

# Nursing Guide to Practice

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

Office of the Professions  
Division of Professional Licensing Services  
89 Washington Avenue  
Albany, NY 12234-1000  
[www.op.nysed.gov](http://www.op.nysed.gov)



(Rev. 4/09)

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Lisa Balas, R.N., Buffalo .....	01/01/08 - 12/31/12 (1 <sup>st</sup> Term)
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Note: A list of current Board members is available on the Office of the Professions' Web site at [www.op.nysed.gov](http://www.op.nysed.gov).



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## FOR FUTURE REFERENCE

**IN THE EVENT OF AN EMERGENCY** that impacts the licensed professions, the Office of the Professions will provide important information, specific to the situation, through our **Web site** ([www.op.nysed.gov](http://www.op.nysed.gov)), our **automated phone system** (518-474-3817), and/or our **regional offices**. This information will include emergency provisions for professional practice as well as updates on scheduled events and services (licensing examinations, professional discipline proceedings, examination reviews, etc.).

# **WELCOME FROM THE ASSOCIATE COMMISSIONER**

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Dear New Professional Licensee:

On behalf of the New York State Board of Regents and the Education Department, I welcome you into the community of New York State licensed professionals. You have worked hard to earn your new professional license. Congratulations on your achievement! In New York State, through the Education Department's Office of the Professions, the Board of Regents licenses and regulates 47 professions and 31 related certification areas, including:

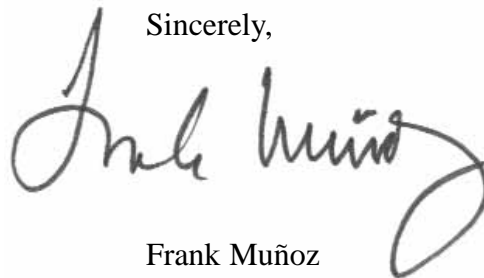
- Nurses, pharmacists, certified social workers, and other professionals who safeguard our health and well-being.
- Accountants and other professionals who ensure the integrity of our business affairs.
- Architects, engineers, and other professionals who keep our roads and buildings safe.

Since 1891, New York's citizen Board of Regents has ensured public protection, quality professional preparation, and fairness for all professionals. The sixteen Regents, representing all regions of the State, oversee the granting of more than 54,000 new licenses each year, the registration of all 733,000 professionals every 2 or 3 years, and the investigation of over 7,000 professional misconduct complaints every year. You join the community of other active professionals in New York State, nearly 320,000 of whom are either registered nurses or licensed practical nurses.

Your license carries with it certain expectations and responsibilities. It represents both your basic qualifications and your commitment to maintaining your competence and rendering quality services throughout your career. The Office of the Professions will support you in meeting your professional responsibilities. We will help you keep up with changes in your profession through our Web site - [www.op.nysed.gov](http://www.op.nysed.gov) and at least one informational mailing a year. We will respond to your questions and process your registration materials promptly. We will also be reaching out to consumers to help them understand their rights to professional services, encourage them to check the licensure and registration status of professionals and to inform them of the process for reporting professional misconduct and unlicensed practice. Our comprehensive approach will ensure that your professional license is backed by the integrity of an effective, unified system of professional regulation under the Board of Regents, that has at its heart, the protection of the public.

Congratulations again on achieving your new professional license and best wishes for a long and satisfying career.

Sincerely,



Frank Muñoz  
Associate Commissioner  
Office of the Professions

# **WELCOME FROM THE EXECUTIVE SECRETARY**

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Dear New Professional Licensee:

On behalf of the New York State Board for Nursing, I would like to welcome you to the practice of nursing in New York State. As you begin what we hope will be a rewarding career in New York, there are a few things you should know.

In New York State you are licensed for life, unless your license is surrendered or revoked following disciplinary action by the Board of Regents. However, if you are practicing in New York, in addition to being licensed, you are also required to be registered. Your initial period of registration begins with your date of licensure, and you must reregister every three years thereafter. As long as we have your current address, you will automatically receive re-registration materials in the mail four months before your registration expires. You are required, by law, to inform us if your name or address changes. If you change your name or move, please notify us by submitting the Address/Name Change form which can be found on our Web site at [www.op.nysed.gov/anchange.pdf](http://www.op.nysed.gov/anchange.pdf).

As a New York State licensed professional, the Regents Rules on Unprofessional Conduct require that you confine your practice to your personal scope of competence. While New York has no continuing education requirements in nursing at the present time, it is our expectation that you will remain current with the best practices in your field. The New York State Board of Regents, the Education Department, and the State Board for Nursing, are committed to the protection of the public and to the highest standards of professional services.

If you have questions related to scope of practice, please contact the Office of the Professions' State Board for Nursing, 89 Washington Avenue, Albany, NY 12234-1000 by phone at 518-474-3817, ext. 120, fax at 518-474-3706, or e-mail at [nursebd@mail.nysed.gov](mailto:nursebd@mail.nysed.gov).

The members of the State Board for Nursing join me in wishing you years of satisfaction in the practice of nursing.

Sincerely,



Barbara Zittel  
Executive Secretary,  
State Board for Nursing

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# OFFICE OF THE PROFESSIONS STRATEGIC PLAN

## **VISION**

A regulatory system that promotes the highest quality of professional services for public protection.

## **MISSION**

To protect the public by fostering high standards of professional licensure, practice and discipline.

## **GOALS**

- The credentialing and discipline processes are fair, prompt, clear, and accurate.
- Accurate information will be provided promptly in a clear and courteous manner to consumers, licensees, and the interested public.
- Policies, practices, interpretations, standards, decisions, and processes for the licensed professions balance the needs and concerns of consumers and professionals, consistent with the law.
- All staff are informed, share in decision making, are clear about their role, have meaningful responsibility and opportunity to contribute, and have training to develop their potential.
- Partnerships are developed to promote diversity and increase awareness of careers in the licensed professions.

# YOUR NEW YORK LICENSE AND REGISTRATION

## IMPORTANT INFORMATION ABOUT YOUR REGISTRATION TO PRACTICE IN NEW YORK STATE

- Your professional license is valid for life unless revoked or surrendered; however, you **must** register with the State Education Department every three years to practice your profession or use your professional title in New York State.
- **Month-of-birth registration -**  
Once licensed, about four months before your initial three year registration expires, you will be sent a registration renewal application assigning you to a one-time *transitional registration period*. This period will end with the month prior to your date of birth between two and three years from the expiration date of your first registration renewal. This allows us to adjust your triennial registration cycle to coincide with the month of your date of birth and helps to ensure a speedy renewal of your registration. The registration fee for this transitional period will be prorated so that you pay only for the number of months included in the period. Thereafter, you will be registered for a three-year period beginning on the first day of your month of birth.

**Remember** that it is your responsibility to notify us of a change of address. You can access the license verification service on the Office of the Professions' Web site - [www.op.nysed.gov](http://www.op.nysed.gov) - to confirm your registration expiration date.

### *For answers about...*

### **Contact:**

#### **PRACTICE ISSUES OR THE RULES GOVERNING YOUR PROFESSION**

- Standards of Practice
- Scope of Practice
- Related areas

#### **OFFICE OF THE PROFESSIONS, STATE BOARD FOR NURSING:**

**Call:** 518-474-3817 ext. 120  
**E-Mail:** [nursebd@mail.nysed.gov](mailto:nursebd@mail.nysed.gov)  
**Write:** Office of the Professions  
 State Board for Nursing  
 89 Washington Avenue  
 Albany, NY 12234-1000  
**Fax:** 518-474-3706

#### **INACTIVE REGISTRATION**

- If you are not practicing your profession or using your title in New York, **you may inactivate** your registration at no cost. You must advise us of your decision to be inactive; otherwise, you will be expected to keep your registration current and pay all registration fees due.

If you decide to resume practice in New York after inactivating your registration, you must re-register with the Department.

#### **TO INACTIVATE YOUR REGISTRATION OR TO RENEW AN INACTIVE OR LAPSED REGISTRATION:**

**Call:** 518-474-3817 ext. 410  
**E-mail\*:** [opregfee@mail.nysed.gov](mailto:opregfee@mail.nysed.gov)  
**Write\*:** Registration Unit  
 Office of the Professions  
 Division of Professional Licensing Services  
 89 Washington Avenue  
 Albany, New York 12234-1000  
**Fax\*:** 518-474-3004

**Licensure Status Information:** [www.op.nysed.gov](http://www.op.nysed.gov)  
 (Click on 'Online Licensure Verification')

\*Be sure to include your name, profession, license number, date of birth, old address, new address (including suite or apartment) and daytime telephone number.

# YOUR NEW YORK LICENSE AND REGISTRATION

<i><b>For answers about...</b></i>	<i><b>Contact:</b></i>
<p><b>CHANGING YOUR ADDRESS OR NAME IN OUR RECORDS</b></p> <p>Education Law and Commissioner's Regulations require that you <b>notify us within 30 days of a change in your name or address.</b></p> <p>You may use the Address/Name Change form to notify us of changes in your name or address <b>or</b> use one of the methods outlined in the box to the right. The Address/Name Change form can be found on our Web site at <a href="http://www.op.nysed.gov/anchange.pdf">www.op.nysed.gov/anchange.pdf</a></p>	<p><b>FOR ADDRESS OR NAME CHANGES:</b></p> <p><b>Call:</b> 518-474-3817 ext. 380  <b>E-mail:</b> <a href="mailto:oparchiv@mail.nysed.gov">oparchiv@mail.nysed.gov</a>  <b>Write:</b> Records and Archives Unit  Office of the Professions  Division of Professional Licensing Services  89 Washington Avenue  Albany, New York 12234-1000  <b>Fax:</b> 518-486-3617</p>
<p><b>Your notification must include your name, profession, license number, social security number, date of birth, and both your old and new address and/or name. Please note: An original signature and notary certification is required for a name change; therefore, phone, fax, or e-mail notifications are not acceptable.</b></p>	
<p><b>REPLACING YOUR REGISTRATION CERTIFICATE OR YOUR LICENSE</b></p> <ul style="list-style-type: none"> <li>• Your <b>license</b> is the permanent document issued at the time of your licensure.</li> <li>• Your renewable <b>registration certificate</b> indicates that you are currently registered to practice under that license in New York State.</li> </ul>	<p><b>FOR AN APPLICATION TO REPLACE A LOST OR DESTROYED LICENSE:</b></p> <p><b>Call:</b> 518-474-3817 ext. 380  <b>E-mail:</b> <a href="mailto:oparchiv@mail.nysed.gov">oparchiv@mail.nysed.gov</a>  <b>Write:</b> Records &amp; Archives Unit  Office of the Professions  Division of Professional Licensing Services  89 Washington Avenue  Albany, New York 12234-1000  <b>FAX:</b> 518-486-3617</p> <p><b>TO REPLACE A LOST OR DESTROYED REGISTRATION CERTIFICATE:</b></p> <p><b>Call:</b> 518-474-3817 ext. 410  <b>E-mail:</b> <a href="mailto:opregfee@mail.nysed.gov">opregfee@mail.nysed.gov</a>  <b>Write:</b> Registration Unit  Office of the Professions  Division of Professional Licensing Services  89 Washington Avenue  Albany, New York 12234-1000  <b>Fax:</b> 518-474-3004</p>
<p><b>An original signature of the licensee is required for replacement documents.</b></p>	

# YOUR NEW YORK LICENSE AND REGISTRATION

<p><b><i>For answers about...</i></b></p>	<p><b><i>Contact:</i></b></p>
<p><b>VERIFYING YOUR NEW YORK LICENSE</b></p> <p>New York issues two types of written confirmation of licensure, both of which require a <b>written request and a fee</b>. Determine exactly which type is needed by the party to whom the information will be sent.</p> <p><b>Verification:</b> states only whether an individual is licensed and currently registered. <b>Fee: \$10</b></p> <p><b>Certification:</b> states the basis of licensure, including professional school and licensing examination results. This statement will only be issued at the request of the licensee or another licensing authority. <b>Fee: \$20</b></p>	<p><b>FOR A WRITTEN VERIFICATION OR CERTIFICATION:</b></p> <p><b>Send request and fee to:</b></p> <p style="text-align: center;">Certifications and Verifications Unit Office of the Professions Division of Professional Licensing Services 89 Washington Avenue Albany, New York 12234-1000</p> <p><b>NO COST VERIFICATION OPTIONS:</b></p> <p><b>By phone:</b> 518-474-3817 ext. 570</p> <p><b>On the Web:</b> <a href="http://www.op.nysed.gov">www.op.nysed.gov</a></p>
<p><b>UNLICENSED PRACTICE OR PROFESSIONAL MISCONDUCT</b></p> <p>You may contact the office of the State board for advice on practice issues.</p> <p><b>The Office of the Professions' Office of Professional Discipline (OPD)</b></p> <ul style="list-style-type: none"> <li>• Investigates and prosecutes complaints against licensed professionals; and</li> <li>• works with other enforcement agencies in cases involving illegal (unlicensed) practice.</li> </ul>	<p><b>TO FILE A COMPLAINT AGAINST A PROFESSIONAL LICENSED BY THE STATE EDUCATION DEPARTMENT* OR REPORT SOMEONE YOU BELIEVE IS PRACTICING WITHOUT A LICENSE, CALL 1-800-442-8106 OR CONTACT AN OFFICE OF THE PROFESSIONS REGIONAL OFFICE:</b></p> <p><b>Albany:</b> 518-485-9350  <b>Bronx/Queens:</b> 718-794-2457 or 2458  <b>Brooklyn and Staten Island:</b> 718-246-3060 or 3061  <b>Buffalo:</b> 716-842-6550  <b>Central Administration:</b> 212-951-6400  <b>Long Island:</b> 631-952-7422  <b>Manhattan:</b> 212-961-4369  <b>Mid Hudson:</b> 914-934-7550  <b>Rochester:</b> 585-241-2810  <b>Syracuse:</b> 315-428-3287</p> <p><b>E-mail:</b> <a href="mailto:conduct@mail.nysed.gov">conduct@mail.nysed.gov</a></p>
<p>*The Office of Professional Medical Conduct (OPMC) of the New York State Health Department investigates complaints against <b>physicians, physician assistants, and specialist assistants</b></p> <p><b>OPMC: 800-663-6114 or 518-402-0836</b></p>	
<p><b>Information about the Office of the Professions and the licensed professions is available on our Web site at: <a href="http://www.op.nysed.gov">www.op.nysed.gov</a></b></p>	

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# NURSING JURISPRUDENCE EXAM

As a licensed professional in New York State, it is your professional responsibility to know the legal requirements governing the practice of your profession and to be alert to changes in those requirements. To help you, this self-administered exam, developed by the State Board for Nursing, is intended to provide you with a measure of your working knowledge of those requirements. Full knowledge will help avoid pitfalls that can lead to charges of professional misconduct. You are encouraged to read the law, regulation or rule before attempting to answer each question. If in doubt, call the Board office at 518-474-3817, ext. 120, or e-mail nursebd@mail.nysed.gov.

The following 20 questions relate to Education Law, Articles 130 and 139, Parts 52 and 64 of the Regulations of the Commissioner of Education, and Part 29 of the Rules of the Board of Regents. The first five questions are general in nature, the remaining fifteen are specific to the profession of nursing. Select one answer for each question. When you finish, you can check pages 14-15 of this Guide for the correct answers with explanations. An overall score of 100% is perfect; a score of 75% to 95% is good; a score below 75% means you may be in danger of violating your professional practice act. This tool is also available on the Office of the Professions Web site at [www.op.nysed.gov](http://www.op.nysed.gov).

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## Questions

1. According to Education Law, Article 130, section 6502, to practice in this State, all Registered Professional Nurses, Nurse Practitioners, and Licensed Practical Nurses must register with the New York State:
  - a. Education Department
  - b. Health Department
  - c. Office of Professional Discipline
  - d. Worker's Compensation Board
  
2. What is the function of the Office of Professional Discipline in relation to the practice of nursing?
  - a. to convict professionals who commit State or Federal crimes
  - b. to investigate and prosecute allegations of professional misconduct
  - c. to monitor consumer complaints
  - d. to set guidelines for practice
  
3. According to Education Law, Article 130, section 6502, a license shall be valid during the life of the holder unless the:
  - a. Board of Regents revokes, annuls, or suspends the license
  - b. Education Department files charges against the licensee
  - c. licensee moves without proper notification
  - d. licensee practices less than one day per month

4. According to Education Law, Article 130, section 6508, a board for each profession shall be appointed by the Board of Regents. The purpose of the State Board for Nursing is to:
  - a. assist the Board of Regents and the Department on matters of professional licensing, practice and conduct
  - b. conduct investigations into misconduct
  - c. register or approve educational programs
  - d. review qualifications of all candidates for licensure
5. According to Education Law, Article 130, section 6509, which one of the following does not constitute professional misconduct?
  - a. being convicted of a crime under New York State or federal law
  - b. making available to a patient copies of their patient records
  - c. permitting an unlicensed person to perform activities requiring a license
  - d. willfully failing to notify the Department of any change in name or mailing address
6. Talking to a nursing colleague in the public cafeteria of a hospital about a specific patient may result in charges of all except which one of the following:
  - a. professional misconduct
  - b. unprofessional conduct
  - c. gross incompetence
  - d. violation of confidentiality
7. According to Regents Rule 29.2, a licensed professional is practicing proper infection control if:
  - a. direct patient contact is discontinued when the licensee has open, uncovered weeping skin lesions
  - b. only gowns and gloves are donned if splattering blood is possible
  - c. sharp items are placed in the trash
  - d. the same protective equipment is used for different patients
8. According to the Rules of the New York State Board of Regents, Part 29.1 what is lawful?
  - a. refusing to make available to a patient copies of patient records
  - b. failing to wear an identification badge
  - c. offering bonuses for a professional service
  - d. charging a fee for providing health records to a patient
9. According to section 18 of the Public Health Law all of the following statements are true regarding access to records by patients except:
  - a. a health care provider must furnish a copy of patient information upon the written request of a qualified person/patient within 10 days of the request
  - b. patient information includes personal notes and observations of the health care provider
  - c. no more than 75 cents per page may be charged for paper copies of such records

- d. failure to pay a reasonable fee for the record relieves the health care provider from providing the information
10. According to Parts 29.1 and 29.2 of the Rules of the Board of Regents, which act might be deemed unprofessional conduct in nursing?
- a. advertising that uses testimonials
  - b. dating a former patient
  - c. delegating professional responsibilities, such as starting IVs, to an LPN
  - d. practicing beyond the scope permitted by law
11. According to Parts 29.1 and 29.2 of the Rules of the Board of Regents, which act might be deemed unprofessional conduct in nursing?
- a. advertising that is flamboyant
  - b. advertising, in a newspaper, ones fees for services
  - c. forgetting to re-register to practice with the Education Department
  - d. wearing a name badge indicating the practitioner's name
12. According to Part 59.13 of the Regulations of the Commissioner of Education how often must a nurse complete a course of training in infection control and barrier precautions:
- a. every two years
  - b. every three years
  - c. every four years
  - d. whenever notified by the State Education Department
13. In accordance with Part 64 of the Commissioner's Regulations, what statement is correct regarding limited permits issued by the Department?
- a. limited permits allow the RN-graduate holder to practice nursing only under the supervision of an RN
  - b. limited permits allow the LPN-graduate holder to practice nursing only under the supervision of an LPN
  - c. limited permits are issued for a two year time frame
  - d. limited permits expire immediately upon notification that the holder has passed the licensing exam
14. According to Article 139, section 6907 of Education Law, who can practice nursing in New York health facilities without a New York State nursing license, certificate or permit?
- a. an applicant who has completed all forms and paid a fee to the Department for licensure and registration
  - b. a commissioned nurse officer in the armed forces of the United States licensed only in France
  - c. for 90 days after graduation, a graduate of an approved school of nursing who has applied for a limited permit
  - d. a student enrolled in an out-of-state school of nursing

15. Article 139, section 6902(1) of Education Law, provides the legal definition of the practice of registered professional nursing. Which one of the following statements is not accurate regarding this definition?
- registered nurses may diagnose and treat human responses to actual or potential health problems
  - registered nurses may diagnose illness
  - registered nurses may provide services such as casefinding, health teaching, health counseling and provision of care supportive to or restorative of life and well-being
  - registered nurses must execute nursing regimen that are consistent with existing medical regimen
16. Which one of the following statements is not accurate regarding the definition of the practice of a licensed practical nurse as defined in Education Law, Article 139, section 6902(2)?
- licensed practical nurses may diagnose and treat human responses to actual or potential health problems
  - licensed practical nurses may perform tasks and responsibilities within the framework of casefinding, health teaching, health counseling and provision of supportive and restorative care
  - licensed practical nurses must work under the direction of a registered professional nurse or other authorized and licensed health care provider
  - licensed practical nurses may administer medications prescribed by an authorized prescriber
17. Which one of the following statements is not accurate regarding the definition of a nurse practitioner as defined in Article 139, section 6902(3)?
- nurse practitioners may diagnose illness and physical conditions and perform therapeutic and corrective measures within a specialty area of practice
  - nurse practitioners must collaborate with a licensed and qualified physician
  - nurse practitioners do not need to maintain their license as a registered professional nurses once they are certified as a nurse practitioner
  - nurse practitioners must provide services performed in accordance with a written practice agreement and written practice protocol
18. According to section 6902 of Article 139 of the Education Law registered professional nurses and licensed practical nurses may execute medical regimens from all of the following legally authorized health care providers except:
- physicians
  - physician assistants
  - nurse practitioners
  - chiropractors

19. According to section 64.7 of the Regulations of the Commissioner of Education, what agents can be provided under non-patient specific orders to adults?
- a. insulin
  - b. travel immunizations
  - c. all immunizations
  - d. just certain immunizations
20. A licensed practical nurse may participate in providing immunizations under non-patient specific orders in all ways except:
- a. assist in injecting approved immunizations
  - b. assist in record keeping
  - c. administering anaphylactic agents
  - d. assessing the recipient

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# ANSWERS TO THE NURSE JURISPRUDENCE EXAM

1. **(a)** The New York State Education Department is authorized by law to regulate nursing and 47 other licensed professions.
2. **(b)** The Office of Professional Discipline investigates and prosecutes all allegations of professional misconduct related to nursing practice in New York.
3. **(a)** A license is valid during the life of the holder unless revoked, annulled, or suspended by the Board of Regents.
4. **(a)** The purpose of the State Board for Nursing is to assist the Board of Regents and the Department on matters of professional licensing, practice and conduct.
5. **(b)** Regents Rule 29.1(b)(7) requires licensees to make records available to a patient or client upon request according to standards set forth in section 18 of the Public Health Law.
6. **(c)** Article 130, section 6509 of Education Law and Part 29 of the Rules of the Board of Regents provide information on acts that relate to professional misconduct and unprofessional conduct.
7. **(a)** Regents Rule 29.2(13)(xii) requires licensees to refrain from all direct patient care when the licensee has exudative lesions or weeping dermatitis that has not been medically evaluated to be safe or capable of being safely protected against.
8. **(d)** Rules of the Board of Regents and section 18 of the Public Health Law clarify that it is lawful to charge a fee for providing health records to a patient.
9. **(d)** Section 18 of Public Health Law states that a qualified person shall not be denied access to patient information solely because of inability to pay.
10. **(d)** Regents Rule 29.1(b)(9) states that it is unprofessional conduct to practice beyond the scope permitted by law or to accept and perform professional responsibilities when the licensee knows that she or he is not competent to perform them.
11. **(d)** Regents Rule 29.2(a)(9) states that it is unprofessional conduct to fail to wear an identifying badge indicating the practitioner's name and professional title.
12. **(c)** Part 59.13 of the Regulations of the Commission describes coursework or training in infection control and barrier precautions for nurses and others that must be completed every four years.
13. **(a)** Limited permit holders may only practice nursing under the supervision of an RN. Limited permits expire 10 days after notification that the holder has failed the licensing exam.

14. **(c)** Graduates of nursing programs registered by the Department may be employed to practice nursing under supervision of a registered professional nurse for ninety days immediately following graduation after having submitted an application for a limited permit.
15. **(b)** Registered nurses are precluded from medical diagnosis. This is clarified in section 6901(1) of Article 139 of Education Law.
16. **(a)** Section 6902 of Article 139 of Education Law limits diagnosing and treating human responses to actual or potential health problems to registered professional nurses.
17. **(c)** Nurse practitioners must maintain licensure as a registered professional nurse as stated in section 6902(3)(a).
18. **(d)** Section 64.6 of the Regulations of the Commissioner of Education clarifies that health care providers authorized to prescribe medical regimens include licensees in the professions of medicine, including physician's assistant and specialist assistant; dentistry; podiatry; and nurse practitioner.
19. **(d)** Section 64.6 of the Regulations of the Commissioner of Education lists the immunizations that can be provided for adults and children under a non-patient specific order and protocol.
20. **(d)** The registered professional nurse is responsible for assessing the recipient and for the on-site direction of the LPN who is administering the immunization.

If you need more information on any of these items or if you have questions about other practice issues, please contact the State Board for Nursing at:

New York State Education Department Office of the Professions  
State Board for Nursing  
89 Washington Avenue  
Albany, NY 12234-1000  
Phone: 518-474-3817 ext. 120  
E-mail: nursebd@mail.nysed.gov

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## FREQUENTLY ASKED PRACTICE QUESTIONS

- 1. The scopes of practice for the professions of registered professional nurse, licensed practical nurse and nurse practitioner are defined in Education Law. Does that mean that I can do everything that falls within the legal scope of the practice of my profession?**

Answer: A licensee may legally perform services that are in the definition of the scope of practice but licensees must also be competent to deliver those services. Part 29 of the Rules of the Board of Regents requires that licensees practice within the scope defined in law and within their personal scope of competence. If you are not competent to provide a service that you are legally allowed to provide, then you may not provide that service. As a licensed professional, it is your responsibility to practice within the scope of your abilities and expertise. If you practice outside your personal scope of competence, you may be charged with professional misconduct.

- 2. Must I wear an identification badge when I am providing nursing services in a healthcare setting?**

Answer: You must wear an identification badge indicating your name and your professional title if you are practicing as an employee of a hospital, clinic, group practice or multi-professional facility or at a commercial establishment offering health services to the public. This requirement is set out in Part 29.2(a) (9) of the Rules of the Board of Regents.

- 3. What is the correct title for new graduates of Licensed Practical Nursing and Registered Professional Nursing programs?**

Answer: The correct title for a graduate of an LPN program who is not yet licensed is Graduate Practical Nurse (GPN). The correct title for a graduate of an RN program who is not yet licensed is Graduate Nurse (GN). This title must be displayed on the identification badge (see previous question) and used in signing official patient-care documents

- 4. How long can graduate nurses work under a limited permit?**

Answer: The Education Department issues limited permits to graduates of RN or LPN programs who have met all licensure requirements except for successfully passing the licensure exam. Limited permits expire one year from the date of issuance or ten days after notification to the applicant of failure on the licensing exam. It is unlawful to work after expiration of a limited permit.

- 5. What limitations do Graduate Practical Nurses (GPN) and Graduate Nurses (GN) practice under as holders of a Limited Permit?**

Answer: GPNs and GNs must practice under the supervision of a registered professional nurse (RN) while they are holders of a Limited Permit. This means that the supervising RN must be on the patient care ward/unit (whichever is smaller) at all times when professional services are being rendered by the limited permittee. The supervising RN must provide an

appropriate degree of supervision which is determined by the specific circumstances of the patient care being provided.

**6. What is the difference between licensure and registration?**

Answer: For the 48 professions regulated by the State Education Department, one is licensed for life unless that license is revoked or suspended by the Board of Regents. In order to practice, however, one must be registered with the Department. In nursing, registration is required every three years. The Department typically sends out a renewal request four months before the beginning of the new renewal cycle. However, *you* are responsible for renewing your registration even if you do not receive an automatic renewal form.

**7. Do nurses have to keep their registration certificates on themselves in order to practice?**

Answer: **No.** However, the registration certificate must be available for inspection upon request. In many facilities a copy of the registration certificate is maintained by the Nursing Office. This requirement is set out in Part 59.8(c) of the Regulations of the Commissioner of Education.

**8. I am licensed in New York and wish to be licensed in another state. How do I go about that?**

Answer: Each state has different licensure requirements, forms to complete and fees to pay. The National Council of State Boards of Nursing maintains a Web site that lists addresses and other contact information for state boards throughout the United States. That Web site address is [www.ncsbn.org](http://www.ncsbn.org).

**9. How do I satisfy the infection control course requirement every four years?**

Answer: Education Law (section 6505-b) requires all nurses to complete course work or training in infection control and barrier precautions, including engineering and work controls to prevent the transmission of human immunodeficiency virus (HIV) and the hepatitis B virus (HBV) every four years. You must attest to having completed this requirement to the State Education Department on your first licensure/registration application and at every subsequent registration. If you graduated from a nursing program registered by the State Education Department after September 1, 1993, for your initial licensure, you are automatically credited with having completed the requirement as part of your coursework. All other applicants must complete approved coursework before licensure will occur. After the initial registration cycle, all nurses must take the training every four years and attest compliance to the requirement when renewing their registration every three years. Please click on to the Office of the Professions Web site at [www.op.nysed.gov/icmemo.htm](http://www.op.nysed.gov/icmemo.htm) to read the entire law governing the infection control coursework requirement and to access the list of approved providers.

**10. Can a Licensed Practical Nurse (LPN) practice independently?**

Answer: Section 6902 of Article 139 of the Education law and section 64.6 of the Regulations of the Commission of Education state that an LPN performs tasks and responsibilities *under the direction of a registered professional nurse, nurse practitioner, physician, physician assistant, specialist assistant, dentist and podiatrist.* *Under the direction of a registered professional nurse* means that a registered professional nurse must be present on the premises or immediately available by telephone when professional services are given by a licensed practical nurse. The degree of supervision should be appropriate to the circumstances.

**11. Can a Licensed Practical Nurse (LPN) practice independently if the LPN has an "independent Medicaid provider number"?**

Answer: **No.** By law, LPNs must practice under the direction of a registered nurse or physician. Issuance of an "independent Medicaid provider number" merely allows the LPN to be paid for the services provided.

**12. What tasks are Licensed Practical Nurses (LPNs) prohibited from performing?**

Answer: It is not possible to provide a comprehensive and exhaustive list of tasks that LPNs are prohibited from performing. In general, however, LPNs may not conduct a nursing diagnosis and may not conduct the assessment phase of the nursing process. In particular, LPNs may not:

- perform triage services,
- administer IV-push medications,
- perform blood transfusions until satisfactory completion of a transfusion training, program meeting criteria specified by the DOH and the SED and only when a registered nurse or a physician or other person authorized by law to manage transfusion reactions is immediately available on-site.

**13. Can a Licensed Practical Nurse (LPN) supervise medical assistants in giving allergy shots?**

Answer: **No.** Medical assistants are non-licensed personnel who may not legally administer medications to patients, by any route.

**14. Can a Licensed Practical Nurse (LPN) be a charge nurse or supervisor in a nursing home or outpatient clinic?**

Answer: An LPN may not assess (interpret clinical data) or develop nursing care plans. To the extent that charge nurse or supervisor responsibilities require ongoing assessment, LPNs accepting such positions could have a disciplinary charge against their license for working beyond their lawful scope of practice.

**15. Can nurses administer medications or tests without a patient specific order from an authorized prescriber?**

Answer: **No.** Nurses are required to have patient-specific orders for the medications and tests that they administer. There is one exception provided by §6909 of Education Law and §64.7 of the Regulations of the Commissioner of Education which authorizes a registered nurse to administer certain immunization, anaphylaxis treatment agents, purified protein derivative (PPD) tests and Human Immunodeficiency Virus (HIV) tests based on non-patient specific orders and protocols.

**16. What immunizations can Registered Professional Nurses (RNs) provide under a non-patient specific order?**

Answer: Registered Professional Nurses may provide a broad range of immunizations to children and adults following a non-patient specific order. For **adults**, these include: Acellular Pertussis, Diphtheria, Hepatitis A, Hepatitis B, Human Papilloma Virus (HPV), Inactivated Polio, Influenza, Measles, Meningococcus, Mumps, Pneumococcus, Rubella, Tetanus, Varicella, Smallpox and Herpes Zoster vaccine. For **children** the list includes: Acellular Pertussis, Diphtheria, Haemophilus Influenza Type b (HIB), Hepatitis A, Hepatitis B, Human Papilloma Virus (HPV), Inactivated Polio, Influenza, Measles, Meningococcus, Mumps, Pneumococcal Conjugate, Rubella, Tetanus, and Varicella. This list and other related information can be found on page 83 of this Guide to Practice and at [www.op.nysed.gov/immunoguide.htm](http://www.op.nysed.gov/immunoguide.htm).

**17. What do I do about obtaining syringes and needles and substances such as immunizing agents so that I can implement a non-patient specific order?**

Answer: Provision has been made in the law for pharmacists to provide registered professional nurses with syringes, needles and immunizing agents. Procurement of such items may be considered a wholesale transaction. However, a wholesale registration does NOT have to be made with the State Board of Pharmacy in order for the pharmacist to provide you with such items.

**18. Can a Registered Professional Nurse (RN) provide care to a pregnant woman who is receiving an analgesic agent(s) by catheter techniques?**

Answer: In caring for the **pregnant woman** who is receiving analgesic agents by catheter technique, Registered Nurses who are not anesthesia care providers should not:

- Increase or decrease the rate of a continuous infusion per PRN order;
- Increase or decrease the rate of a continuous infusion by direct order unless the anesthesia provider is on the unit and immediately available during the increase or decrease;
- Rebolus an epidural either by injecting medication into the catheter or increasing the rate of a continuous infusion;
- Re-initiate an infusion once it has been stopped, and
- Manipulate PCEA (Patient Controlled Epidural Analgesia) doses or dosage intervals.

**19. To what degree is a Registered Professional Nurse (RN), employed in an Office of Mentally Retardation and Developmental Disabilities (OMRDD) group home, responsible for the administration of medications by approved medication administration personnel (AMAP)**

Answer: It is the responsibility of the RN to provide initial and on-going training to unlicensed direct care staff in all nursing tasks that they will perform, including medication administration. The RN is also responsible for periodically reviewing the performance of unlicensed staff to determine that their care is consistent with established standards. However, it is expected that once non-licensed persons have completed training and are recognized as AMAPS, they have met minimal standards of competency to safely administer medications.

**20. As a Registered Professional Nurse (RN) with a private practice, how long must I retain patient records?**

Answer: All licensed practitioners with private practices must retain patient records 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. It is unprofessional conduct to fail to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Additional information on record keeping can be found in Part 29.2(3) of the Rules of the Board of Regents at [www.op.nysed.gov/nurse](http://www.op.nysed.gov/nurse).

**21. Can a Registered Professional Nurse (RN) be hired by a business corporation to practice nursing?**

Answer: **No.** Business ventures such as med spas, nutrition stores and durable equipment companies may not hire licensed professionals to provide professional health care services in New York State.

**22. Can a Registered Professional Nurse (RN) administer botox, sclera therapy, dermabrasion, laser hair removal and other alternative or cosmetic procedures to a patient?**

Answer: **Yes.** The RN, who has been found competent in these procedures, may carry them out upon the prescription of an authorized provider who has examined the patient.

**23. Can a Registered Nurse (RN) carry out medical tasks at the delegation of a physician or nurse practitioner?**

Answer: In New York State, a licensed professional such as a physician, may not delegate tasks that fall exclusively within that practitioner's scope of practice, such as performing spinal taps, to another licensed professional, such as an RN, who does not have that task within her/his licensed scope of practice.

**24. Who is the best person/agency to contact regarding information about the legal practice of school nurses?**

Answer: The New York State Education Department's Office of Student Support Services, 89 Washington Ave., Albany, NY 12234, provides technical assistance about school health

service programs. Scope of practice questions can be e-mailed to [studentsupportservices@mail.nysed.gov](mailto:studentsupportservices@mail.nysed.gov) or the program's office can be called at 518-486-6090. For more information, you can visit their Web site at [www.p12.nysed.gov/ss/schoolhealth/schoolhealthservices/](http://www.p12.nysed.gov/ss/schoolhealth/schoolhealthservices/).

**25. To what extent is an employer mandated to report nursing errors or instances of conduct to the Office of Professional Discipline?**

Answer: It is up to the Chief Nurse Officer to determine if an error or instance of conduct reaches the level of concern that would suggest an official report to the Office of Professional Discipline or to the Department of Health. There are three events regarding medication errors that require a report to the Department of Health's patient tracking system (NYPORT system): permanent patient harm, near death as evidenced by cardiac or respiratory arrest, and death. Other reporting references are Public Health Law 2803-e, Education Law 6510 b, Title 10 NYCRR 405.3.

**26. Can an unlicensed person use the title "nurse" or be referred to as "the nurse" in New York State?**

Answer: **No.** The law requires that the title "nurse" be used to refer only to persons who hold a license under Article 139 of the Education law, commonly referred to as the "nurse practice act".

**27. Can a Nurse Practitioner (NP) diagnose illness and prescribe treatment for all persons?**

Answer: While Nurse Practitioners can diagnose illness and prescribe treatment, their practice is limited to a specialty area that is determined by their educational preparation and stated on their State issued certificate to practice.

**28. As a newly certified Nurse Practitioner, is completion of the 4NP form equivalent to a collaborative practice agreement?**

Answer: **No.** The 4NP is a signed document verifying that you have a written collaborative practice agreement with a physician that includes an approved protocol text related to your specialty area as designated on your certificate. A sample collaborative practice agreement is included on page 48 of this guide.

**29. As a Nurse Practitioner (NP), where do I need to file the practice agreement and practice protocol?**

Answer: The collaborative practice agreement and practice protocols must be maintained in the practice setting and must be available to the Department for inspection. They may be updated periodically.

**30. Can a Nurse Practitioner (NP) who has a collaborative agreement with a collaborator continue working if the collaborator dies?**

Answer: **No.** The law requires that there be an active collaborative agreement in place, for the Nurse Practitioner to practice. If there is already a designated resource physician for vacations and illness, that physician could agree to become the official collaborator.

**31. Can a Nurse Practitioner (NP) continue working when the collaborating physician is on vacation or out due to a prolonged illness?**

Answer: **Yes.** The collaborator can designate a resource person to be available to the nurse practitioner as needed during the collaborator's absence. It is best if the resource person is named in the collaborative agreement if the absence is prolonged.

**32. Can a Geriatric Nurse Practitioner take a position as a Pediatric NP if s/he has years of pediatric *nursing* experience as a Registered Nurse (RN)?**

Answer: **No.** Experience as an RN is not sufficient to be licensed as a nurse practitioner (NP) as the scope of practice of an NP is distinctly different from that of an RN. An NP must be a graduate of an educational program for nurse practitioners and licensed by the State of New York *in a specialty*, in this case pediatrics, or s/he is not practicing unlawfully.

**33. Must the collaborating physician co-sign the Nurse Practitioner's (NP) orders and charts?**

Answer: **No.** Nurse practitioners (NPs) do not function under the supervision of physicians- they function in collaboration with physicians. Nurse practitioners are independently responsible for the diagnosis and treatment of the patients that they serve. We do not recommend co-signatures as it transfers responsibility of the care from the NP to the physician.

**34. What additional requirements are there for a Nurse Practitioner (NP) to prescribe medications?**

Answer: You will need to obtain certain forms or identification numbers as follows:

- **National Provider Identifier (NPI)**

All health care providers- including those serving Medicare beneficiaries- are now required to apply for a new National Provider Identifier (NPI) that will be used in all electronic health care transactions. The NPI will replace all other provider identifiers currently being used. The National Provider Identifier initiative was mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and requires that NPIs be used by health plans, health care clearinghouses, and health care providers that process claims, handle claim status inquiries/responses and eligibility inquiries/responses, as well as other transactions. Nurse practitioners can apply for an NPI by going to <http://nppes.cms.hhs.gov>. Applications can be submitted online now or via regular mail.

- **Federal Drug Enforcement Administration (DEA) Number:**

A Federal Drug Enforcement Administration (DEA) Number is required to prescribe and dispense narcotic and controlled substances. A DEA number may be obtained from:

United States Department of Justice  
Drug Enforcement Administration  
99 10th Avenue  
New York, NY 10011  
Web: [www.DEAdiversion.USDOJ.gov](http://www.DEAdiversion.USDOJ.gov)  
Telephone: 1-877-883-5789, 1-800-882-9539 or 212-337-1593.  
Fax: 212-337-2867 or 2895.

- **New York State Official Prescription Forms may be obtained from:**

New York State Department of Health  
Bureau of Narcotic Enforcement  
433 River Street, Suite 303  
Troy, NY 12180  
Telephone: 866-811-7957 or 518-402-0708

**35. Is there any limitation on the medications that a Nurse Practitioner (NP) may prescribe under a DEA number?**

Answer: The law authorizes Nurse Practitioners to prescribe drugs for treatment of patients within their specialty area of practice. In terms of controlled substances, they may order drugs from Schedules II through IV without restriction. Drugs, immunizing agents, tests, devices, and procedures ordered by nurse practitioners do not require a co-signature from the collaborating physician.

**36. Can a Nurse Practitioner (NP) also practice as a Registered Nurse First Assistant (RNFA)?**

Answer: It is within the scope of practice of any registered professional nurse (RN), including a Nurse Practitioner (NP), to function as a first assistant in surgery following completion of additional education and training that meets the Association of Operating Room Nurses' Recommended Education Standards for RN First Assistant programs. RN First Assistants in the Operating Room are credentialed by the education community and must establish privileges to First Assist from the Medical Staff Office credentialing/privileging department of each facility in which they intend to practice. Since surgery is not part of the scope of practice of the NP role, NPs must clearly differentiate between RNFA duties and NP practice.

**37. Does the State Board for Nursing determine insurance reimbursement for nursing services?**

Answer: **No.** The State Board does not have the authority to resolve disputes involving insurance fees or privileges. This function is regulated by the New York State Insurance Department.

**38. If I have been to court for an alleged violation of the law can it affect my license?**

Answer: **Yes.** *Conviction* of a misdemeanor or a crime may affect your license. You are required to answer the following questions on your re-registration form.

- Have you been found guilty after trial, or
- pleaded guilty, no contest or nolo contendere to a crime (felony or misdemeanor) in any court?
- Are criminal charges pending against you in any court?

A "yes" answer will trigger a review of your circumstances. Please note that the courts often notify the Office of Professional Discipline when a known licensee is convicted of a crime.

**39. What options are available to a nurse if a co-worker is suspected of diverting medications?**

Answer: Several options are available depending upon the particular circumstances of the situation. You may wish to share your concerns with your nursing supervisor or report your findings to the Bureau of Controlled Substances in Troy, New York at 518-402-0707. You may also assist the nurse in contacting either the New York State Nurses Association's Statewide Peer Assistance for Nurses (SPAN) program, at 518-782-9400 ext.304, or through their Web site at [www.nysna.org/programs/span/home.htm](http://www.nysna.org/programs/span/home.htm) or the New York State Education Department's Professional Assistance Program (PAP) at, 518-485-9353.

**40. Can a Registered Nurse (RN), recognized by another state as a clinical nurse specialist/advanced practice registered nurse, be recognized to practice as a Nurse Practitioner (NP) in New York State?**

Answer: Not usually. New York State Law does not recognize a clinical nurse specialist as an advanced practice registered nurse (APRN); only Nurse Practitioners (NPs) are recognized as APRNs. Clinical nurse specialists must complete additional education in order to be certified as Nurse Practitioners in New York State.

**41. If I am unsure about whether something falls within my legal scope of practice, how can I find out?**

Answer: You can contact the New York State Board for Nursing by mail at New York State Education, 89 Washington Avenue-Education Building, State Board for Nursing, Second Floor, West Wing, Albany, New York, 12234, by e-mail at [nursebd@mail.nysed.gov](mailto:nursebd@mail.nysed.gov), or by telephone at 518-473-3817 ext. 120.

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# PRACTICE POSITIONS

If you have questions or need additional information about these practice positions, please contact the New York State Board for Nursing at:

New York State Education Department  
Office of the Professions  
State Board for Nursing  
89 Washington Avenue  
Albany, New York 12234-1000  
Phone: 518-474-3817, ext. 120  
Fax: 518-474-3706  
E-mail: nursebd@mail.nysed.gov

## **Abandonment in Nursing**

**To:** New York State Licensed Nurses, Health Care Facilities and Other Interested Parties  
**From:** Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Deputy Commissioner, Office of Higher Education and Barbara Zittel, Executive Secretary, New York State Board for Nursing  
**Date:** September 2002  
**Subject:** Abandonment in Nursing

The New York State Education Department has received numerous requests from nurses and health care employers seeking clarification about actions that could be considered abandonment and lead to charges of unprofessional conduct against a nurse's license. As part of their work to ensure a strong future for the nursing profession, the New York State Board of Regents Blue Ribbon Task Force on the Future of Nursing recommended that the Department clarify its position in this area. We are pleased to provide you with this guidance memo resulting from the significant contributions of the State Board for Nursing, in consultation with the Department of Health, the New York Organization of Nurse Executives, the New York State Nurses Association and the Healthcare Association of New York State.

Provided below are key terms describing important aspects to help clarify abandonment as well as factors associated with assessing allegations of abandonment in nursing.

### **Responsibility of the Licensed Nurse**

Nurses strive to protect the health, safety and rights of their patients. They are individually responsible and professionally accountable for the nursing care that they provide to their patients. Nurses are also responsible to preserve their own integrity and safety.

### **Responsibility of the Health Care Facility**

Health care facilities are responsible for providing staff for the patients they accept, respecting the legal and ethical obligation of nurses to protect the safety of patients. Managerial or supervisory personnel should make adequate provisions for competent staffing to ensure necessary patient care in routine situations.

## **Nurse-Patient Relationship**

A nurse-patient relationship begins when the nurse accepts responsibility for providing nursing care based upon a written or oral report of patient needs. A nurse-patient relationship ends when that responsibility has been transferred to another nurse and a report of patient needs has been communicated.

## **Objection to a Work Assignment**

The decision to accept or reject an assignment must be based upon a critical judgement by the nurse of the nurse's ability to provide competent patient care. When a nurse is assigned to care for a patient or group of patients that is beyond the nurse's level of physical or professional competence, the nurse should immediately notify the first-line supervisor in writing of the objections to accepting the assignment. It should also be noted that future assignments in similar situations will be refused.

## **Definition of Abandonment**

Abandonment results when the nurse-patient relationship is terminated without making reasonable arrangements with an appropriate person so that nursing care by others can be continued.

The legal definition of abandonment as found in section 29.2(a) of the Rules of the Board of Regents states that unprofessional conduct shall include:

*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.*

## **Abandonment and Unprofessional Conduct**

The decision to charge a nurse with abandonment will depend on an examination of all of the circumstances surrounding a particular situation as assessed by State Education Department staff in consultation with a member of the State Board for Nursing. Key questions considered include:

- Did the nurse accept the patient assignment, which established a nurse-patient relationship?
- Did the nurse provide reasonable notice when severing the nurse-patient relationship?
- Could reasonable arrangements have been made for continuation of nursing care by others when proper notification was given?

An investigation by the Department of abandonment charges would consider whether managerial or supervisory personnel made adequate provisions for competent staffing to ensure necessary patient care in routine situations. The Department and the nurse may obtain a copy of the nurse's written notice of patient assignment refusal in the event of such an investigation.

In most cases, the following situations are not examples of unprofessional conduct nor automatic violations of the Regents Rule:

- Refusing to accept responsibility for a patient assignment(s) when the nurse has given reasonable notice to the proper agent that the nurse lacks competence to carry out the assignment.
- Refusing the assignment of a double shift or additional hours beyond the posted work schedule when proper notification has been given.

### **Employer Abandonment**

Employer abandonment may occur if a nurse fails to give reasonable notice to an employer of the intent to terminate the employer/employee relationship or contract under circumstances that seriously impair the delivery of professional care to patients or clients. It should be noted that the Department has no jurisdiction to interpret or resolve issues limited to employment and contract disputes.

The State Education Department views abandonment as a serious charge. It is however, inappropriate for nurses to be threatened with charges of abandonment to coerce them to work additional hours or care for patients beyond their expertise.

### **Patient and Employer Abandonment - Frequently Asked Questions & Answers**

#### **Introduction**

#### **1. Why is this information important for me?**

Answer: The New York State Education Department (SED) has received numerous requests from nurses and health care employers seeking clarification about actions that could be considered abandonment and lead to charges of unprofessional conduct against a nurse's license. Staff nurses were informing us that employers were threatening them with charges of abandonment to coerce them to work additional hours or to care for patients beyond their expertise. A memo was developed to clarify situations that the State Education Department would or would not consider to be patient abandonment. It was mailed to all currently licensed and registered Nurse practitioners (NPs), Registered Nurses (RNs) and Licensed Practical Nurses (LPNs).

#### **2. Who determines whether a complaint of abandonment is professional misconduct?**

Answer: The State Education Department's Office of Professional Discipline in consultation with the State Board for Nursing determine whether specific situations rise to the level of professional misconduct.

### **3. What factors are required for a nurse to be charged with patient abandonment?**

Answer: For patient abandonment to occur:

- The nurse must have first accepted a patient assignment, thus establishing a nurse-patient relationship;
- The nurse must have severed the nurse-patient relationship without giving reasonable notice to the appropriate person so that arrangements were made for continuation of nursing care;
- The patient(s) must be in need of immediate professional care or circumstances must exist which would seriously impair the delivery of professional care to patients or clients.

### **4. Can you please give examples of patient abandonment?**

Answer: Examples of patient abandonment may include, but are not limited to:

- An RN or LPN accepts an assignment for patient care and then leaves the facility without transferring patient care to another qualified individual, when this would seriously impair the delivery of professional care;
- An RN leaves the operating room during a surgical case without transferring patient care to another qualified individual, when this would seriously impair the delivery of professional care;
- An RN or NP withdraws from a contractual relationship with a patient to provide home health, counseling, daily nursing care or another similar service and fails to provide sufficient notice to the patient.

### **5. What situations would probably not be considered patient abandonment?**

Answer: The Education Department evaluates complaints of patient abandonment on an individual basis taking into consideration the unique characteristics of each situation. In general, the Education Department would probably not consider that patient abandonment has occurred in the following situations:

- Refusal to accept an assignment when the nurse has given reasonable notice to the appropriate person that s/he lacks the competence to carry out the assignment, or that s/he is too mentally or physically exhausted to provide safe care, or that expected resources to support safe delivery of care are not available;
- Refusal to work additional hours or shifts beyond the posted work schedule when proper notification has been given.

### **6. The answer to Question 5 states that refusing to accept an assignment when the nurse has given reasonable notice would in all probability not be considered patient abandonment. Could you further clarify what a "reasonable " notice would be?**

Answer: Reasonable notice depends on the distinctive nature of a particular circumstance, which will change from case to case. For example, in the situation where a nurse has worked a 12-hour shift and is required to work an additional shift, reasonable notice might be at the time the mandate is made.

**7. Is a hospital allowed to make a nurse work beyond her or his 12 hour-shift if hospital administration is aware of a shortage in staff on the next shift for several days in advance?**

Answer: The Education Department does not have jurisdiction over employer-employee policies for facilities that provide patient care. However, it is unlikely that the State Education Department would consider a charge of patient abandonment when a nurse refuses to accept an assignment for additional hours beyond the posted work schedule when administration has been aware for several days of the presence of a staff shortage on a particular shift and when the nurse has notified the employer of refusal to accept the assignment.

**8. I am frequently required to float to an unfamiliar unit and feel that I am not competent to safely care for some of the patients on that floor. Can I be charged with patient abandonment?**

Answer: In most instances, the Education Department would not consider a charge of patient abandonment when a nurse refuses to float to an unfamiliar unit when there has been no orientation, preparation, or appropriate modification of assignment (such as another RN providing assistance in the care of select patients for which you are not competent to provide care). However, to become licensed as an RN or LPN, you met educational and examination requirements that assure minimal competence in the delivery of basic nursing care. Refusing to float, based on your statement that you are not competent to provide patient care to an entire unit of patients, when there has been good-faith efforts to re-assign only those duties that fall within your expected level of competence, may be considered abandonment.

**9. What are my responsibilities as a nurse manager? Could I be implicated in a patient abandonment charge?**

Answer: It is the responsibility of the licensed manager or supervising nurse to delegate professional responsibilities only to persons who are qualified by education, experience or by licensure to carry out the responsibility. An investigation by the State Education Department of abandonment charges would consider whether administrative and supervisory personnel have made adequate provision for staffing, as discussed below, to ensure necessary patient care in all situations. The action of administrators or supervisors who are licensed by the education Department may lead to charges of unprofessional conduct depending upon their role and the relationship of that role in providing necessary professional services.

Responsibilities of the nurse manager/administrator in patient care include:

- Assuring that the qualifications and capabilities of personnel are appropriate to patient needs;
- Accepting a nurse's reasonable notice to terminate the nurse-patient relationship and seeking a qualified replacement; and
- Addressing known vacancies in a timely manner.

In instances of inadequate staffing, the manager should take one or more of the following actions:

- Make every possible effort to acquire additional qualified staff;
- Assign "periodic" assistance from another area for delivery of specific services;
- Prioritize the care activities that will be delivered during the tour of duty; and,
- Notify administration of the limitations in providing optimal care during periods of understaffing.

**10. Could you please clarify a charge against a nurse for employer abandonment?**

Answer: Employer abandonment may occur if a nurse fails to give reasonable notice to the employer of her or his intent to terminate the employer-employee relationship or contract, under circumstances which seriously impair the delivery of professional care to patient or clients.

Examples include:

- The nurse walks off duty without notice to the employer-when the patient(s) is in need of immediate care and when this would seriously impair the delivery of professional care;
- The nurse notifies the supervisor or other responsible party of the intent to leave immediately but does so without transferring her or his responsibilities and reporting to another nurse, when the patient(s) is in need of immediate care and when this would seriously impair the delivery of professional care.

**11. Can you provide examples of situations that may not necessarily be considered employer abandonment?**

Answer: The Education Department cannot interpret issues limited to employment and contract disputes. However, the following examples of employer abandonment, in which patient care is not seriously impaired, would probably not alone subject the nurse to disciplinary action by the Department:

- A licensed nurse completes her/his assigned shift and then notifies the employer that the employment relationship between the nurse and the employer is being ended immediately--other staff are available to provide nursing care;
- The nurse fails to return from a scheduled leave of absence;
- The employer-employee relationship is ended without providing the employer with a period of time to find a replacement;
- The nurse resigns but does not complete the notice period given.

## **Administration of IV Anesthetic Agents by Non-Anesthetist Registered Nurses for the Purpose of Sedation and Anesthesia**

The New York State Education Department's Board for Nursing has, within the last year, received numerous requests from health care facilities and licensees regarding the administration of intravenous (IV) anesthetic agents by Registered Nurses (RN) who are not trained anesthesia providers. Of particular concern is the administration of IV anesthetic (sedative-hypnotic) drugs such as propofol, ketamine, etomidate, methohexital, and thiopental for the purpose of sedation and anesthesia. We are pleased to provide you with this guidance memorandum on this critical issue. The role of RNs using IV anesthetic drugs in the treatment of intractable pain is not the subject of this memorandum. Information on that topic is available in a separate statement from the Nursing Board.

At the onset, it is important to recognize that guidance memoranda such as this are not a substitute for or have the authority of Education Law, Regents Rules, or Commissioner's Regulations. A licensee can only be charged with professional misconduct if there is a violation of the Education Law or Regents Rules. Guidelines may be a resource in assessing conduct that underlies a violation, however, they may not be used as the basis for a charge of professional misconduct. Nor can conformance with guidelines be deemed to immunize a professional from potential charges of misconduct. Such determinations are made on a case-by-case basis by the Department. The purpose of this guidance memorandum is to provide general information to practitioners who will amplify that information with their individual practice skills, professional education and judgment.

In general, licensed professionals must only provide services that they are competent to perform. Therefore, any drug that is considered an anesthetic agent must be administered by a trained anesthesia provider who is competent to do so by virtue of licensure, education, training and experience, such that they are able to immediately recognize and treat the side effects and complications resulting from the administration of these drugs. Light sedation and analgesia may easily progress to deep sedation, loss of consciousness, loss of protective airway reflexes, and loss of respiratory effort as a result of the agents used as well as the physical status and various drug sensitivities of an individual patient. Generally, in order to assure adequate public safety, the use of IV anesthetic agents should be limited to anesthesia providers who possess competencies and have training in areas such as airway management, intubation of patient's airways, pharmacology and use of these drugs, and are authorized to immediately recognize and treat their side effects and complications. We also recognize that providers will need to be deemed competent to provide such services by the institutions in which they practice.

Drugs such as propofol, ketamine, etomidate, methohexital, and thiopental for the purpose of sedation and anesthesia present specific safety concerns and may not be appropriate agents for administration by RNs unless they are qualified and competent to administer them. Some RNs gain such competence through the completion of a Certified Registered Nurse Anesthetist (CRNA) program. However, RNs who have not otherwise gained professional competence through a program such as one leading to CRNA recognition, but who otherwise are competent in the procedure through education and experience, may be deemed competent to administer propofol to intubated, ventilated patients in a critical care setting based on an appropriate medical order. The competence of a non-CRNA RN should be validated for the care of patients of the type and acuity commensurate with specific specialty areas, such as ER, OR, ICU, etc.

Generally, when an RN administers a drug such as propofol for an anesthesia provider in a crisis situation, the actual anesthesia provider must carefully consider all of the patient safety issues relating to monitoring and managing the patient. The RN may not choose the dose or monitor its effects. Specific concerns arise when an anesthesia provider is the only individual who is performing a procedure, such as inserting a central venous line or performing an endoscopic procedure. In such cases, care should be taken to choose anesthetic agents that can safely be administered and monitored by the non-anesthesia providing RN, within her/his competence. Such drugs may include midazolam (Versed) or a small dose of an opioid analgesic, for example, Demerol, Fentanyl, or Dilaudid.

When anesthesia drugs are administered outside of the OR in support of routine diagnostic or therapeutic procedures, additional concerns arise. We recognize that there are times when a procedure requires the full attention of the operating provider and the patient requires the use of IV anesthetic agents in order to tolerate the procedure. Such instances would require the services of a practitioner who is competent by virtue of licensure, education, training, and experience to administer IV anesthetic agents, immediately recognize their side effects and authorized to treat drug related complications and side effects. We are also aware of a variety of national standards that suggest that, ideally, there should be three appropriately credentialed individuals involved in any procedure requiring the use of IV anesthetic agents: the operating clinician, the anesthesia provider and an assistant to the operating clinician (who may or may not be the bedside RN). In all circumstances, the safety of the patient must be considered when assessing the need for staff appropriate to the procedure being performed. For example, if the authorized medical provider finds it necessary to use IV anesthesia drugs for moderate sedation in cases such as endoscopic or radiologic procedures, care should be taken to ensure that an appropriately trained and credentialed anesthesia provider assist with the sedation for these cases.

We hope this clarification is helpful. If you have questions or need additional information, please contact the New York State Board for Nursing at the letterhead address above, by phone 518-474-3817 ext. 120, or by e-mail [nursebd@mail.nysed.gov](mailto:nursebd@mail.nysed.gov).

February 2007

## Administration of Medications by Unlicensed Personnel

**To:** Interested Parties

**From:** Barbara Zittel, Executive Secretary

**Re:** Administration of Medications by Unlicensed Personnel

**Date:** August 2006

It has come to our attention that there is a need to clarify the use of unlicensed personnel in the administration of medications in New York State. Unlicensed persons are not permitted to administer medication to patients in New York State except in a few well delineated areas. This memorandum provides information about those few exceptions.

The administration of medication is a function that is statutorily authorized to a limited number of professions. A nurse or a physician may not legally delegate the administration of medications to unlicensed personnel, no matter what the experience or education of that unlicensed person. Section 1(b)(10) of Part 29 of the Rules of the Board of Regents specifically prohibits delegation of this professional responsibility by licensed persons to an individual who the licensee knows or has reason to know, lacks the education, experience or licensure to perform those tasks.

The following limited circumstances permit unlicensed persons to administer medications because they have exempt status within the Nurse Practice Act (Section 6908 of Article 139 of the Education Law):

This article shall not be construed:

*a. As prohibiting*

- i. the domestic care of the sick, disabled or injured by any family member, household member or friend, or person employed primarily in a domestic capacity who does not hold himself or herself out, or accept employment as a person licensed to practice nursing under the provision of this article; provided that if such person is remunerated, the person does not hold himself or herself out as one who accepts employment for performing such care; or the administration of medications or treatment by child day care providers or employees or caregivers of child day care programs where such providers, employees or caregivers are acting under the direction and authority of a parent of a child, legal guardian, legal custodian, or an adult in whose care a child has been entrusted and who has been authorized by the parent to consent to any health care for the child and in compliance with the regulations of the office of children and family services pertaining to the administration of medications and treatment; or*
- ii. any person from the domestic administration of family remedies; or*
- iii. the providing of care by a person acting in the place of a person exempt under clause (i) of this paragraph, but who does hold himself or herself out as one who accepts employment for performing such care, where nursing services are under the instruction of a licensed nurse, or under the instruction of a patient or family or household member determined by a registered professional nurse to be self-directing and capable of*

*providing such instruction, and any remuneration is provided under section thirty-six hundred twenty-two of the public health law or section three hundred sixty-five-f of the social service law; or*

- iv. the furnishing of nursing assistance in case of an emergency;*
- b. As including services given by attendants in institutions under the jurisdiction of or subject to the visitation of the state department of mental hygiene if adequate medical and nursing supervision is provided;*
- c. As prohibiting such performance of nursing service by students enrolled in registered schools or programs as may be incidental to their course of study;*
- d. As prohibiting or preventing the practice of nursing in this state by any legally qualified nurse or practical nurse of another state, province, or country whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of such engagement provided such person does not represent or hold himself or herself out as a nurse or practical nurse registered to practice in this state;*
- e. As prohibiting or preventing the practice of nursing in this state during an emergency or disaster by any legally qualified nurse or practical nurse of another state, province, or country who may be recruited by the American National Red Cross or pursuant to authority vested in the state civil defense commission for such emergency or disaster service, provided such person does not represent or hold himself or herself out as a nurse or practical nurse registered to practice in this state;*
- f. As prohibiting or preventing the practice of nursing in this state, in obedience to the requirements of the laws of the United States, by any commissioned nurse officer in the armed forces of the United States or by any nurse employed in the United States veterans administration or United States public health service while engaged in the performance of the actual duties prescribed for him or her under the United States statutes, provided such person does not represent or hold himself or herself out as a nurse registered to practice in this state; or*
- g. As prohibiting the care of the sick when done in connection with the practice of the religious tenets of any church.*

Examples of exemptions where unlicensed persons, under the supervision of a registered nurse, may administer medications include the Office of Mental Retardation and Developmental Disabilities (OMRDD)<sup>1</sup>, the Office of Children and Family Services<sup>2</sup>, and public schools in specifically defined emergencies<sup>3</sup>. Such applications of the exemptions are specific to limited settings and only explicitly allowed by law. The Board for Nursing is concerned about and systematically examining the various medication administration practices in other settings including youth homes, adult homes, and jails in order to inform staff of the law and ensure public safety in this important matter.

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<sup>1</sup> Refer to: *Memorandum of Understanding* between the Office of Mental Retardation and Developmental Disabilities and the State Education Department and Administrative, # 2003-01, Registered Nursing Supervision of Unlicensed Direct

Care Staff in Residential Facilities Certified by the Office of Mental Retardation and Developmental Disabilities, related to Section 6908 (b) of Article 139 of Education Law.

<sup>2</sup> Section 6908(a) of *Article 139* of the Education Law, line 6, re: administration of medications in child day care centers.

<sup>3</sup> Refer to: *Use of Epinephrine Auto-Injector Devices in the School Setting*. June, 2002. Joint memorandum of the Office of the Professions and the Office of Elementary and Middle, Secondary and Continuing Education, State Education Department (EMSC/SED). And: *Training of Unlicensed Individuals in the Injection of Glucagon in Emergency Situations*. November, 2003. Memorandum, EMSC/SED.

## **AICD/Pacemaker Interruptions with a Magnet during Colonoscopy Procedures**

**To:** Interested Parties

**From:** Barbara Zittel, RN, Ph.D, Executive Secretary, State Board for Nursing

**Re:** AICD/Pacemaker Interruptions with a Magnet during Colonoscopy Procedures

**Date:** February 2009

The Board has recently been asked to opine on whether it is within the scope of practice of a Registered Professional Nurse (RN) to disable an Automatic Implanted Cardioverter Defibrillator (AICD) through use of a surface magnet. The question was further limited to situations in which an electrocautery is being applied during a colonoscopy procedure in a Gastrointestinal Lab.

The purpose of an automatic implanted cardioverter defibrillator (AICD) is to monitor and correct rapid heart rates (ventricular tachycardia /fibrillation) and, in some instances, to pace the heart in situations of slow heart rates (bradycardia). During procedures using electrocautery the AICD may mistake the cautery's current as an episode of fibrillation and unnecessarily shock the patient. To prevent such occurrences, a magnet, provided to each patient with an AICD, can be placed on the chest wall over the AICD to temporarily disable the defibrillator. If during the colonoscopy procedure an emergency occurs requiring defibrillation, the magnet can simple be removed from the patient's skin and the AICD will automatically reset and defibrillate as required.

It is the position of the State Board for Nursing that registered professional nurses (RNs) licensed and currently registered by the New York State Education Department may apply a magnet to temporarily disable an AICD given the following conditions:

- A patient-specific order must be written by a physician for use of the magnet,
- A physician must be in attendance the entire time that the magnet is attached to the patient,
- Cardiac monitoring must be performed continuously throughout the procedure,
- An emergency code cart must be immediately available,
- The facility must provide education and skill training, with input from the Cardiology Department, to RNs providing this procedure,
- The facility must have a written institutional policy and procedure, with input from the Cardiology Department/cardiologist, describing the role of the RN in this procedure,
- The RN must be able to document the completion of appropriate education and clinical competence in the procedure,
- The facility must provide competency assessment of each RN's ability to provide this procedure. Such assessment must be documented in the personnel file of each RN and updated annually,

- A complete nursing assessment must be performed and documented prior to each treatment,
- Prior to discharge the patient's AICD must be evaluated by the facility's cardiac electrophysiology lab/cardiologist.

Failure to comply with these guidelines may place the nurse at increased risk for a charge of unprofessional conduct especially in a situation involving a bad patient outcome.

This procedure is not within the scope of practice of a Licensed Practical Nurse.

If you have additional questions, please contact Barbara Zittel, Executive Secretary to the State Board for Nursing by: mail at the above letter-head address; e-mail: [nursebd@mail.nysed.gov](mailto:nursebd@mail.nysed.gov); phone: 518-474-3817 ext. 120; or fax: 518-474-3706.

## **The Differentiated Scope of Practice of Licensed Practical Nurses (LPNs) and Registered Professional Nurses (RNs)**

It has come to our attention that there is a need to clarify the scope of practice of Licensed Practical Nurses (LPNs). The information that follows seeks to differentiate the practice of LPNs from that of Registered Professional Nurses (RNs) in order to ensure patients' health and safety and prevent professional misconduct charges against LPNs who practice beyond the scope of their practice. The memo also provides information about the supervisory responsibilities of RNs in relation to Graduate Practical Nurses (GPNs) and Graduate Professional Nurses (GNs) on Limited Permits.

Section 6902 of Article 139 of the Education Law distinguishes between the legal definitions of RNs and LPNs as follows:

*The practice of the profession of nursing as a registered professional nurse is defined as diagnosing and treating human responses to actual or potential health problems through such services as casefinding, health teaching, health counseling, and provision of care supportive to or restorative of life and well-being, and executing medical regimens prescribed by a licensed physician, dentist or other licensed health care provider legally authorized under this title and in accordance with the commissioner's regulations. A nursing regimen shall be consistent with and shall not vary any existing medical regimen.*

*The practice of nursing as a licensed practical nurse is defined as performing tasks and responsibilities within the framework of casefinding, health teaching, health counseling, and provision of supportive and restorative care under the direction of a registered professional nurse or licensed physician, dentist or other licensed health care provider legally authorized under this title and in accordance with the commissioner's regulations.*

This definition authorizes Registered Professional Nurses to execute medical orders from select authorized health care providers. In addition, Registered Nurses may function independently in providing nursing care in such areas as:

- **Casefinding, including but not limited to,**
  - ▶ Identification of epidemiological trends
  - ▶ Client abuse assessment
  - ▶ Early identification of emergent complications
  
- **Health Teaching, including but not limited to,**
  - ▶ Patient teaching re: signs and symptoms of medication side effects
  - ▶ Patient teaching regarding disease process (heart disease, cancer) and management in relation to life factors such as culture and ethnicity
  - ▶ Health care promotion, such as disease prevention, accident prevention, and teaching normal child growth and development

- **Health Counseling, including but not limited to,**
  - ▶ Mental health counseling
  - ▶ Addiction counseling
  - ▶ Health counseling related to management of chronic diseases such as Alzheimer's, Parkinson's, Bi-Polar and Diabetes
  
- **Care Restorative of Life and Well Being, including but not limited to:**
  - ▶ Rehabilitation services such as bowel/bladder training, ostomy/wound care
  - ▶ Triage and continuous assessment for early identification of signs and symptoms of post operative complications with timely intervention
  - ▶ Ongoing surveillance and nursing intervention to rescue chronically ill persons from development of negative effects and secondary results of treatment
  
- **Care Supportive of Life and Well Being, including but not limited to:**
  - ▶ Hospice and palliative care
  - ▶ Chronic pain management through non-pharmacological nursing measures such as ergo dynamic techniques, relaxation, imagery, therapeutic touch, and rational-emotive therapy (RET)
  - ▶ Public health care including elder care, well-baby care, school and industrial nursing.

Nursing diagnosis by an RN is cited in section 6901 of Article 139 of the Education Law as: *the identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen. Such diagnostic privilege is distinct from a medical diagnosis.* Nursing diagnosis has been additionally interpreted by the Department as including patient assessment, that is, the collection and interpretation of patient clinical data, the development of nursing care goals and the subsequent establishment of a nursing care plan.

Section 6902, cited above, does not include nursing diagnosis within the scope of practice of Licensed Practical Nurses. Thus, Licensed Practical Nurses in New York State do not have assessment privileges; they may not interpret patient clinical data or act independently on such data; they may not triage; they may not create, initiate, or alter nursing care goals or establish nursing care plans. Licensed Practical Nurses function by law in a dependent role **at the direction of the RN** or other select authorized health care providers. Under such direction, Licensed Practical Nurses may administer medications, provide nursing treatments, and gather patient measurements, signs, and symptoms that can be used by the RN in making decisions about the nursing care of specific patients. However, they may not function independent of direction.

The scopes of practice of RNs and LPNs are not interchangeable. Inappropriate use of LPNs may expose agencies to potential litigation, the delegating RN to a potential charge of unprofessional conduct for inappropriate delegation of professional responsibilities [see Regent Rules 29.1(b)(10)], and the LPN to a charge of acting outside the scope of nursing as a Licensed Practical Nurse [see Regents Rules 29.1(b)(9)].

Graduate nurses (GNs) and graduate practical nurses (GPNs) employed under a Limited Permit (see Education Law section 6907) may only practice under the supervision of an RN. The Department has long held the position that this supervision requires the RN to be on-site, that is, on the patient ward/unit (whichever is smaller), at all times when nursing services are provided by the limited permittee. There are no exceptions. The supervising RN must provide an appropriate degree of supervision, which is determined by the specific circumstances of the patient care provided. Employers must assure that such on-site supervision is available when hiring GPNs or GNs.

Upon successful completion of the National Council Licensing Examination for Practical Nurses (NCLEX-PN) and subsequent licensure, the supervisory requirement for practical nurses changes to permit LPNs to function under the direction of an RN. Such direction has been interpreted to mean that the RN must be present on the premises or within a reasonable distance and immediately available by telephone when nursing services are rendered by the LPN. Again, the degree of direction should be appropriate to the circumstances.

## **Intraosseous Fluid and Medication Administration**

A Registered Professional Nurse may administer medication and fluids by the intraosseous route in the Emergency Room or ICU of an Article 28 facility under the following circumstances:

- The hospital has specific policies and procedures related to the administration of medication and fluids by this route.
- The RN has successfully completed didactic coursework in the methods and proper placement of the intraosseous access device (s) including contraindications and signs and symptoms of untoward effects of the procedure.
- The RN has successfully completed a series of demonstrations in the procedure under supervision and has been evaluated to be competent in its performance.
- Competency evaluation must be documented annually in the RN's personnel file.
- The RN is credentialed by the hospital to carry out this procedure.
- There is a patient specific order from an authorized provider for the intraosseous route.

October 2006

**INTRAOSSIOUS INFUSION:** Is within the scope of practice for the registered professional nurse. The procedure of intraosseous infusion is considered advanced practice and is frequently performed by nurse practitioners, nurse clinicians with advanced education. All of which are advanced trainings of RN's. A medical regimen requiring this procedure would need to document both education and competency. (Letter 2/5/91 Hart/Megel)

## **Intravenous Monoclonal Antibodies**

**To:** Interested Parties

**From:** Barbara Zittel, RN, Ph.D, Executive Secretary, State Board for Nursing

**Re:** Intravenous monoclonal antibodies

**Date:** January 2009

The Board has recently been asked to opine on whether or not intravenous monoclonal antibodies such as Remicade/Infliximab, Rituxin/Infliximab and Tysabri/Natalizumab may be administered by a registered professional nurse (RN).

In examining the use of intravenous immunological agents such as monoclonal antibodies we note that many of these agents have black box warnings in their package inserts due to the risk of infusion reactions, hypersensitivity and anaphylaxis. All of these agents have potential drug interactions and numerous adverse reactions which require continuous nursing assessment, monitoring, and detailed patient teaching. For example, Tysabri is limited to patients enrolled in a risk minimization plan called the TOUCH prescribing Program.

Given these conditions, it is the position of the State Board for Nursing that registered professional nurses (RNs) licensed by the New York State Education Department may administer intravenous monoclonal antibodies only under the following conditions:

- A patient-specific order must be available from an authorized prescriber such as a physician or nurse practitioner that details the immunological therapy including dosage, route, rate, treatment monitoring requirements and premedication, if indicated,
- An authorized prescriber must be on-site during the treatment and readily available,
- An anaphylaxis kit or emergency code cart must be immediately available,
- There must be a written patient consent,
- The facility must provide education and skill training that addresses proper technique and hazards including contraindications for such therapy and how to handle unexpected outcomes/emergencies,
- The facility must have a written institutional policy and procedure for such therapy describing the role of the RN,
- The RN must be able to document the completion of appropriate education and clinical competence in the administration of intravenous biologic agents to safe guard the patient against risks or complications,
- The RN must be designated by the facility to carry out the procedure.
- The facility must provide competency assessment of each RN's ability to provide therapy. Such assessment must be documented in the personnel file of each RN and updated annually,

- A complete nursing assessment must be performed and documented prior to each treatment.

Failure to comply with these guidelines may place the nurse at increased risk for a charge of unprofessional conduct especially in a situation involving a bad patient outcome.

It is not within the scope of practice of a Licensed Practical Nurse to administer these agents in any clinical setting.

If you have additional questions, please contact Barbara Zittel, Executive Secretary to the State Board for Nursing by: mail at the above letter-head address; e-mail: [nursebd@mail.nysed.gov](mailto:nursebd@mail.nysed.gov); phone: 518-474-3817 ext. 120; or fax: 518-474-3706.

# Nurse Practitioner

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**Revised: January 2007**

## **Clarifying Information for Nurse Practitioners**

The purpose of the following is to provide guidance in clarifying several aspects of interface between nurse practitioners and their collaborating physicians.

The definition of practice as a nurse practitioner is provided in Article 139, section 6902(3)(a) of Education Law as follows:

*The practice of registered professional nursing by a nurse practitioner, certified under section six thousand nine hundred ten of this article, may include the diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures within a specialty area of practice, in collaboration with a licensed physician qualified to collaborate in the specialty involved, provided such services are performed in accordance with a written practice agreement and written practice protocols. The written practice agreement shall include explicit provisions for the resolution of any disagreement between the collaborating physician and the nurse practitioner regarding a matter of diagnosis or treatment that is within the scope of practice of both. To the extent the practice agreement does not so provide, then the collaborating physician's diagnosis or treatment shall prevail.*

### **Nurse Practitioners Are Not Under the Supervision of the Collaborating Physician**

A Nurse Practitioner (NP) in New York State may begin active practice once the collaborative agreement has been completed. While the NP is not legally independent given the collaborative agreement, the NP is not under the supervision of the collaborator. NPs are responsible to the public for their own acts. They can be sued exclusively and have professional disciplinary actions brought against their license. The NP, similar to any other health care provider, may not undertake a particular procedure unless there has been adequate preparation and competence in the procedure.

### **The Collaborating Physician is Responsible for Chart Reviews**

The physician is responsible for chart reviews for the purposes of ensuring that the practice of the NP reflects accepted standards of medical practice and is within the scope of specialty practice as identified in the State approved protocol text. The law does not specify ratios or numbers of charts that must be reviewed by the collaborating physician. That decision is left to the professional judgment of the NP and the physician and may vary depending on a number of variables such as: the NP's level of experience; the collaborating physician's knowledge of the NP's abilities and judgment, the nature of the practice setting; the specialty, etc. It is expected that the physician will have readily available, a system that will permit retrospective verification of a quarterly documentation indicating that these elements of practice have been satisfied.

### **While a Department-Approved Protocol Text Must be Agreed to by the NP and the Collaborating Physician, Protocols for Subspecialty Areas May also Guide Practice**

The Department is aware that protocol texts commonly exist for group practices in subspecialty areas such as hematology, orthopedics, and others. Such protocols vary widely and are changed frequently to maintain currency with research findings. Both NPs and physicians in such specialties are expected to follow protocols developed by the particular specialty professional group. It is not necessary for all such professional protocols to be reviewed by the Department.

## **Submission of a Verification of Practice Protocol (4NP) Form is Required Only Upon Initial Practice**

The State Education Department requires submission of a *Verification of Practice Protocol* (4NP) Form when NPs begin their first practice situation. The collaborating physician is required to sign this form. Once the NP moves to another situation, there is no requirement that a new 4NP be filed with the Department. However, it is required that a current collaborative agreement be maintained at the practice site and be readily available upon request of the Department.

## **Multiple Collaborative Agreements are Not Required**

Many Nurse Practitioners have two or more places of employment or work in a facility that involves patients being cared by several different attending physicians. However, the Department does not require the submission of multiple collaborative agreements in such situations. For example:

- If an OB-GYN NP is employed in three sites, such as in an OB practice office for three days a week, at a maternity hospital one night a week, and at Planned Parenthood for two days a week, the expectation is that an OB-GYN physician would be the collaborating physician. The collaborator may list an auxiliary physician at the hospital and at Planned Parenthood in the collaborative agreement as chart reviewers for those sites, or, alternatively, the OB-GYN physician may review charts at those sites after an arrangement has been made for that process to occur.
- If an NP works in a nursing home or acute care facility, the medical director may be the collaborator. In the case of a disagreement between the NP and an attending physician, the collaborator would mediate the dispute and make the final treatment decision. It is not required that the NP has collaborative agreements with all of the attendant physicians.

## **Financial Arrangements between Collaborator and Nurse Practitioner**

Part 29 of Regents Rules describes a variety of circumstances that may be considered professional misconduct. Section 29.1(b)(3) of the Rules, for example, states that unprofessional conduct shall include: *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.* The Office of the Professions has interpreted this rule, within the context of Nurse Practitioner practice, to mean that a Nurse Practitioner may pay a collaborating physician for the fair market value of services such as chart review and consultation. However, there is no compulsion for the NP to enter into such an arrangement nor is it appropriate to include such terms within the written collaborative agreement. When a payment agreement does exist, the payment may not influence the nature of the chart review nor result in any exclusive arrangement between the NP and physician for patient referrals in exchange for the services rendered. It is understood that in certain instances Nurse Practitioners may refer patients to their collaborating physicians when medically necessary including situations where a Nurse Practitioner may not be granted hospital privileges. Such instances would not automatically be considered professional misconduct unless NPs bind themselves into an exclusive arrangement for referrals to the collaborating physician(s) or otherwise give or receive compensation for such referrals.

- **Collaborating Physicians And Patient Records Review**

Nurse practitioners sometimes request information about the number of patient records that must be reviewed by their collaborating physicians. The New York State Education Department is pleased to provide you with information to help clarify this issue.

Patient records must be reviewed by a nurse practitioner's collaborating physician according to Section 6902(3)(c) of Education Law, which states that:

*Each practice agreement [between a nurse practitioner and physician] shall provide for patient records review by the collaborating physician in a timely fashion but in no event less often than every three months.*

The law does not provide specific ratios or numbers of charts that must be reviewed by the collaborating physician. That decision is left to the professional judgment of the nurse practitioner and the collaborating physician and might vary depending on the:

- nurse practitioner's experience,
- collaborating physician's knowledge of the nurse practitioner's abilities and judgment,
- specialty area of practice

It is important that the nurse practitioner and the physician determine the terms of the collaboration on the matter of patient records review through negotiation and agreement. The signature of the physician following a record review indicates that the collaborator has found the nurse practitioner to be practicing within the limits of the state approved protocol text and within the limits of the specialty area of practice.

The appropriateness of the process of patient record review might be considered in professional discipline, malpractice litigation, or in institutional internal reviews, as for example in an Article 28 facility.

## **Collaborative Practice Agreement (Sample)**

This agreement sets forth the terms of the Collaborative Practice Agreement between (nurse practitioner and specialty as listed on the State issued certificate) and (name of collaborating physician and specialty if any) at (name and address of agency or entity where practice takes place). This agreement shall take effect as of (date).

### **Introduction**

(YOUR NAME RN, NP) meets the qualifications and practice requirements as stated in Chapter 257 of the Laws of 1988 and Article 139 of the Education Law of New York State, holds a New York State license and is currently registered as a registered professional nurse in good standing, holds a certificate as a nurse practitioner pursuant to Sec. 6910 of the Education law and herein meets the requirement of maintaining a collaborative practice agreement with (NAME OF COLLABORATOR, MD/DO) a duly licensed and currently registered physician in good standing under Article 131 of the New York State Education Law.

### **I. Scope of Practice**

The practice of a registered professional nurse as a nurse practitioner may include the diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures including prescribing medications for patients whose conditions fall within the authorized scope of the practice as identified on the college certificate. This privilege includes the prescribing of all controlled substances under a DEA number. The nurse practitioner, as a registered nurse, may also diagnose and treat human responses to actual or potential health problems through such services as case finding, health counseling, health teaching, and provision of care supportive to or restorative of life and well-being. This practice will take place at (above identified agency) or in such other facility or location as designated by (name of identified agency) or by the parties of this contract. The following exceptions to the certified scope of practice have been agreed upon by the undersigned parties: (list exception(s)).

### **II. Practice Protocols**

The protocols used in this (identify specialty as listed on State issued certificate) practice are contained in (name approved protocol text with all bibliography citations) and in (cite location of any other protocols which are germane to this particular practice).

### **III. Physician Consultation**

The parties shall be available to each other for consultation either on site or by electronic access including but not limited to telephone, facsimile and email. Each party will cover for the other in the absence of one of them or (names of third parties) who are designated by (YOUR NAME, RN, NP and NAME OF COLLABORATOR MD/DO) as appropriate for coverage in the absence of both parties. In the event that there is an unforeseen lack of coverage, patients will be referred to the appropriate emergency room.

#### **IV. Record Review**

A representative sample of patient records shall be reviewed by the collaborating physician every three months to evaluate that (name of NP)'s practice is congruent with the above identified practice protocol documents and texts. Summarized results of this review will be signed by both parties and shall be maintained in the nurse practitioner's practice site for possible regulatory agency review. Consent forms for such review will be obtained from any patient whose primary physician is other than (name of collaborating physician).

#### **V. Resolution of Disagreements**

Disagreement between (name of nurse practitioner) and (name of collaborating physician) regarding a patient's health management that falls within the scope of practice of both parties will be resolved by a consensus agreement in accordance with current medical and nursing peer literature consultation. In case of disagreements that cannot be resolved in this manner, (name of collaborative physician's) opinion will prevail. In disagreements between the nurse practitioner and non-collaborating physicians, the collaborating physician's opinion will prevail.

#### **VI. Alteration of Agreement**

The collaborative practice agreement shall be reviewed at least annually and may be amended in writing in a document signed by both parties and attached to the collaborative practice agreement.

#### **VII. Agreement**

Having read and understood the full contents of this document, the parties hereto agree to be bound by its terms.

##### **Nurse Practitioner (Specialty):**

Printed Name \_\_\_\_\_ RN license # \_\_\_\_\_

Certificate # \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

##### **Collaborating Physician:**

Printed Name \_\_\_\_\_ MD license # \_\_\_\_\_

Board Certification \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

## **The Practice of IV Therapy by Licensed Practical Nurses in Acute Care Settings**

In response to numerous inquiries concerning the role of the licensed practical nurse (LPN) in the administration of intravenous therapy in acute care settings, the New York State Board for Nursing provides the following guidance document.

The role of the LPN in providing intravenous therapy is determined by a number of factors including the complexity of the procedure, the degree of direction, the setting, as well as the skill and competence of the licensee. A Registered Professional Nurse (RN) may delegate select activities associated with the administration of intravenous therapy to an appropriately competent LPN. The delegation of these activities is based on the RN's professional judgement, the competence of the LPN, policy and procedures of the institution and standards of nursing practice. Regardless of the degree of delegation, however, the RN retains the ultimate responsibility for the administration and clinical management of intravenous therapy, including assessment of the patient for symptoms and reactions. Education Law does not permit LPNs to make any patient assessments (interpret or evaluate clinical data). In the opinion of the State Board for Nursing, *the practice of intravenous therapy by LPNs in acute care settings requires RN supervision, that is, the RN responsible for the LPN must be assigned to the patient care unit at all times when intravenous therapy is being provided by the LPN.* The RN must document, at least every shift, assessment of the patient's condition relative to the intravenous therapy.

Facilities must ensure that LPNs allowed to perform intravenous therapy procedures have satisfactorily completed an initial training program, received supervised clinical experiences, demonstrated competence in the performance of intravenous therapy, are appropriately supervised by RNs and complete an annual IV therapy update. It is appropriate for IV competency evaluation to be included in the annual performance review of each licensee.

The accompanying chart displays select tasks that can be performed by an LPN practicing in acute care settings, under appropriate supervision, who has demonstrated competency in intravenous therapy administration. The chart also includes advanced technical procedures that require assessment and critical analysis skills that are beyond the scope of practice of LPNs and that cannot be performed by an LPN regardless of the degree of education, experience or supervision. A glossary is also provided defining terms used in the chart.

### **Definition of Terms**

#### **Venous Access Device/Line:**

Any centrally or peripherally inserted venous infusion device/line.

#### **Central Venous Device/Line:**

Any infusion device whose distal end is placed in the central venous system. These devices may be tunneled, non-tunneled, or implanted. Insertion sites may be peripheral, for example, peripherally inserted central catheter (PICC) lines or central. Examples include various ports, triple lumen, "BROVIAC"®, and "HICKMAN"® catheters, etc. ("HICKMAN" and "BROVIAC" are registered trademarks of C. R. Bard, Inc. and its related company, BCR, Inc.)

**Central Venous Chest Port:**

Implanted central venous line devices for long term IV therapy.

**Central Venous Arm Port:**

Peripherally implanted central venous line devices for long term IV therapy.

**Midline Catheters:**

Long-line peripherally inserted venous access devices. Such devices do not have their distal end in the central venous system. These devices are used to infuse only isotonic drugs or fluid.

**SASH:**

Saline administration, saline, heparin flush procedure.

**SAS:**

Saline administration, saline, flush procedure.

<b>The Practice of IV Therapy by Licensed Practical Nurses in Acute Care Settings</b>		
<ul style="list-style-type: none"> <li>The provision of IV therapy by an LPN must be under the direct supervision of an RN who is assigned to the patient care unit at all times that the LPN is providing IV therapy.</li> <li>LPNs may not independently provide IV therapy in Home Care settings.</li> </ul>		
<b>An LPN MAY:</b> <ul style="list-style-type: none"> <li>Identify and set up equipment and solutions for infusion through any venous access device (peripheral or central line).</li> </ul>		
<b>An LPN MAY</b> <ul style="list-style-type: none"> <li>Start most peripheral IV lines;</li> </ul>	<b>Except that:</b>	<b>An LPN MAY NOT:</b> <ul style="list-style-type: none"> <li>Start any central venous line including PICC lines.</li> <li>Start a venous line using a midline catheter.</li> </ul>
<b>An LPN MAY:</b> <ul style="list-style-type: none"> <li>Monitor and adjust flow rates of any venous access device/line.</li> </ul>		
<b>An LPN MAY</b> <ul style="list-style-type: none"> <li>Administer medicated and unmedicated intravenous solutions through most venous access lines including midline catheters.</li> </ul>	<b>Except that:</b>	<b>An LPN MAY NOT:</b> <ul style="list-style-type: none"> <li>Administer intravenous solutions through any implanted central venous chest port or implanted central venous arm port access device.</li> <li>Administer the first dose of any medicated IV solution through any venous access device.</li> <li>Administer oncology chemotherapy regimens infusion through venous access devices.</li> </ul>
<b>An LPN MAY</b> <ul style="list-style-type: none"> <li>Administer intermittent IV medicated or unmedicated solutions through most venous access lines including midline catheters.</li> </ul>	<b>Except that:</b>	<b>An LPN MAY NOT:</b> <ul style="list-style-type: none"> <li>Administer intermittent IV solutions through a central venous line, including a PICC line, central venous chest ports and central venous arm ports.</li> </ul>

<p><b>An LPN MAY</b></p> <ul style="list-style-type: none"> <li>Administer ONLY saline and/or heparin flushes through a peripheral IV line by the direct IV push technique.</li> </ul>	<p><b>Except that:</b></p>	<p><b>An LPN MAY NOT:</b></p> <ul style="list-style-type: none"> <li>Administer any medication (except saline and/or heparin flushes) by direct IV push.</li> <li>Administer an IV fluid bolus for plasma volume expansion (except in Hemodialysis as defined in Department of Health Regulations [400.15]).</li> </ul>
<p><b>An LPN MAY</b></p> <ul style="list-style-type: none"> <li>Flush venous access lines for patency using the SASH or SAS flush procedure.</li> </ul>	<p><b>Except that:</b></p>	<p><b>An LPN MAY NOT:</b></p> <ul style="list-style-type: none"> <li>Flush any central venous line for patency, including PICC lines, central venous chest ports or central venous arm port devices.</li> </ul>
<p><b>An LPN MAY</b></p> <ul style="list-style-type: none"> <li>Change dressings on peripheral venous IV lines not directly connected to the central venous system.</li> </ul>	<p><b>Except that:</b></p>	<p><b>An LPN MAY NOT:</b></p> <ul style="list-style-type: none"> <li>Change dressings and/or heparin lock caps on any central venous access device/line.</li> </ul>
<p><b>An LPN MAY</b></p> <ul style="list-style-type: none"> <li>Draw blood from peripheral venous lines not directly connected to the central venous system.</li> </ul>	<p><b>Except that:</b></p>	<p><b>An LPN MAY NOT:</b></p> <ul style="list-style-type: none"> <li>Draw blood from any central venous access device/line.</li> </ul>
<p><b>An LPN MAY</b></p> <ul style="list-style-type: none"> <li>Discontinue and remove peripheral venous lines.</li> </ul>	<p><b>Except that:</b></p>	<p><b>An LPN MAY NOT:</b></p> <ul style="list-style-type: none"> <li>Discontinue or remove any central venous access device/line including PICC lines.</li> </ul>

## **The Practice of IV Therapy by Licensed Practical Nurses in Long Term Care Settings**

In response to numerous inquiries concerning the role of the licensed practical nurse (LPN) in the administration of intravenous therapy in long term care settings, the New York State Board for Nursing provides the following clarifying document.

The role of the LPN in providing intravenous therapy is determined by a number of factors including the complexity of the procedure, the degree of direction, the setting, as well as the skill and competence of the licensee. A Registered Professional Nurse (RN) may delegate select activities associated with the administration of intravenous therapy to an appropriately competent LPN. The delegation of these activities is based on the RN's professional judgement, the competence of the LPN, policy and procedures of the institution and standards of nursing practice. Regardless of the degree of delegation, however, the RN retains the ultimate responsibility for the administration and clinical management of intravenous therapy, including assessment of the patient for symptoms and reactions. Education Law does not permit LPNs to make any patient assessments (interpret or evaluate clinical data). In the opinion of the State Board for Nursing, *the practice of intravenous therapy by LPNs in long term care settings requires RN supervision, which must be on-site at all times that IV therapy is being provided by the LPN (long term care facilities must follow acute care guidelines on sub-acute units)*. The RN must document, at least every shift, assessment of the patient's condition relative to the intravenous therapy.

Facilities must ensure that LPNs permitted to perform intravenous therapy procedures have satisfactorily completed an initial training program, received supervised clinical experiences, demonstrated competence in the performance of intravenous therapy, are appropriately supervised by RNs and complete an annual IV therapy update. It is appropriate for IV competency evaluation to be included in the annual performance review of each licensee.

The accompanying chart displays select tasks that can be performed by an LPN practicing in long term care settings, under appropriate supervision, who has demonstrated competency in intravenous therapy administration. The chart also includes advanced technical procedures that require assessment and critical analysis skills that are beyond the scope of practice of LPNs and that cannot be performed by an LPN regardless of the degree of education, experience or supervision. A glossary is also provided defining terms used in the chart.

### **Definition of Terms**

#### **Venous Access Device/Line:**

Any centrally or peripherally inserted venous infusion device/line.

#### **Central Venous Device/Line:**

Any infusion device whose distal end is placed in the central venous system. These devices may be tunneled, non-tunneled, or implanted. Insertion sites may be peripheral, for example, peripherally inserted central catheter (PICC) lines or central. Examples include various ports, triple lumen, "BROVIAC"®, and "HICKMAN"® catheters, etc. ("HICKMAN" and "BROVIAC" are registered trademarks of C. R. Bard, Inc. and its related company, BCR, Inc.)

**Central Venous Chest Port:**

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Long-line peripherally inserted venous access devices. Such devices do not have their distal end in the central venous system. These devices are used to infuse only isotonic drugs or fluid.

**SASH:**

Saline administration, saline, heparin flush procedure.

**SAS:**

Saline administration, saline, flush procedure.

<b>The Practice of IV Therapy by Licensed Practical Nurses in Long Term Care Settings</b>		
<ul style="list-style-type: none"> <li>The provision of IV therapy by an LPN must be under the on-site supervision of an RN at all times that the LPN is providing IV therapy. (Long term care facilities must follow acute care RN supervision guidelines on sub-acute units.)</li> <li>LPNs may not independently provide IV therapy in Home Care settings.</li> </ul>		
<b>An LPN MAY:</b> <ul style="list-style-type: none"> <li>Identify and set up equipment and solutions for infusion through any venous access device (peripheral or central line).</li> </ul>		
<b>An LPN MAY</b> <ul style="list-style-type: none"> <li>Start most peripheral IV lines;</li> </ul>	<b>Except that:</b>	<b>An LPN MAY NOT:</b> <ul style="list-style-type: none"> <li>Start any central venous line including PICC lines.</li> <li>Start a venous line using a midline catheter.</li> </ul>
<b>An LPN MAY:</b> <ul style="list-style-type: none"> <li>Monitor and adjust flow rates of any venous access device/line.</li> </ul>		
<b>An LPN MAY</b> <ul style="list-style-type: none"> <li>Administer medicated and unmedicated intravenous solutions through most venous access lines including midline catheters.</li> </ul>	<b>Except that:</b>	<b>An LPN MAY NOT:</b> <ul style="list-style-type: none"> <li>Administer intravenous solutions through any implanted central venous chest port or implanted central venous arm port access device.</li> <li>Administer the first dose of any medicated IV solution through any venous access device.</li> <li>Administer oncology chemotherapy regimens infusion through venous access devices.</li> </ul>
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<p><b>An LPN MAY</b></p> <ul style="list-style-type: none"> <li>Administer ONLY saline and/or heparin flushes through a peripheral IV line by the direct IV push technique.</li> </ul>	<p><b>Except that:</b></p>	<p><b>An LPN MAY NOT:</b></p> <ul style="list-style-type: none"> <li>Administer any medication (except saline and/or heparin flushes) by direct IV push.</li> <li>Administer an IV fluid bolus for plasma volume expansion (except in Hemodialysis as defined in Department of Health Regulations [400.15]).</li> </ul>
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<p><b>An LPN MAY</b></p> <ul style="list-style-type: none"> <li>Change dressings on peripheral venous IV lines not directly connected to the central venous system.</li> </ul>	<p><b>Except that:</b></p>	<p><b>An LPN MAY NOT:</b></p> <ul style="list-style-type: none"> <li>Change dressings and/or heparin lock caps on any central venous access device/line.</li> </ul>
<p><b>An LPN MAY</b></p> <ul style="list-style-type: none"> <li>Draw blood from peripheral venous lines not directly connected to the central venous system.</li> </ul>	<p><b>Except that:</b></p>	<p><b>An LPN MAY NOT:</b></p> <ul style="list-style-type: none"> <li>Draw blood from any central venous access device/line.</li> </ul>
<p><b>An LPN MAY</b></p> <ul style="list-style-type: none"> <li>Discontinue and remove peripheral venous lines.</li> </ul>	<p><b>Except that:</b></p>	<p><b>An LPN MAY NOT:</b></p> <ul style="list-style-type: none"> <li>Discontinue or remove any central venous access device/line including PICC lines.</li> </ul>

# **SED/OMRDD Memorandum of Understanding for RN Nursing Supervision**

## **OMRDD Administrative Memorandum - #2003-01**

**To:** Directors of Developmental Disabilities Services Offices, Executive Directors of Agencies Providing Residential Services  
**From:** Helene DeSanto, Executive Deputy Commissioner, Office of Mental Retardation and Developmental Disabilities; and  
Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, New York State Education Department  
**Subject:** Registered Nursing Supervision of Unlicensed Direct Care Staff in Residential Facilities Certified by the Office of Mental Retardation and Developmental Disabilities  
**Date:** February 2003

**Suggested Distribution:** Registered Professional Nurses, Licensed Practical Nurses, Quality Compliance Staff, Program/Direct Care Staff, Administrative Staff

### **Purpose**

This administrative memorandum has been developed to define the appropriate level of supervision, by a registered professional nurse, that is to be provided to unlicensed direct care staff who perform tasks or activities commonly identified as nursing procedures pursuant to §6908(1)(b) of New York State Education Law.

### **Applicability**

This directive applies to all certified community-based residences, with the exception of family care homes, where two or more consumers receive services, including Intermediate Care Facilities (ICFs), Community Residences (CRs), and Individual Residential Alternatives (IRAs). This directive and the provisions of §6908(1)(b) of the New York State Education Law do not apply to non-certified residential settings.

### **Definitions**

A Registered Professional Nurse (RN) shall be responsible for the supervision of unlicensed direct care staff in the performance of nursing tasks and activities. It is the responsibility of the employing agency to ensure that all staff is adequately trained regarding the elements of clinical nursing supervision, and the difference between clinical nursing supervision and administrative supervision.

Adequate nursing supervision is the provision of guidance by an RN for the accomplishment of a nursing procedure, including:

- initial training of the task or activity; and
- periodic inspection of the actual act of accomplishing the task or activity.

The amount and type of nursing supervision required will be determined by the RN responsible for supervising the task or activity, and will depend upon:

- the complexity of the task;

- the skill, experience and training of the staff; and
- the health conditions and health status of the consumer.

### **Frequency of Visits**

The frequency of visits to certified community-based residences with two or more consumers shall be at the discretion of the RN responsible for supervision but in no case shall visits occur less frequently than once a week.

### **Professional Nursing Availability**

There shall be an RN available to unlicensed direct care staff 24 hours a day, 7 days a week. The RN must be either on site or immediately available by telephone. The residence RN or, during off-hours, the RN on-call will be immediately notified of changes in medical orders for a consumer and/or of changes in a consumer's health status.

### **Plan of Nursing Services**

The RN is responsible for developing an individualized plan for nursing services for any consumer who requires nursing care, including those who require medication administration for diagnosed medical conditions. Such plans will be updated at least annually or whenever there is a significant change in the consumer's condition.

The RN shall document that direct care staff have been educated about the chronic conditions and related health care needs of each consumer in their care.

The RN shall ensure that there is a consumer specific medication sheet for each medication that is administered. This sheet shall include all of the information required by 14 NYCRR §633.17(a)(17)(iii).

### **Nursing Procedures**

It shall be the responsibility of the Registered Professional Nurse to determine which nursing procedures unlicensed direct care staff will be allowed to perform, and which unlicensed staff will be allowed to perform them. The Registered Professional Nurse shall exercise professional judgement as to when delegation is unsafe and/or not in the consumer's best interest.

When making a decision regarding a nursing task or activity, the RN shall assess the following:

- complexity of the task;
- condition/stability of the consumer; and
- training, skill and experience of the staff involved, including relevant factors related to the individual's ability to safely provide nursing services.

In no case will an RN allow direct care staff to perform a nursing procedure that is outside the scope of practice of an LPN.

## **Training**

RNs who do not have previous experience in the field of mental retardation/developmental disabilities (MR/DD) nursing will be required to complete an orientation for registered nurses in MR/DD nursing within three months of being hired.

It is the responsibility of the RN to provide initial and on-going training to unlicensed direct care staff in all nursing tasks and/or functions that they will perform. The RN must periodically review that the performance of unlicensed staff is consistent with standards of care and training.

Medication administration, tube feeding and diabetic care shall be taught utilizing a standard curriculum approved by the Office of Mental Retardation and Developmental Disabilities (OMRDD).

Diabetic care shall be taught by either:

- A Certified Diabetic Educator (CDE). In those instances where the CDE is not a RN, the administration of insulin shall be taught by an RN;

### **OR**

- An RN who has successfully completed an OMRDD approved train-the-trainer course to teach diabetes care to unlicensed direct care staff. Approval to teach diabetic care to unlicensed direct care staff shall be for a period of one year. Continued approval will be dependent upon completion of annual knowledge/skill maintenance training.

Unlicensed direct care staff will be separately certified for medication administration, tube feeding and insulin administration and shall be recertified on an annual basis.

Resident managers who have not previously completed the didactic portion of the OMRDD-approved medication administration curriculum shall be required to do so. However, residence managers will not be certified to administer medication unless they are also designated as "staff providing direct care services" as defined in 14 NYCRR §633.99.

It is the intent of the regulation that the staff not only has the responsibility for direct care in the job description, but that they are also actually providing direct hands-on care. It is recognized that many unit supervisors and/or house managers do routinely provide direct care to consumers. Each agency must determine which supervisors and/or house managers within their agency meet the letter, the spirit and the intent of the regulation.

## **Clinical Evaluations**

The RN shall conduct annual clinical performance evaluations for unlicensed direct care staff for procedures that include but are not limited to medication administration. This evaluation shall become part of the employee's annual performance evaluation.

## **Staffing Ratios**

The following items shall be considered when establishing an RN/consumer ratio for RNs assigned to provide nursing services in community based residences:

- the health status/stability of the consumers;
- the type of residential facility;
- the actual number of direct care staff, both full and part time, who are to be trained and supervised;
- the number of Licensed Practical Nurses to be supervised;
- the number of certified residences involved, their geographic location and proximity to each other and proximity to health care providers; and
- the degree of additional nursing services provided by external nursing agencies.

Based on the evaluation of these factors, the provider agency shall establish a registered nurse/consumer ratio that ensures consistently adequate nursing supervision. In no instance shall this ratio to exceed one full time equivalent of an RN to 50 consumers (1:50). Some ratios will need to be significantly less than this based upon evaluation of the above factors.

RN/consumer ratios shall be re-evaluated within one week if there are any significant changes in any of the factors listed above and RN assignments adjusted accordingly.

If an RN is acting as the supervising nurse for the agency and also has responsibility for one or more residences, only that portion of her/his time that is devoted to the residences may be used in calculating the ratio.

### **Effective Date**

May 1, 2003

## **Standing Orders or Protocols**

**To:** Interested Parties

**From:** Barbara Zittel, RN, Ph.D., Executive Secretary to the State Board for Nursing

**Subject:** Standing Orders or Protocols

**Date:** August 2006

The purpose of this memorandum is to provide guidance in clarifying the scope of practice of registered professional nurses (RNs) in relation to a variety of circumstances where non-patient specific medical orders, culturally known as standing orders, are being used to dictate nursing care. There appears to be a heightened interest among medical providers to rely on non-patient specific orders for patient care. The State Education Department, however, has historically interpreted that standing orders are not appropriate because without the existence of a relationship between the patient and an authorized provider, given the complexities of patient co-morbidities, considerable allergies and multiple medications, it is difficult and potentially dangerous to design a medical treatment plan in which "one size fits all."

In 2000, the New York State Legislature created the non-patient specific standing order as a legal entity. The legislation's intent was to legitimize the administration of immunizations and anti-anaphylactic agents by RNs without the need for a patient specific order. More recently, purified protein derivative (PPD) tests and human immunodeficiency virus (HIV) tests were added to the law by the legislature.

Within the limited context of this legislation, non-patient specific orders waive the usual requirement that there exist a treatment relationship between the patient and the authorized medical provider prior to execution of a medical order by an RN. In the absence of such a treatment relationship, the responsibility for assessing each patient for any obstacle or danger that the order might create, falls to the RN. Since assessment is not within the scope of practice of Licensed Practical Nurses (LPNs), they may not independently execute a non-patient specific order. However, depending upon the outcome of the patient assessment, the RN may lawfully delegate the actual administration of the immunization or test to an LPN.

Non-patient specific standing orders for the administration of immunization, anaphylactic agents, purified protein derivative tests and human immunodeficiency virus tests are the only legal circumstance in which orders can be provided for a given patient population with whom an authorized provider has no treatment relationship. The use of non-patient specific standing orders or non-patient specific standing protocols for clients in camps, college infirmaries, jails, hospitals, nursing homes, and occupational health facilities, for example, has no legal standing, and may result in a charge of unprofessional conduct against the RNs executing such orders.

The State Education Department has stated that in certain limited situations the development of a standardized list of orders designed for a given patient population may be lawful if each list of orders is signed by the patient's primary care provider and customized to the particular needs of a specific patient. Such orders are to be administered on an as needed (PRN) basis and executed in the same manner as any other PRN order.

## **Task Force on Provision of Services for Chronic Outpatient End State Renal Disease (ESRD) Facilities**

Historically, the New York State Education Department has determined that it is NOT within the scope of practice of a LPN to independently access central venous lines in any health care setting. Effective October 1, 2006, upon completion of a training program consistent with the requirements outlined in the attached document, including successful completion of a competency evaluation, it will be permissible for Licensed Practical Nurses (LPNs), working exclusively in chronic hemodialysis outpatient settings, to access and provide care to patients with central venous catheters under the direction of a Registered Professional Nurse (RN). In accordance with New York State Education Law, all LPN activities must occur under the direct supervision of a registered professional nurse (RN). With or without implementation of this new program for the expanded role of LPNs in the hemodialysis outpatient chronic dialysis setting, the RN maintains overall responsibility for the patients in the unit. The Code of Federal Regulations (CFR) 405.2136 (d) (1) requires chronic hemodialysis outpatient facilities to have policies and procedures that ensure "All members of the facility's staff are qualified to perform the duties and responsibilities assigned to them and meet such Federal, State, and local professional requirements as may apply." Facilities that choose to participate in the program allowing LPNs to access central venous catheters must include the training and competency requirements as defined in the attached document for this expanded LPN role in the facility's policies and procedures. Facilities will be responsible for identifying the LPN candidates determined to be eligible for this training. It is noted, however, that there may be situations where the RN is not comfortable with a trained LPN accessing central venous catheters. Facility training of LPNs is to be accomplished with the understanding that the final determination for an LPN providing this service will be at the discretion of the supervising RN. The delegation of these activities is based on the RN's professional judgment, the competence of the LPN, policy and procedures of the facility and standards of nursing practice. Regardless of the degree of delegation, however, the RN retains the ultimate responsibility for the administration and clinical management of dialysis care, including assessment of the patient for symptoms and reactions. The scopes of practice of RNs and LPNs are not interchangeable. Inappropriate use of LPNs may expose the delegating RN to a potential charge of unprofessional conduct for inappropriate delegation of professional responsibilities and the LPN to a charge of acting outside the scope of nursing as a Licensed Practical Nurse. The New York State Department of Health and the New York State Education Department, working cooperatively with representatives from the New York ESRD Network, providers of chronic hemodialysis outpatient services, and professional clinical staff associations, have developed the attached training program requirements. This program will allow LPNs, who have completed the formal education programs as described within the attached document to care for patients with central venous catheters ONLY in the chronic hemodialysis outpatient setting. The LPN must be under the direct supervision of the RN. This program does not apply to any other health care setting. CFR 405.2136 (d) (6) requires that facility personnel in the chronic hemodialysis outpatient center participate in educational programs on a regular basis, including initial orientation and continuing in-service training. If the facility plans to allow LPNs to access central venous catheters as part of the provision of services, the LPN must first complete a training program, consistent with the program requirements specified in the attached document, with successful completion of a written examination and competency demonstration. The training for LPN central venous catheter access may be part, or may be independent, of the facility's initial training program. If part of the facility initial training, the written examination for the central

venous catheter training for LPNs may be incorporated into the initial training comprehensive examination. It is required that LPNs receive annual updates for central venous catheter training, with successful completion of a skill based practical competency evaluation. These LPN functions are allowed in the chronic hemodialysis outpatient setting, with successful completion of the advanced training and under the direct supervision of an RN. Registered professional nurses at the facility are to be familiar with the LPN training program to ensure they clearly understand the tasks that may be delegated to the LPN(s) under their supervision. The LPN competency evaluation requirement in this training program is not to be used as the RN competency exam for central venous catheters, since it is not inclusive of professional registered nursing processes related to this function. A separate and distinct RN demonstrated competency for central venous catheters is required.

***The RN is responsible for evaluating each central venous catheter patient within thirty (30) minutes (not to exceed 45 minutes) of initiation of the dialysis procedure.***

**The facility's responsibilities** for authorizing LPNs to initiate dialysis procedures on patients with central venous catheters include:

- Develop and regularly update policies and procedures for LPN access of central venous catheters;
- Ensure LPNs have received the appropriate training for accessing central venous catheters, receive supervised clinical experience, demonstrate competency, and provide the service under appropriate supervision. Ensure LPNs complete an annual update training for accessing central venous line catheters, with demonstrated competency;
- Maintain onsite documentation reflecting the mandated LPN training for care of the central venous catheter dialysis patients.
- LPNs with experience in accessing central venous catheters based on employment at another facility MUST take and successfully complete the training program and competency evaluation at the current facility, in order to continue accessing central venous catheters in the provision of care to chronic hemodialysis outpatient patients

***Facility compliance with the training and competency program requirements and implementation of the LPN expanded role in the chronic hemodialysis outpatient setting will be monitored through routine New York State Department of Health surveillance activities.***

**Task Force Members:** Barbara Zittel, RN, Ph.D. New York State Education, Lydia Belardo, RN, MS New York State Nurses Association, Deborah Elliott, RN, MBA New York State Nurses Association, Carol Logan, RN, MS, BSN, CNN ESRD Network of New York, Joan Arslanian, RN, MSN, CNN, FNP ESRD Network of New York, Patricia Hansen, RN, BSN, MS ESRD Network of New York, Donna McCarthy, RN, MHA Fresenius Medical Care NA, Marybeth Sommer, RN, CNN, DaVita Noreasters Division, Jemma Marie Hanson, RN, BSN Public Employees Federation, Patricia Greenberg, RN, MA Nurse Alliance of 1199 SEIU, New York State Department of Health Staff Lisa McMurdo, RN, MPH, Rosemarie Miller, RN, Vickie Ventresca, MPA

**June 5, 2006**

# ETHICAL PRACTICE

When nurses make professional judgments, their decisions are based on a reflection of consequences and on universal moral principles. A respect for individuals as unique persons is the most fundamental of these principles. Other principles deriving from this core principle are: doing good, avoiding harm, telling the truth, keeping promises, treating persons fairly, respecting privileged data, and self-determination.

A code of ethics states the primary goals and values of the profession. It indicates a profession's acceptance of the trust and responsibility with which it has been empowered by society. A code of ethics serves to inform both nurses and society of the profession's expectations and requirements in ethical matters. An ethical code provides a framework within which nurses can make ethical decisions and fulfill their responsibilities to the public, to other members of the health team, and to the profession.

The following Code of Ethics for Nurses was developed by the American Nurses Association (ANA). It is meant to serve as a guide throughout a nurse's professional practice.

## **ANA CODE OF ETHICS FOR NURSES\***

1. The nurse, in all professional relationships, practices with compassion and respect for the inherent dignity, worth and uniqueness of every individual, unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems.
2. The nurse's primary commitment is to the patient, whether an individual, family, group, or community.
3. The nurse promotes, advocates for, and strives to protect the health, safety, and rights of the patient.
4. The nurse is responsible and accountable for individual nursing practice and determines the appropriate delegation of tasks consistent with the nurse's obligation to provide optimum patient care.
5. The nurse owes the same duties to self as to others, including the responsibility to preserve integrity and safety, to maintain competence, and to continue personal and professional growth.
6. The nurse participates in establishing, maintaining, and improving healthcare environments and conditions of employment conducive to the provision of quality health care and consistent with the values of the profession through individual and collective action.
7. The nurse participates in the advancement of the profession through contributions to practice, education, administration, and knowledge development.
8. The nurse collaborates with other health professionals and the public in promoting community, national, and international efforts to meet health needs.
9. The profession of nursing, as represented by associations and their members, is responsible for articulating nursing values, for maintaining the integrity of the profession and its practice, and for shaping social policy.

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# WHISTLEBLOWER PROTECTION

In 2002, legislation was passed referred to as Whistleblower Protection, which protects employees, who provide health care services, from retaliatory action by their employers when the employee discloses or refuses to participate in activities s/he believes constitutes improper quality of patient care. The added provision to the labor law follows:

Labor Laws of New York State, Article 20-C §741. Retaliatory Action by Employers. Prohibition; health care employer who penalizes employees because of complaints of employer violations.

1. Definitions. As used in this section, the following terms shall have the following meanings:

- (a) "Employee" means any person who performs health care services for and under the control and direction of any public or private employer which provides health care services for wages or other remuneration.
- (b) "Employer" means any partnership, association, corporation, the state, or any political subdivision of the state which:
  - (i) provides health care services in a facility licensed pursuant to article twenty-eight or thirty-six of the public health law;
  - (ii) provides health care services within a primary or secondary public or private school or public or private university setting;
  - (iii) operates and provides health care services under the mental hygiene law or the correction law; or
  - (iv) is registered with the department of education pursuant to section sixty-eight hundred eight of the education law.
- (c) "Agent" means any individual, partnership, association, corporation, or group of persons acting on behalf of an employer.
- (d) "Improper quality of patient care" means, with respect to patient care, any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law, where such violation relates to matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient.
- (e) "Public body" means:
  - (1) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;
  - (2) any federal, state or local court, or any member or employee thereof, any grand or petit jury;

- (3) any federal, state or local regulatory, administrative or public agency or authority, or instrumentality thereof;
  - (4) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer;
  - (5) any federal, state or local department of an executive branch of government; or
  - (6) any division, board, bureau, office, committee or commission of any of the public bodies described in subparagraph one, two, three, four or five of this paragraph.
- (f) "Retaliatory action" means the discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.
- (g) "Supervisor" means any person within an employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits a complaint.
2. Retaliatory action prohibited. Notwithstanding any other provision of law, no employer shall take retaliatory action against any employee because the employee does any of the following:
- (a) discloses or threatens to disclose to a supervisor, or to a public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care; or
  - (b) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.
3. Application. The protection against retaliatory personnel action provided by subdivision two of this section shall not apply unless the employee has brought the improper quality of patient care to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. This subdivision shall not apply to an action or failure to act described in paragraph (a) of subdivision two of this section where the improper quality of patient care described therein presents an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.
4. Enforcement. A health care employee may seek enforcement of this section pursuant to paragraph (d) of subdivision four of section seven hundred forty of this article.
5. Relief. In any court action brought pursuant to this section it shall be a defense that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

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## PROFESSIONAL MISCONDUCT

A license to practice a profession in New York State is in effect for life unless surrendered by the holder or revoked by the Board of Regents upon a finding of professional misconduct. Professional misconduct is defined in section 6509 of Article 130 of Education Law and in Part 29 of the Rules of the Board of Regents. **It is the responsibility of every professional to be aware of the laws and regulations governing his or her profession.**

Professional misconduct includes:

- practicing beyond the authorized scope of practice;
- practicing fraudulently;
- practicing with gross negligence or gross incompetence or with negligence or incompetence on more than one occasion;
- practicing while the ability to practice is impaired by alcohol, drugs, or mental disability;
- being a habitual user of drugs;
- being convicted of a crime;
- unlawful fee splitting;
- delegating professional duties to an unauthorized person;
- physically or sexually abusing a patient;
- filing false reports;
- failing to maintain proper records;
- ordering excessive or unnecessary tests;
- and other serious matters.

The Office of the Professions investigates and prosecutes allegations of professional misconduct in all professions except medicine (which includes physicians, physician assistants, and specialist assistants) where it is the responsibility of the Office of Professional Medical Conduct (OPMC) of the New York State Department of Health.

## REPORTING PROFESSIONAL MISCONDUCT OR ILLEGAL PRACTICE

Any person who suspects or has knowledge of professional misconduct should report the information to the appropriate Office of the Professions office listed below. **Complaints may be treated confidentially.** If an investigation develops sufficient evidence, disciplinary proceedings will be commenced. In the most serious cases, these proceedings may lead to the Regents suspending or revoking a license.

The public is placed at risk whenever an unlicensed professional illegally practices a profession. The Office of the Professions has jurisdiction to investigate the practice of a profession by someone who is not licensed, which is a criminal act punishable as a Class E Felony. Any professional who discovers such illegal practice should immediately report the information to the appropriate office listed below. This should occur as soon as the illegal practice is suspected so that an investigation can be conducted and prompt action may be taken to protect the public and preserve the integrity of the profession involved.

**To report professional misconduct for professions other than medicine or unlicensed practice, call, write, or e-mail the Office of the Professions.**

- **Toll-free Professional Misconduct Hotline: 1-800-442-8106**
- **E-mail address: [conduct@mail.nysed.gov](mailto:conduct@mail.nysed.gov).**

Complainants may also call or write any of the following regional offices:

- ▶ **Albany Regional Office:** New York State Education Department, Office of the Professions, Office of Professional Discipline, 80 Wolf Road, 2nd Floor, Albany, NY 12205 [phone: 518-485-9350; fax: 518-485-9361].
- ▶ **Bronx/Queens Regional Office:** New York State Education Department, Office of the Professions, Office of Professional Discipline, 2400 Halsey Street, Bronx, NY 10461 [phone: 718-794-2457 or 2458; fax: 718-794-2480].
- ▶ **Brooklyn and Staten Island Regional Office:** New York State Education Department, Office of the Professions, Office of Professional Discipline, 195 Montague Street, 4th Floor Brooklyn, NY 11201 [phone: 718-246-3060 or 3061; fax: 718-246-3096].
- ▶ **Buffalo Regional Office:** New York State Education Department, Office of the Professions, Office of Professional Discipline, 295 Main Street, Suite 756, Buffalo, NY 14203 [phone: 716-842-6550; fax: 716-842-6551].
- ▶ **Central Administration:** New York State Education Department, Office of the Professions, Office of Professional Discipline, 475 Park Avenue South, 2nd Floor, New York, NY 10016-6901 [phone: 212-951-6400; fax: 212-951-6537].
- ▶ **Long Island Regional Office:** New York State Education Department, Office of the Professions, Office of Professional Discipline, 250 Veterans Memorial Highway, Room 3A-15, Hauppauge, New York 11788 [phone: 631-952-7422; fax: 631-952-1029].
- ▶ **Manhattan Regional Office:** New York State Education Department, Office of the Professions, Office of Professional Discipline, 163 West 125th Street, Room 819, New York, NY 10027 [phone: 212-961-4369; fax: 212-961-4361].
- ▶ **Mid Hudson Regional Office:** New York State Education Department, Office of the Professions, Office of Professional Discipline, One Gateway Plaza, 3rd Floor, Port Chester, NY 10573 [phone: 914-934-7550; fax: 914-934-7607].
- ▶ **Rochester Regional Office:** New York State Education Department, Office of the Professions, Office of Professional Discipline, 85 Allen Street, Suite 120, Rochester, NY 14608 [phone: 585-241-2810; fax: 585-241-2816].
- ▶ **Syracuse Regional Office:** New York State Education Department, Office of the Professions, Office of Professional Discipline, 333 East Washington Street, Suite 527, Syracuse, NY 13202 [phone: 315-428-3286; fax: 315-428-3287].

**To report misconduct by a physician, a physician assistant, or a specialist assistant,** write or call the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299 [phone: 1-800-663-6114 or 518-402-0836].

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## **PROFESSIONAL ASSISTANCE PROGRAM**

The Office of the Professions' Professional Assistance Program (PAP) assists licensed professionals with addictive illness. The program allows professionals to voluntarily and confidentially surrender their licenses while entering and receiving treatment in acceptable programs. It is only available to licensees who have not harmed patients or clients. In some cases, successful completion of the program may act as an alternative to disciplinary action.

The Committee for Professional Assistance, composed primarily of experts in addictive illness, advises the Education Department on the administration of the program. A member of the appropriate State professional board sits ex officio on each PAP panel. The panels interview applicants and determine their suitability for the program, monitor progress, and determine the readiness of the licensee to resume professional practice.

For additional information about this program contact the Professional Assistance Program, New York State Education Department, Office of the Professions, 80 Wolf Road, 2nd Floor, Albany, NY 12205; phone 518-474-3817 ext. 480; or e-mail [pap@mail.nysed.gov](mailto:pap@mail.nysed.gov).

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# PAGE REFERENCE TO LAWS, RULES AND REGULATIONS

*The following pages contain the laws and regulations that govern your professional practice as a licensed practical nurse or registered professional nurse. It is important that you familiarize yourself with these laws and regulations. Pay particular attention to Part 29 of the Regents Rules, which defines unprofessional conduct. Please note that updates to laws and regulations will be available on the Office of the Professions Web site at [www.op.nysed.gov](http://www.op.nysed.gov).*

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# LAWS, RULES AND REGULATIONS SPECIFIC TO NURSING

## EDUCATION LAW

### Article 139 Nursing

#### §6900. Introduction.

This article applies to the profession of nursing. The general provisions for all professions contained in article one hundred thirty of this title apply to this article.

#### §6901. Definitions.

As used in section sixty-nine hundred two:

1. "Diagnosing" in the context of nursing practice means that identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen. Such diagnostic privilege is distinct from a medical diagnosis.
2. "Treating" means selection and performance of those therapeutic measures essential to the effective execution and management of the nursing regimen, and execution of any prescribed medical regimen.
3. "Human Responses" means those signs, symptoms and processes which denote the individual's interaction with an actual or potential health problem.

#### §6902. Definition of practice of nursing.

1. The practice of the profession of nursing as a registered professional nurse is defined as diagnosing and treating human responses to actual or potential health problems through such services as casefinding, health teaching, health counseling, and provision of care supportive to or restorative of life and well-being, and executing medical regimens prescribed by a licensed physician, dentist or other licensed health care provider legally authorized under this title and in accordance with the commissioner's regulations. A nursing regimen shall be consistent with and shall not vary any existing medical regimen.
2. The practice of nursing as a licensed practical nurse is defined as performing tasks and responsibilities within the framework of casefinding, health teaching, health counseling, and provision of supportive and restorative care under the direction of a registered professional nurse or licensed physician, dentist or other licensed health care provider legally authorized under this title and in accordance with the commissioner's regulations.
3.
  - a. The practice of registered professional nursing by a nurse practitioner, certified under section six thousand nine hundred ten of this article, may include the

diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures within a specialty area of practice, in collaboration with a licensed physician qualified to collaborate in the specialty involved, provided such services are performed in accordance with a written practice agreement and written practice protocols. The written practice agreement shall include explicit provisions for the resolution of any disagreement between the collaborating physician and the nurse practitioner regarding a matter of diagnosis or treatment that is within the scope of practice of both. To the extent the practice agreement does not so provide, then the collaborating physician's diagnosis or treatment shall prevail.

- b. Prescriptions for drugs, devices and immunizing agents may be issued by a nurse practitioner, under this subdivision and section six thousand nine hundred ten of this article, in accordance with the practice agreement and practice protocols. The nurse practitioner shall obtain a certificate from the department upon successfully completing a program including an appropriate pharmacology component, or its equivalent, as established by the commissioner's regulations, prior to prescribing under this subdivision. The certificate issued under section six thousand nine hundred ten of this article shall state whether the nurse practitioner has successfully completed such a program or equivalent and is authorized to prescribe under this subdivision.
- c. Each practice agreement shall provide for patient records review by the collaborating physician in a timely fashion but in no event less often than every three months. The names of the nurse practitioner and the collaborating physician shall be clearly posted in the practice setting of the nurse practitioner.
- d. The practice protocol shall reflect current accepted medical and nursing practice. The protocols shall be filed with the department within ninety days of the commencement of the practice and may be updated periodically. The commissioner shall make regulations establishing the procedure for the review of protocols and the disposition of any issues arising from such review.
- e. No physician shall enter into practice agreements with more than four nurse practitioners who are not located on the same physical premises as the collaborating physician.

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- f. Nothing in this subdivision shall be deemed to limit or diminish the practice of the profession of nursing as a registered professional nurse under this article or any other law, rule, regulation or certification, nor to deny any registered professional nurse the right to do any act or engage in any practice authorized by this article or any other law, rule, regulation or certification.
- g. The provisions of this subdivision shall not apply to any activity authorized, pursuant to statute, rule or regulation, to be performed by a registered professional nurse in a hospital as defined in article twenty-eight of the public health law.

**§6903. Practice of nursing and use of title "registered professional nurse" or "licensed practical nurse".**

Only a person licensed or otherwise authorized under this article shall practice nursing and only a person licensed under section sixty-nine hundred five of this article shall use the title "registered professional nurse" and only a person licensed under section sixty-nine hundred six of this article shall use the title "licensed practical nurse". No person shall use the title "nurse" or any other title or abbreviation that would represent to the public that the person is authorized to practice nursing unless the person is licensed or otherwise authorized under this article.

**§6904. State board for nursing.**

A state board for nursing shall be appointed by the board of regents on recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing and professional conduct in accordance with section sixty-five hundred eight of this title. The board shall be composed of not less than fifteen members, eleven of whom shall be registered professional nurses and four of whom shall be licensed practical nurses all licensed and practicing in this state for at least five years. An executive secretary to the board shall be appointed by the board of regents on recommendation of the commissioner and shall be a registered professional nurse registered in this state.

**§6905. Requirements for a license as a registered professional nurse.**

To qualify for a license as a registered professional nurse, an applicant shall fulfill the following requirements:

- 1. Application: file an application with the department;
- 2. Education: have received an education, and a diploma or degree in professional nursing, in accordance with the commissioner's regulations;
- 3. Experience: meet no requirement as to experience;
- 4. Examination: pass an examination satisfactory to the board

and in accordance with the commissioner's regulations;

- 5. Age: be at least eighteen years of age;
- 6. Citizenship: meet no requirement as to United States citizenship;
- 7. Character: be of good moral character as determined by the department; and
- 8. Fees: pay a fee of one hundred fifteen dollars to the department for admission to a department conducted examination and for an initial license, a fee of forty-five dollars for each reexamination, a fee of seventy dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of fifty dollars for each triennial registration period.

**§6906. Requirements for a license as a licensed practical nurse.**

To qualify for a license as a licensed practical nurse, an applicant shall fulfill these requirements:

- 1. Application: file an application with the department;
- 2. Education: have received an education including completion of high school or its equivalent, and have completed a program in practical nursing, in accordance with the commissioner's regulations, or completion of equivalent study satisfactory to the department in a program conducted by the armed forces of the United States or in an approved program in professional nursing;
- 3. Experience: meet no requirement as to experience;
- 4. Examination: pass an examination satisfactory to the board and in accordance with the commissioner's regulations, provided, however, that the educational requirements set forth in subdivision two of this section are met prior to admission for the licensing examination;
- 5. Age: be at least seventeen years of age;
- 6. Citizenship: meet no requirements as to United States citizenship;
- 7. Character: be of good moral character as determined by the department; and
- 8. Fees: pay a fee of one hundred fifteen dollars to the department for admission to a department conducted examination and for an initial license, a fee of forty-five dollars for each reexamination, a fee of seventy dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of fifty dollars for each triennial registration period.

**§6907. Limited permits.**

1. A permit to practice as a registered professional nurse or a permit to practice as a licensed practical nurse may be issued by the department upon the filing of an application for a license as a registered professional nurse or as a licensed practical nurse and submission of such other information as the department may require to
  - i. graduates of schools of nursing registered by the department,
  - ii. graduates of schools of nursing approved in another state, province, or country or
  - iii. applicants for a license in practical nursing whose preparation is determined by the department to be the equivalent of that required in this state.
2. Such limited permit shall expire one year from the date of issuance or upon notice to the applicant by the department that the application for license has been denied, or ten days after notification to the applicant of failure on the professional licensing examination, whichever shall first occur. Notwithstanding the foregoing provisions of this subdivision, if the applicant is waiting the result of a licensing examination at the time such limited permit expires, such permit shall continue to be valid until ten days after notification to the applicant of the results of such examination.
3. A limited permit shall entitle the holder to practice nursing only under the supervision of a nurse currently registered in this state and with the endorsement of the employing agency.
4. Fees. The fee for each limited permit shall be thirty-five dollars.
5. Graduates of schools of nursing registered by the department may be employed to practice nursing under supervision of a professional nurse currently registered in this state and with the endorsement of the employing agency for ninety days immediately following graduation from a program in nursing and pending receipt of a limited permit for which an application has been filed as provided in this section.

**§6908. Exempt persons.**

1. This article shall not be construed:
  - a. As prohibiting
    - i. the domestic care of the sick, disabled or injured by any family member, household member or friend, or person employed primarily in a domestic capacity who does not hold himself or herself out, or accept employment as a person licensed to practice nursing

under the provision of this article; provided that if such person is remunerated, the person does not hold himself or herself out as one who accepts employment for performing such care; or the administration of medications or treatment by child day care providers or employees or caregivers of child day care programs where such providers, employees or caregivers are acting under the direction and authority of a parent of a child, legal guardian, legal custodian, or an adult in whose care a child has been entrusted and who has been authorized by the parent to consent to any health care for the child and in compliance with the regulations of the office of children and family services pertaining to the administration of medications and treatment; or

- ii. any person from the domestic administration of family remedies; or
- iii. the providing of care by a person acting in the place of a person exempt under clause (i) of this paragraph, but who does hold himself or herself out as one who accepts employment for performing such care, where nursing services are under the instruction of a licensed nurse, or under the instruction of a patient or family or household member determined by a registered professional nurse to be self-directing and capable of providing such instruction, and any remuneration is provided under section thirty-six hundred twenty-two of the public health law or section three hundred sixty-five-f of the social service law; or
- iv. the furnishing of nursing assistance in case of an emergency;
- b. As including services given by attendants in institutions under the jurisdiction of or subject to the visitation of the state department of mental hygiene if adequate medical and nursing supervision is provided;
- c. As prohibiting such performance of nursing service by students enrolled in registered schools or programs as may be incidental to their course of study;
- d. As prohibiting or preventing the practice of nursing in this state by any legally qualified nurse or practical nurse of another state, province, or country whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of such engagement provided such person does not represent or hold himself or herself out as a nurse or practical nurse registered to practice in this state;
- e. As prohibiting or preventing the practice of nursing in this state during an emergency or disaster by any legally

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qualified nurse or practical nurse of another state, province, or country who may be recruited by the American National Red Cross or pursuant to authority vested in the state civil defense commission for such emergency or disaster service, provided such person does not represent or hold himself or herself out as a nurse or practical nurse registered to practice in this state;

- f. As prohibiting or preventing the practice of nursing in this state, in obedience to the requirements of the laws of the United States, by any commissioned nurse officer in the armed forces of the United States or by any nurse employed in the United States veterans administration or United States public health service while engaged in the performance of the actual duties prescribed for him or her under the United States statutes, provided such person does not represent or hold himself or herself out as a nurse registered to practice in this state; or
- g. As prohibiting the care of the sick when done in connection with the practice of the religious tenets of any church.

**§6909. Special provision.**

- 1. Notwithstanding any inconsistent provision of any general, special, or local law, any licensed registered professional nurse or licensed practical nurse who voluntarily and without the expectation of monetary compensation renders first aid or emergency treatment at the scene of an accident or other emergency, outside a hospital, doctor's office or any other place having proper and necessary medical equipment, to a person who is unconscious, ill or injured shall not be liable for damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid or emergency treatment unless it is established that such injuries were or such death was caused by gross negligence on the part of such registered professional nurse or licensed practical nurse. Nothing in this subdivision shall be deemed or construed to relieve a licensed registered professional nurse or licensed practical nurse from liability for damages for injuries or death caused by an act or omission on the part of such nurse while rendering professional services in the normal and ordinary course of her practice.
- 2. Nothing in this article shall be construed to confer the authority to practice medicine or dentistry.
- 3. An applicant for a license as a registered professional nurse or licensed practical nurse by endorsement of a license of another state, province or country whose application was filed with the department under the laws in effect prior to August thirty-first, nineteen hundred seventy-one shall be licensed only upon successful completion of the appropriate

licensing examination unless satisfactory evidence of the completion of all educational requirements is submitted to the department prior to September one, nineteen hundred seventy-seven.

- 4. A certified nurse practitioner may prescribe and order a non-patient specific regimen to a registered professional nurse, pursuant to regulations promulgated by the commissioner, consistent with subdivision three of section six thousand nine hundred two of this article, and consistent with the public health law, for:
  - a. administrating immunizations.
  - b. the emergency treatment of anaphylaxis.
  - c. administering purified protein derivative (PPD) tests.
  - d. administering tests to determine the presence of the human immunodeficiency virus.
- 5. A registered professional nurse may execute a non-patient specific regimen prescribed or ordered by a licensed physician or certified nurse practitioner, pursuant to regulations promulgated by the commissioner.
- 6. A registered professional nurse defined under subdivision one of section sixty-nine hundred two of this article may use accepted classifications of signs, symptoms, dysfunctions and disorders, including, but not limited to, classifications used in the practice setting for the purpose of providing mental health services.

**§6910. Certificates for nurse practitioner practice.**

- 1. For issuance of a certificate to practice as a nurse practitioner under subdivision three of section six thousand nine hundred two of this article, the applicant shall fulfill the following requirements:
  - a. Application: file an application with the department;
  - b. License: be licensed as a registered professional nurse in the state;
  - c. Education:
    - i. have satisfactorily completed educational preparation for provision of these services in a program registered by the department or in a program determined by the department to be the equivalent; or
    - ii. submit evidence of current certification by a national certifying body, recognized by the department; or

- iii. meet such alternative criteria as established by the commissioner's regulations;
  - d. Fees: pay a fee to the department of fifty dollars for each initial certificate authorizing nurse practitioner practice in a specialty area and a triennial registration fee of thirty dollars. Registration under this section shall be coterminous with the nurse practitioner's registration as a professional nurse.
2. Only a person certified under this section shall use the title "nurse practitioner".
  3. The provisions of this section shall not apply to any act or practice authorized by any other law, rule, regulation or certification.
  4. The provisions of this section shall not apply to any activity authorized, pursuant to statute, rule or regulation, to be performed by a registered professional nurse in a hospital as defined in article twenty-eight of the public health law.
  5. The commissioner is authorized to promulgate regulations to implement the provisions of this section.

**EDUCATION LAW**

**Article 131 - Section 6527**

**Immunizations and Anaphylactic Agents, Purified Protein Derivative (PPD) Tests and Tests to Determine the Presence of Human Immunodeficiency Virus (HIV)**

**Subdivision 6:**

A licensed physician may prescribe and order a non-patient specific regimen to a registered professional nurse, pursuant to regulations promulgated by the commissioner, and consistent with the public health law, for:

- a. administering immunizations.
- b. the emergency treatment of anaphylaxis.
- c. administering purified protein derivative (PPD) tests.
- d. administering tests to determine the presence of the human immunodeficiency virus.

**EDUCATION LAW**

**Article 137 - Section 6807**

**Immunizations and Anaphylactic Agents, Purified Protein Derivative (PPD) Tests and Tests to Determine the Presence of Human Immunodeficiency Virus (HIV)**

**Subdivision 3:**

A pharmacist may dispense drugs and devices to a registered professional nurse, and a registered professional nurse may possess and administer, drugs and devices, pursuant to a non-patient specific regimen prescribed or ordered by a licensed physician or certified nurse practitioner, pursuant to regulations promulgated by the commissioner and the public health law.

**EDUCATION LAW**

**Article 139 - Section 6909**

**Immunizations and Anaphylactic Agents, Purified Protein Derivative (PPD) Tests and Tests to Determine the Presence of Human Immunodeficiency Virus (HIV)**

**Subdivision 4:**

A certified nurse practitioner may prescribe and order a non-patient specific regimen to a registered professional nurse, pursuant to regulations promulgated by the commissioner, consistent with subdivision three of section six thousand nine hundred two of this article, and consistent with the public health law, for:

- c. administering purified protein derivative (PPD) tests.
- d. administering tests to determine the presence of the human immunodeficiency virus.

- a. administering immunizations.
- b. the emergency treatment of anaphylaxis.

**Subdivision 5:**

A registered professional nurse may execute a non-patient specific regimen prescribed or ordered by a licensed physician or certified nurse practitioner, pursuant to regulations promulgated by the commissioner.

**COMMISSIONER'S REGULATIONS**  
**Section 52.12**  
**Registration of Curricula**

**§52.12 Nursing.**

- a. Programs which prepare for admission to licensing examinations.
  - 1. The curriculum for a program preparing for admission to the licensing examination for registered professional nurse shall meet the following standards:
    - i. The program leading to the diploma in nursing shall include a minimum of the equivalent of 30 semester hours in nursing and shall be at least two years in length.
    - ii. The program leading to an associate degree with a major in nursing shall include a minimum of 30 semester hours or the equivalent in nursing.
    - iii. The program leading to a baccalaureate or higher degree with a major in nursing shall include a minimum of 40 semester hours or the equivalent in nursing.
  - 2. curriculum for a program preparing for admission to the licensing examination for licensed practical nurse shall meet the following standards:
    - i. The curriculum offered by an agency or institution other than a college shall be a minimum of nine months in length.
    - ii. The curriculum offered by a college shall be a minimum of two semesters or the equivalent in length.
  - 3. Clinical facilities. A written contract or agreement shall be executed between the institution conducting the nursing program and the cooperating clinical facility or agency, shall be signed by the responsible officer or each party, and shall set forth the responsibilities of each party.
- b. Programs and courses in nursing other than those that prepare for admission to a licensing examination.
  - 1. Nurse practitioner programs.
    - i. Definitions of terms.
      - a. For purposes of this paragraph, the term nurse practitioner program means an educational program which meets the requirements of this paragraph and which has as its objective the education of nurses who will, upon completion

of their studies in such programs, be qualified to provide services, within the scope of practice permitted by section 6910 of the Education Law.

- ii. Registration. No nurse practitioner program shall be offered until such program has been registered by the department.
- iii. Admission. Licensure as a registered nurse in New York or another jurisdiction of the United States shall be required for admission to a registered program, except that in a combined program of education as a registered professional nurse and as a nurse practitioner, registered by the department or accredited by an accrediting agency acceptable to the department, the nurse practitioner component may be taken upon successful completion of the registered nurse component.
- iv. Curriculum. The curriculum shall include, in addition to the requirements of section 52.2 (c) of this Title:
  - a. classroom and supervised clinical designed to prepare nurse practitioners in the areas of diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures within a specialty area of practice;
  - b. a pharmacology component of not less than three semester hours or the equivalent; to include instruction in drug management of clients in the nurse practitioner specialty area and instruction in New York State and Federal laws and regulations relating to prescriptions and recordkeeping; and
  - c. a preceptorship experience, supervised by a nurse practitioner or physician practicing in the specialty area of the program, of at least one semester in length or its equivalent.
- v. Credential. Upon satisfactory completion of all components of the program including class, supervised clinical nursing practice, and preceptorship, a certificate of completion indicating the specialty area shall be issued to each individual by the sponsoring institution/agency.

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2. Other courses. No institution may offer courses in clinical nursing for students enrolled in basic nursing programs, or for graduates of State-approved nursing education programs who are not licensed and currently registered to practice nursing in New York, unless such courses have been registered by the department.

**COMMISSIONER'S REGULATIONS**  
**Part 64**  
**Nursing**

**§64.1 Professional study of nursing.**

- a. Registered professional nursing. To meet the professional education requirement, the applicant shall have graduated from:
  1. a program in nursing registered by the department as preparation for practice as a registered professional nurse;
  2. a program in nursing approved by the licensing authority in another state, territory or possession of the United States as preparation for practice as a registered professional nurse; or
  3. a general nursing course of at least two academic years in a country outside the United States and its territories or possessions that is satisfactory to the department and that the licensing authority or appropriate governmental agency of said country certifies to the department as being preparation for practice as a registered professional nurse. For issuance of a limited permit, an applicant shall obtain a score satisfactory to the department on a proficiency examination selected by the department as evidence of equivalent training, if the applicant's nursing education was obtained in a school of nursing outside the United States and its territories and has not been determined by the department to be equivalent in quality and scope to a program of nursing education registered by the department.
- b. Licensed practical nursing. To meet the education requirements, the applicant shall have graduated from high school or its equivalent, and shall have:
  1. graduated from a program in nursing registered by the department or approved by the licensing authority in another state, territory, or possession of the United States as preparation for practice as a licensed practical nurse;
  2. completed preparation in a program determined by the department to be equivalent to the programs described in paragraph (1) of this subdivision;
  3. graduated from a program in practical nursing of at least nine months in a country outside the United States and its territories or possessions, which program is

satisfactory to the department and which program the licensing authority of said country certifies to the department as being preparation for practice as a licensed practical nurse; or

4. graduated from a general nursing course in a country outside the United States and its territories that is satisfactory to the department and that the licensing authority of said country certifies to the department as being preparation for practice as a professional nurse.

**§64.2 Licensing examinations.**

- a. Registered professional nursing.
  1. All parts of the registered professional nurse licensing examination shall be taken each time the candidate is examined.
  2. Each candidate for licensure as a registered professional nurse examined after November 22, 1961 shall have taken an examination acceptable to the State Board for Nursing. Except as provided in Section 64.3 of this Part, each candidate examined after May 31, 1974 shall have taken the same examination on the same dates such examination was given in this State.
  3. The registered professional nurse licensing examination results shall be reported as a single score. Applicants who have passed a part or parts of the registered professional nurse licensing examination prior to July 1, 1982 may not retain credit for such part or parts beyond that date.
- b. Licensed practical nursing.
  1. A candidate for licensure as a practical nurse shall pass an examination acceptable to the State Board for Nursing. Each candidate examined after September 11, 1974 shall have taken the same examination on the same dates such examination was given in this State.
  2. The passing score as determined by the State Board for Nursing for the licensed practical nurse licensing examination shall be reported as a single score.

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### §64.3 Limited permits.

A limited permit to practice as a registered professional nurse or licensed practical nurse may be issued after the applicant has met requirements of age, moral character, education and proficiency examination, if applicable, provided that the applicant has not failed the professional licensing examination. Failure on a registered professional nurse licensing examination shall not preclude issuance of a limited permit to practice as a licensed practical nurse.

### §64.4 Nurse practitioner certification.

#### a. Certificates.

1. Nurse practitioner certificates issued to a registered professional nurse will reflect the specialty area of nurse practitioner academic preparation.
2. The certificate will specify the specialty area of practice and, when applicable, that prescriptive privileges have been granted.
3. A nurse practitioner may apply for certification in more than one specialty area of practice. A complete application and fee shall be required for each certificate.

#### b. Professional study. To meet the professional education requirements for certification in this State, the applicant shall present evidence of:

1. i. completion of an educational program registered by the department, or a program determined by the department to be equivalent to a registered program, which is designed and conducted to prepare graduates to practice as nurse practitioners; or ii. certification as a nurse practitioner by a national certifying body acceptable to the department; and
2. completion of not less than three semester hours or the equivalent in pharmacology either in an acceptable nurse practitioner program or after other educational requirements for certification as nurse practitioner have been satisfied. An acceptable course in pharmacology shall be equivalent in scope and content to that required by Section 52.12 of this Title.

#### c. Alternative criteria for certification.

1. For applicants whose professional education as a nurse practitioner was completed prior to April 1, 1989, the department may accept as alternative educational criteria the following qualifications:
  - i. A program of education preparation for the provision of primary health care services as nurse practitioner of at least four weeks in duration, and completed prior to April 1, 1989; and

- ii. a course of instruction in pharmacotherapeutics management as required by this subdivision; and either:
- iii. two years of experience prior to April 1, 1989, at least one year of which shall be subsequent to April 1, 1986, in the provision of primary health care services in a health care facility licensed pursuant to Article 28 of the Public Health Law or in a school health demonstration project; or
- iv. satisfactory completion of a supplemental educational program culminating in the successful completion of a comprehensive examination or clinical evaluation.

#### 2. the department may accept as alternative criteria for satisfaction of the pharmacotherapeutics requirement set forth in paragraph 2 of subdivision (b) of this section any of the following:

- i. an educational program or a combination of courses which is the substantial equivalent in content and scope to the pharmacotherapeutics component of a registered program; or
- ii. satisfactory completion of an examination in pharmacotherapeutics satisfactory to the department; or
- iii. satisfactory completion of a nationally recognized examination acceptable for licensure in New York State as a physician assistant or as a midwife.

#### 3. The department may issue a certificate upon the receipt of satisfactory evidence that an applicant licensed or certified in another state or country has met the substantial equivalent of the New York requirements for certification. An applicant who does not have the substantial equivalent of all of the New York requirements may be required to make up specific deficiencies and/or pass a proficiency examination.

#### d. Alternative criteria for certification in additional specialty areas of practice.

1. The alternative requirements of this subdivision are only available to applicants who apply to the department for certification in the additional specialty area of practice on or before September 15, 2007. These alternative requirements for certification shall not be available to applicants who do not meet these conditions and shall not be available to applicants who apply for certification after September 15, 2007.
2. An applicant who has been certified as a nurse practitioner may be certified in an additional specialty or

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specialties upon the submission of evidence satisfactory to the department that the criteria for initial certification in the additional specialty or specialties has been met, or in the alternative, that the applicant has met the following alternative education and experience requirements:

- i. Alternative education. The department may accept 60 hours of continuing education obtained in the specialty area of practice in which certification is sought. Such continuing education may be obtained through the completion of any of the following:
  - a. academic courses or continuing education programs approved by the department or by a nursing or medical organization or accrediting agency acceptable to the department; or
  - b. evidence of preparation for the specialty by service as a presenter or lecturer in an academic or continuing education program, or by the publication in a professional journal of clinical information related to the specialty. Credit for such services or publication may not exceed 30 contact hours;
  - c. independent study in an academic course or continuing education program may be accepted but may not exceed 12 contact hours;
  - d. for the purposes of this paragraph one contact hour shall include at least 50 minutes of study and one academic semester hour shall equal 15 contact hours and one academic quarter hour shall equal 12.5 contact hours.
- ii. Alternative experience. The department may accept either:
  - a. one thousand hours of clinical practice after April 1, 1986 in the specialty for which additional certification is sought. Such practice shall be in a health care facility licensed pursuant to article 28 of the Public Health Law or in a school health demonstration project; or
  - b. three hundred hours of clinical practice as part of a clinical practicum affiliated with a nurse practitioner program registered by the department, or accredited by an accrediting agency acceptable to the department.
3. Evidence of completion of educational programs, experience and examinations submitted to meet alternative criteria for certification as a nurse practitioner must be satisfactory to the department, and the overall preparation of the applicant must be comparable by

assessment and substantially equivalent to the preparation provided by a registered or approved program. The department may require verification of the content and completion of the program or experience and of the satisfactory performance of the applicant by the person or institution conducting the program or in which the experience was acquired.

- e. Prescriptive privilege. An applicant who satisfies all requirements for certification as a nurse practitioner may be authorized to issue prescriptions pursuant to Section 6902(3)(b) of the Education Law after completing instruction, satisfactory to the department, in New York State and Federal laws and regulations relating to prescriptions and recordkeeping.

#### **§64.5 Nurse practitioner practice.**

- a. Practice agreements and practice protocols shall be maintained in the practice setting of the nurse practitioner and collaborating physician and shall be available to the department for inspection.
- b. Practice agreements shall include provisions for referral and consultation, coverage for emergency absences of either the nurse practitioner or collaborating physician, resolution of disagreements between the nurse practitioner and collaborating physician regarding matters of diagnosis and treatment, and the review of patient records at least every three months by the collaborating physician; and may include such other provisions as determined by the nurse practitioner and collaborating physician to be appropriate.
- c. Protocols shall identify the area of practice to be performed by the nurse practitioner in collaboration with the physician and shall reflect accepted standards of nursing and medical practice. Protocols shall include provisions for case management, including diagnosis, treatment, and appropriate recordkeeping by the nurse practitioner; and may include such other provisions as are determined by the nurse practitioner and collaborating physician to be appropriate. Such protocols may be updated periodically.
- d. The department in its discretion or upon request of a nurse practitioner or collaborating physician may review practice protocols for the purpose of insuring that they are in conformance with accepted medical and nursing practice and with the statutes and regulations governing the practice of medicine, nursing, and the prescribing of drugs, and may render an opinion which shall be binding upon the parties to the protocol. A practice and protocol committee designated by the Deputy Commissioner for the Professions shall review practice protocols and shall recommend findings as to their adequacy and conformity with current accepted medical and nursing practice. If the department determines that a protocol is inadequate or contrary to current accepted medical and nursing practice it shall communicate that determination, and the reasons therefor, to the nurse practitioner and to the

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collaborating physician in writing. The nurse practitioner and collaborating physician shall conform to accepted medical and nursing practice immediately, and shall submit a revised protocol within 30 days of receipt of the department's determination, unless an extension of time is requested and granted by the department. Continuation of practice in violation of the determination shall constitute unprofessional conduct by either or both licensees.

- e. An appeal from a determination that a practice protocol is inadequate or contrary to current accepted medical and nursing practice may be taken within 30 days after receipt of the notice of determination by a petition setting forth the reasons for the appeal, and signed by both the nurse practitioner and the collaborating physician. Such joint appeal shall be filed with the Division of Professional Licensing Services and determined by the Committee on the Professions whose determination shall be final.
- f. In addition to the requirements of Section 6810 of the Education Law, prescription forms used by nurse practitioners shall be printed with the name, nurse practitioner certificate number, office address, and office telephone number of the nurse practitioner.

#### **§64.6 Prescription and direction of nursing services.**

- a. Health care providers authorized to prescribe medical regimens to be executed by a registered professional nurse shall include persons licensed or authorized to practice pursuant to a limited permit or statutory exemption from the licensure requirement in the following licensed professions: medicine, including physician's assistant and specialist's assistant; dentistry; podiatry; midwifery; and nurse practitioner.
- b. Health care providers authorized to direct the performance of professional services by licensed practical nurses shall include persons licensed or authorized to practice pursuant to a limited permit or statutory exemption from the licensure requirement in the following licensed professions: medicine, including physician's assistant and specialist's assistant; dentistry; podiatry; midwifery; and registered professional nursing, including but not limited to nurse practitioners.

#### **§64.7 Immunizations and emergency treatment of anaphylaxis, and purified protein derivative (PPD) mantoux tuberculin skin tests pursuant to non-patient specific orders and protocols.**

- a. Immunizations.
  - 1. Pursuant to subdivision (5) of section 6909 of the Education Law, a registered professional nurse shall be authorized to administer immunization agents prescribed in paragraph (2) of this subdivision to patients therein specified, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician

or a certified nurse practitioner, provided the registered nurse meets the prerequisite requirements prescribed in paragraph (3) of this subdivision and the order and protocol meets the requirements of paragraph (4) of this subdivision.

- 2. Authorized immunization agents.
  - i. Adult immunizations. A registered professional nurse that meets the requirements of paragraph (3) of this subdivision shall be authorized to administer the following immunization agents to patients 18 years of age or older, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a certified nurse practitioner that meets the requirements of paragraph (4) of this subdivision: Hepatitis A, Hepatitis B, Influenza, Pneumococcus, Meningococcus, Diphtheria, Tetanus, Measles, Mumps, Rubella, Varicella, Inactivated Polio, Acellular Pertussis, Human Papilloma Virus (HPV), Smallpox vaccine, and additional immunizations agents approved by resolution of the Board of Regents upon recommendation by the commissioner that such additional immunization agents are safe and effective immunization agents for registered professional nurses to administer to patients who are 18 years or older, pursuant to a nonpatient specific order and protocol as prescribed in this section, after consideration of the recommendations of State and/or nationwide authorities that evaluate the effectiveness and safety of immunization agents, including but not limited to the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services. Such additional immunization agents, which are not specifically enumerated in this subparagraph, may be removed by resolution of the Board of Regents, upon recommendation of the commissioner that such immunization agents are not safe and effective immunization agents for registered professional nurses to administer to patients who are 18 years or older, pursuant to a nonpatient specific order and protocol as prescribed in this section, after consideration of the recommendations of State and/or nationwide authorities that evaluate the effectiveness and safety of immunization agents, including but not limited to the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.
  - ii. Child immunizations. A registered professional nurse that meets the requirements of paragraph (3) of this subdivision and who is employed or is acting as an agent for the Visiting Nurses Association or other equivalent organization as determined by the department that is legally authorized to provide

nursing services, or for a State, county, municipal or other government agency, shall be authorized to administer the following immunization agents to patients under the age of 18, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a certified nurse practitioner that meets the requirements of paragraph (4) of this subdivision: Diphtheria, Tetanus, Acellular Pertussis, Measles, Mumps, Rubella, Varicella, Haemophilus Influenzae Type b (Hib), Inactivated Polio, Hepatitis B, Human Papilloma Virus (HPV), Rotovirus and additional immunizations agents approved by resolution of the Board of Regents upon recommendation by the commissioner that such additional immunization agents are safe and effective immunization agents for registered professional nurses to administer to patients who are under the age of 18 years old, pursuant to a non-patient specific order and protocol as prescribed in this section, after consideration of the recommendations of State and/or nationwide authorities that evaluate the safety and effectiveness of immunization agents, including but not limited to the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services. Such additional immunization agents, which are not specifically enumerated in this subparagraph, may be removed by resolution of the Board of Regents, upon recommendation of the commissioner that such immunization agents are not safe and effective immunization agents for registered professional nurses to administer to patients who are under the age of 18 years old, pursuant to a non-patient specific order and protocol prescribed in this section, after consideration of the recommendations of State and/or nationwide authorities that evaluate the effectiveness and safety of immunization agents, including but not limited to the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

- iii. Epidemics. Notwithstanding the requirements of subparagraphs (i) and (ii) of this paragraph, a registered professional nurse that meets the requirements of paragraph (3) of this subdivision shall be authorized to administer to patients, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a nurse practitioner that meets the requirements of paragraph (4) of this subdivision, any immunization agents authorized under such order and protocol to be administered as part of an immunization program maintained, authorized, or under the auspices of the Commissioner of Health, a county commissioner of health, or a county public health director, when such an immunization program is instituted pursuant to an epidemic declared by such official.

3. Prerequisite requirements. For a registered professional nurse authorized to administer immunization agents prescribed in paragraph (2) of this subdivision to recipients therein specified, pursuant to a non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner, such registered professional nurse shall be currently certified in cardio-pulmonary resuscitation by a program of the American Red Cross or the American Heart Association or an equivalent organization acceptable to the department, which has an established record of providing programs of cardio-pulmonary resuscitation training.
4. Order and Protocol.
  - i. The registered professional nurse shall either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner which authorizes a registered professional nurse to administer immunization agents, in accordance with the requirements of paragraph (1) of this subdivision. The order prescribed in subparagraph (ii) of this paragraph shall incorporate a protocol that meets the requirements of subparagraph (iii) of this paragraph. Such order and protocol shall be considered a record of the patient who is immunized and maintained as a record for the period of time prescribed in paragraph 29.2(a)(3) of this Title.
  - ii. The order shall authorize one or more named registered professional nurses, or registered professional nurses who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, to administer specified immunization agents for a prescribed period of time. In instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, such registered professional nurses shall not be authorized by such order to administer immunizations outside of such employment or contract. The order shall contain but shall not be limited to the following information:
    - a. the specific immunization agents that the registered professional nurse(s) is permitted to administer;
    - b. the period of time that the order is effective, including the beginning and ending dates;

- c. the name and license number of the registered professional nurse(s) authorized to administer the immunization agent(s) pursuant to the order; or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services with whom registered professional nurses who are not individually named are employed or under contract to administer the prescribed immunization agent(s) pursuant to the order;
  - d. in instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, the order shall contain a statement limiting the registered professional nurses to administering immunizations only in the course of such employment or pursuant to such contract; and
  - e. the name, license number, and signature of the licensed physician or nurse practitioner who has issued the order.
- iii. The protocol, incorporated into the order prescribed in subparagraph (ii) of this paragraph, shall require the registered professional nurse to meet the following requirements:
- a. The registered professional nurse shall ensure that each potential recipient is assessed for untoward conditions that would preclude immunization(s) and each recipient's record of immunization with manufacturer and lot number or a potential recipient's refusal to be immunized shall be documented in accordance with paragraph 29.2(a)(3) of this Title.
  - b. The registered professional nurse shall be responsible for having emergency anaphylaxis treatment agents, related syringes and needles available at the immunization site.
  - c. The registered professional nurse shall inform each recipient of potential side effects and adverse reactions, orally and in writing, prior to immunization. The registered professional nurse shall provide written instructions to the recipient regarding the appropriate course of action in the event of untoward or adverse reactions, which statements are required to be developed by a competent entity knowledgeable about the untoward or adverse reactions of the immunization agent which shall be administered, such as the Centers for Disease Control of the U.S. Department of Health and Human Services, which issues vaccine information statements. The registered professional nurse shall not administer immunizations unless the recipient is adequately informed as prescribed in this clause and the recipient consents to the immunization; except for minors or other recipients incapable of consenting to the administration of an immunization, in which case a person legally responsible for the recipient shall have given prior written consent to the immunization after having been informed in writing as prescribed in this clause before it may be administered; or shall be in attendance during the immunization, informed as prescribed in this clause, and have consented to the immunization before it may be administered.
- d. The registered professional nurse shall provide to each recipient or other person legally responsible when the recipient is a minor or otherwise incapable of consenting to immunization, a signed certificate of immunization with the recipient's name, date of immunization, address of administration, administering nurse, immunization agent, manufacturer and lot number and recommendations for future immunizations recorded thereon. With the consent of the recipient or a person legally responsible when the recipient is a minor or otherwise incapable of consenting, the registered professional nurse shall communicate this information to the recipient's primary health care provider, if one exists.
  - e. Each registered professional nurse shall report any adverse outcomes as may be required by Federal law on the Vaccine Adverse Event Reporting System form of the Centers for Disease Control of the U.S. Department of Health and Human Services, or on the successor form.
  - f. Each registered professional nurse shall ensure that a record of all persons immunized including the recipient's name, date, address of administration, administering nurse, immunization agent, manufacturer, lot number and recommendations for future immunizations is recorded and maintained in accordance with paragraph 29.2(a)(3) of this Title.
- b. Anaphylaxis treatment agents.
    - 1. Pursuant to subdivision (5) of section 6909 of the Education Law, a registered professional nurse shall be

**Note: Laws, rules and regulations are current as of the date of this publication**

authorized to administer anaphylaxis treatment agents, including but not limited to epinephrine, for the emergency treatment of anaphylaxis, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a certified nurse practitioner, provided the order and protocol meets the requirements of paragraph (2) of this subdivision.

2. Order and Protocol.

i. The registered professional nurse shall either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner which authorizes a registered professional nurse to administer anaphylaxis treatment agents, including but not limited to epinephrine, for the emergency treatment of anaphylaxis, in accordance with the requirements of paragraph (1) of this subdivision. The order prescribed in subparagraph (ii) of this paragraph shall incorporate a protocol that meets the requirements of subparagraph (iii) of this paragraph. Such order and protocol shall be considered a record of the patient who receives the anaphylaxis treatment agent and maintained as a record for the period of time prescribed in paragraph 29.2(a)(3) of this Title.

ii. The order shall authorize one or more named registered professional nurses, or registered professional nurses who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, to administer specified anaphylaxis treatment agents for a prescribed period of time. In instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, such registered professional nurses shall not be authorized by such order to administer anaphylaxis treatment agents outside of such employment or contract. The order shall contain but shall not be limited to the following information:

- a. the specific anaphylaxis treatment agents that the registered professional nurse(s) is permitted to administer;
- b. the period of time that the order is effective, including the beginning and end date; and
- c. the name and license number of the registered professional nurse(s) authorized to administer

the anaphylaxis treatment agent(s) pursuant to the order; or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services with whom registered professional nurses who are not individually named are employed or under contract to administer the prescribed anaphylaxis treatment agent(s) pursuant to the order;

- d. in instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, the order shall contain a statement limiting the registered professional nurses to administering anaphylaxis treatment agents only in the course of such employment or pursuant to such contract; and
- e. the name, license number, and signature of the licensed physician or certified nurse practitioner who has issued the order.

iii. The protocol, incorporated into the order prescribed in subparagraph (ii) of this paragraph, shall require the registered professional nurse to meet the following requirements:

- a. Each registered professional nurse shall ensure that a record of all persons to whom they have administered an anaphylaxis treatment agent, including but not limited to: the recipient's name, date, address of administration, administering nurse, anaphylaxis treatment agent, manufacturer, and lot number, is recorded and maintained in accordance with paragraph 29.2(a)(3) of this Title.
- b. The registered professional nurse shall contact the local emergency medical services system following the administration of the anaphylaxis treatment agent, or shall ensure that equivalent follow-up care is provided through other arrangements.
- c. The registered professional nurse shall report to the local emergency medical system or other provider of equivalent follow-up care information concerning the administration of the anaphylaxis treatment agent, including but not limited to: when it was administered, the dosage, strength, and route of administration. The registered professional nurse shall also report such information to the patient's primary

care provider if one exists, unless the patient is unable to communicate the identity of his or her primary care provider.

c. Purified protein derivative (PPD) mantoux tuberculin skin tests.

1. Pursuant to section 6909 (5) of the Education Law, a registered professional nurse shall be authorized to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a certified nurse practitioner, provided the order and protocol meets the requirements of paragraph (2) of this subdivision.

2. Order and Protocol.

i. The registered professional nurse shall either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner, which authorizes a registered professional nurse to execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test, in accordance with the requirements of paragraph (1) of this subdivision. The order prescribed in subparagraph (ii) of this paragraph shall incorporate a protocol that meets the requirements of subparagraph (iii) of this paragraph. Such order and protocol shall be considered a record of the patient who has received a purified protein derivative (PPD) mantoux tuberculin skin test and maintained as a record for the period of time prescribed in paragraph 29.2(a)(3) of this Title.

ii. The order shall authorize one or more named registered professional nurses, or registered professional nurses who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests for a prescribed period of time. In instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, such registered professional nurses shall not be authorized by such order to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests outside of such employment or contract. The order shall contain but shall not be limited to the following information:

- a. identification of the purified protein derivative (PPD) mantoux tuberculin skin test;
- b. the period of time that the order is effective, including the beginning and ending dates;
- c. the name and license number of the registered professional nurse(s) authorized to execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test; or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services with whom registered professional nurses who are not individually named are employed or under contract to execute the order to administer the prescribed purified protein derivative (PPD) mantoux tuberculin skin test;
- d. in instances in which registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, the order shall contain a statement limiting registered professional nurses to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests only in the course of such employment or pursuant to such contract; and
- e. the name, license number, and signature of the licensed physician or certified nurse practitioner that has issued the order.

iii. The protocol, incorporated into the order prescribed in subparagraph (ii) of this paragraph, shall require the registered professional nurse to meet the following requirements:

- a. The registered professional nurse shall ensure that each potential recipient is assessed for untoward conditions that would preclude purified protein derivative (PPD) mantoux tuberculin skin testing and each recipient's record of the purified protein derivative (PPD) mantoux tuberculin skin test with manufacturer and lot number or a potential recipient's refusal to be tested shall be documented in accordance with paragraph 29.2(a)(3) of this Title.
- b. The registered professional nurse shall be responsible for having emergency anaphylaxis treatment agents, related syringes and needles available at the purified protein derivative

(PPD) mantoux tuberculin skin testing site, except in an emergency as determined by the Commissioner of Health, a county commissioner of health, or a county public health director.

- c. When the recipient of the test is legally capable of consenting to the test, the registered professional nurse may execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test only after the recipient is adequately informed in writing as prescribed in this clause and consents to the purified protein derivative (PPD) mantoux tuberculin skin test. In the case of minors or other recipients incapable of consenting to the test, the registered professional nurse may execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test only after the person legally responsible for the recipient of the test is adequately informed in writing as prescribed in this clause and consents to the purified protein derivative (PPD) mantoux tuberculin skin test. Prior to the registered professional nurse executing the order to administer the test, the recipient of the test, or the person legally responsible for the recipient of the test in the case of minors or other recipients incapable of consenting to the test, shall be informed in writing about the potential side effects of and adverse reactions to the test, the appropriate course of action in the event of untoward or adverse reactions to the test, and the need for test evaluation within 48 to 72 hours after the test is administered.
  - d. The registered professional nurse shall ensure that the recipient, or other person legally responsible for the recipient when the recipient is a minor or otherwise incapable of consenting to the test, is provided with a signed certificate of purified protein derivative (PPD) mantoux tuberculin skin testing and results, with the recipient's name, date of the test, address where the test was administered, administering nurse, manufacturer and lot number and recommendations for future tests recorded thereon. With the consent of the recipient or a person legally responsible for the recipient when the recipient is a minor or otherwise incapable of consenting, the registered professional nurse shall ensure that this information is communicated to the recipient's primary health care provider if one exists.
  - e. Each registered professional nurse shall ensure that a record of all persons so tested including the recipient's name, date of the test, address where the test was administered, administering nurse, test results, manufacturer, lot number and recommendations for future tests is recorded and maintained in accordance with paragraph 29.2(a)(3) of this Title.
- d. Human Immunodeficiency Virus (HIV) tests.
    1. As used in this subdivision, human immunodeficiency virus (HIV) test means HIV-related test as defined in Section 63.1 of the Rules and Regulations of the New York State Department of Health (10 NYCRR 63.1).
    2. Pursuant to section 6909(5) of the Education Law, a registered professional nurse shall be authorized to execute an order to administer HIV tests, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a certified nurse practitioner, provided the order and protocol meet the requirements of paragraph (3) of this subdivision.
    3. Order and Protocol.
      - i. The registered professional nurse shall either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner, which authorizes a registered professional nurse to execute the order to administer an HIV test, in accordance with the requirements of paragraph (2) of this subdivision. The order prescribed in subparagraph (ii) of this paragraph shall incorporate a protocol that meets the requirements of subparagraph (iii) of this paragraph. Such order and protocol shall be considered a record of the patient who has received an HIV test and be maintained as a record for the period of time prescribed in paragraph 29.2(a)(3) of this Title.
      - ii. The order shall authorize one or more named registered professional nurses, or registered professional nurses who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, to execute the order to administer HIV tests for a prescribed period of time. In instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, such registered professional nurses shall not be authorized by such

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order to execute the order to administer HIV tests outside of such employment or contract. The order shall contain but shall not be limited to the following information:

- a. identification of the HIV test;
  - b. the period of time that the order is effective, including the beginning and ending dates;
  - c. the name and license number of the registered professional nurse(s) authorized to execute the order to administer the HIV test; or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services with whom registered professional nurses who are not individually named are employed or under contract to execute the order to administer the HIV test;
  - d. in instances in which registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, the order shall contain a statement limiting registered professional nurses to execute the order to administer HIV tests only in the course of such employment or pursuant to such contract; and
  - e. the name, license number, and signature of the licensed physician or certified nurse practitioner that has issued the order.
- iii. The protocol, incorporated into the order prescribed in subparagraph (ii) of this paragraph, shall require the registered professional nurse to meet the following requirements:
- a. The registered professional nurse shall ensure that each potential recipient is assessed for conditions that would preclude HIV testing and ensure that each recipient's record of the HIV test with manufacturer and lot number or a potential recipient's refusal to be tested is documented in accordance with paragraph 29.2(a)(3) of this Title.
  - b. The registered professional nurse shall execute the order to administer a HIV test in accordance with applicable state laws and regulations, including, but not limited to Article 27-F of the Public Health Law and Part 63 of the Rules and Regulations of the New York State Department of Health.
- c. The registered professional nurse shall certify that he/she obtained the written, informed consent of the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual, prior to ordering the performance of the HIV test. Informed consent shall include pre-test counseling to the recipient, or if the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual. The written informed consent and the pre-test counseling shall be obtained and conducted in accordance with Article 27-F of the Public Health Law and Part 63 of the Rules and Regulations of the New York State Department of Health.
  - d. A physician or nurse practitioner who issues a non-patient specific order for HIV testing shall retain responsibility for communication of a confirmatory, positive HIV test result to the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual. A registered professional nurse is not authorized to deliver a final confirmatory HIV positive test result through a non-patient specific order. A registered professional nurse may only deliver a confirmatory, positive HIV test result through a patient specific order as directed by the treating physician or nurse practitioner.
  - e. When a confirmatory, positive HIV test result is communicated to a recipient, the registered professional nurse shall ensure that the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual, is provided with post-test counseling in conformance with the requirements of Article 27-F of the Public Health Law and Part 63 of the Rules and Regulations of the New York State Department of Health.
  - f. The registered professional nurse shall, upon request, ensure that the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual, is provided with a signed certificate of HIV testing and results, with the recipient's name, date of the test, address where the test was administered, the name of the administering nurse, manufacturer and product lot number. If the recipient has a confirmatory, positive HIV test result, the registered nurse shall not provide a signed

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certificate of HIV testing and results until after the physician or nurse practitioner who issued the non-patient specific order for the HIV test communicates the confirmatory, positive HIV test result to the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual.

- g. With the consent of the recipient or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual, and with an appropriate authorization for the release of confidential HIV information, the registered professional nurse shall ensure that this information is communicated to the recipient's primary health care provider if one exists in accordance with the requirements of Article 27-

F of the Public Health Law and Part 63 of the Rules and Regulations of the New York State Department of Health.

- h Each registered professional nurse shall ensure that a record of all persons so tested including the recipient's name, date of the test, address where the test was administered, administering nurse, test results, manufacturer, lot numbers and such other information as may be necessary pursuant to the protocol is recorded and maintained in accordance with section 29.2(a)(3) of this Title and Article 27-F of the Public Health Law and Part 63 of the Rules and Regulations of the New York State Department of Health.

## **CIVIL PRACTICE LAW AND RULES**

### **Section 4504**

### **Confidentiality**

#### **§4504. Physician, dentist, podiatrist, chiropractor and nurse**

- (a) Confidential information privileged. Unless the patient waives the privilege, a person authorized to practice medicine, registered professional nursing, licensed practical nursing, dentistry, podiatry or chiropractic shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity. The relationship of a physician and patient shall exist between a medical corporation, as defined in article forty-four of the public health law, a professional service corporation organized under article fifteen of the business corporation law to practice medicine, a university faculty practice corporation organized under section fourteen hundred twelve of the not-for-profit corporation law to practice medicine or dentistry, and the patients to whom they respectively render professional medical services.

A patient who, for the purpose of obtaining insurance benefits, authorizes the disclosure of any such privileged communication to any person shall not be deemed to have waived the privilege created by this subdivision. For purposes of this subdivision:

1. "person" shall mean any individual, insurer or agent thereof, peer review committee, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever; and
2. "insurance benefits" shall include payments under a self-insured plan.

- (b) Identification by dentist; crime committed against patient under sixteen. A dentist shall be required to disclose information necessary for identification of a patient. A physician, dentist, podiatrist, chiropractor or nurse shall be required to disclose information indicating that a patient who is under the age of sixteen years has been the victim of a crime.
- (c) Mental or physical condition of deceased patient. A physician or nurse shall be required to disclose any information as to the mental or physical condition of a deceased patient privileged under subdivision (a), except information which would tend to disgrace the memory of the decedent, either in the absence of an objection by a party to the litigation or when the privilege has been waived:
  1. by the personal representative, or the surviving spouse, or the next of kin of the decedent; or
  2. in any litigation where the interests of the personal representative are deemed by the trial judge to be adverse to those of the estate of the decedent, by any party in interest; or
  3. if the validity of the will of the decedent is in question, by the executor named in the will, or the surviving spouse or any heir-at-law or any of the next of kin or any other party in interest.
- (d) Proof of negligence; unauthorized practice of medicine. In any action for damages for personal injuries or death against a person not authorized to practice medicine under article 131 of the education law for any act or acts constituting the

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practice of medicine, when such act or acts were a competent producing proximate or contributing cause of such injuries or death, the fact that such person practiced medicine without being so authorized shall be deemed prima facie evidence of negligence.

**PUBLIC HEALTH LAW**  
**Section 18**  
**Records Access**

**§18. Access to patient information.**

1. Definitions. For the purpose of this section:

- (a) "Committee" means a medical access review committee appointed pursuant to subdivision four of this section.
- (b) "Health care provider" or "provider" means a "health care facility" or a "health care practitioner" as defined by this subdivision.
- (c) "Health care facility" or "facility" means a hospital as defined in article twenty-eight of this chapter, a home care services agency as defined in article thirty-six of this chapter, a hospice as defined in article forty of this chapter, a health maintenance organization as defined in article forty-four of this chapter, and a shared health facility as defined in article forty-seven of this chapter.
- (d) "Health care practitioner" or "practitioner" means a person licensed under article one hundred thirty-one, one hundred thirty-one-B, one hundred thirty-two, one hundred thirty-three, one hundred thirty-six, one hundred thirty-nine, one hundred forty-one, one hundred forty-three, one hundred forty-four, one hundred fifty-three, one hundred fifty-four, one hundred fifty-six or one hundred fifty-nine of the education law or a person certified under section twenty-five hundred sixty of this chapter.
- (e) "Patient information" or "information" means any information concerning or relating to the examination, health assessment including, but not limited to, a health assessment for insurance and employment purposes or treatment of an identifiable subject maintained or possessed by a health care facility or health care practitioner who has provided or is providing services for assessment of a health condition including, but not limited to, a health assessment for insurance and employment purposes or has treated or is treating such subject, except (i) information and clinical records subject to the provisions of section 23.05 or 33.13 of the mental hygiene law, (ii) personal notes and observations of a health care practitioner, provided that such personal notes and observations are maintained by the practitioner and not disclosed by the practitioner to any other person after January first, nineteen hundred eighty-seven, (iii) information maintained by a practitioner, concerning or

relating to the prior examination or treatment of a subject received from another practitioner, provided however, that such information may be requested by the subject directly from such other practitioner in accordance with the provisions of this section, and (iv) data disclosed to a practitioner in confidence by other persons on the basis of an express condition that such data would never be disclosed to the subject or other persons, provided that such data has never been disclosed to any other person. If at any time such personal notes and observations or such data is disclosed, it shall be considered patient information for purposes of this section. For purposes of this subdivision, "disclosure to any other person" shall not include disclosures made to practitioners as part of a consultation or referral during the treatment of the subject, to persons reviewing information or records in the ordinary course of ensuring that a provider is in compliance with applicable quality of care, licensure or accreditation standards, to an employee or official of a federal, state or local agency for the sole purpose of conducting an audit in the course of his or her official duties, to the statewide planning and research cooperative system, to other persons pursuant to a court order, to governmental agencies, insurance companies licensed pursuant to the insurance law and other third parties requiring information necessary for payments to be made to or on behalf of patients, to qualified researchers, to the state board for professional medical conduct when such board requests such information in the exercise of its statutory function, to an insurance carrier insuring, or an attorney consulted by, a health care provider, or to a health maintenance organization certified pursuant to article forty-four of this chapter or licensed pursuant to the insurance law, or to the committee or a court pursuant to the provisions of this section.

For purposes of this subdivision treatment of a subject shall not include diagnostic services, except mammography, performed by a practitioner at the request of another health care practitioner provided, however, that such information, and mammograms, may be requested by the subject directly from the practitioner at whose request such diagnostic services were performed, in accordance with the provisions of this section.

**Note: Laws, rules and regulations are current as of the date of this publication**

- (f) "Personal notes and observations" means a practitioner's speculations, impressions (other than tentative or actual diagnosis) and reminders, provided such data is maintained by a practitioner.
- (g) "Qualified person" means any properly identified subject; or a guardian appointed under article eighty-one of the mental hygiene law; or a parent of an infant; or a guardian of an infant appointed under article seventeen of the surrogate's court procedure act or other legally appointed guardian of an infant who may be entitled to request access to a clinical record under paragraph (c) of subdivision two of this section; or a distributee of any deceased subject for whom no personal representative, as defined in the estates, powers and trusts law, has been appointed; or an attorney representing a qualified person or the subject's estate who holds a power of attorney from the qualified person or the subject's estate explicitly authorizing the holder to execute a written request for patient information under this section. A qualified person shall be deemed a "personal representative of the individual" for purposes of the federal health insurance portability and accountability act of 1996 and its implementing regulations.
- (h) "Subject" means an individual concerning whom patient information is maintained or possessed by a health care provider.
- (i) "Treating practitioner" means the health care practitioner who has primary responsibility for the care of the subject within the health care facility or if such practitioner is unavailable, a practitioner designated by such facility.

## 2 Access by qualified persons.

- (a) Subject to the provisions of subdivision three of this section, upon the written request of any subject, a health care provider shall provide an opportunity, within ten days, for such subject to inspect any patient information concerning or relating to the examination or treatment of such subject in the possession of such health care provider.
- (b) Subject to the provisions of subdivision three of this section, upon the written request of the committee for an incompetent appointed pursuant to article seventy-eight of the mental hygiene law, a health care provider shall provide an opportunity, within ten days, for the inspection by such committee of any patient information concerning the incompetent subject in the possession of such health care provider.
- (c) Subject to the provisions of subdivision three of this section and except as otherwise provided by law, upon the written request of a parent or guardian of an infant appointed pursuant to article seventeen of the surrogate's court procedure act, or any other legally appointed

guardian, a health care provider shall provide an opportunity, within ten days, for such parent or guardian to inspect any patient information maintained or possessed by such provider concerning care and treatment of the infant for which the consent of such parent or guardian was obtained or where care was provided without consent in an emergency which was the result of accidental injury or the unexpected onset of serious illness; provided, however, that such parent or guardian shall not be entitled to inspect or make copies of any patient information concerning the care and treatment of an infant where the health care provider determines that access to the information requested by such parent or guardian would have a detrimental effect on the provider's professional relationship with the infant, or on the care and treatment of the infant, or on the infant's relationship with his or her parents or guardian.

- (d) Subject to the provisions of subdivision three of this section, upon the written request of any qualified person, a health care provider shall furnish to such person, within a reasonable time, a copy of any patient information requested, and original mammograms requested, which the person is authorized to inspect pursuant to this subdivision.
- (e) The provider may impose a reasonable charge for all inspections and copies, not exceeding the costs incurred by such provider, provided, however, that a provider may not impose a charge for copying an original mammogram when the original has been furnished to any qualified person and provided, further, that any charge for furnishing an original mammogram pursuant to this section shall not exceed the documented costs associated therewith. However, the reasonable charge for paper copies shall not exceed seventy-five cents per page. A qualified person shall not be denied access to patient information solely because of inability to pay.
- (f) A provider may place reasonable limitations on the time, place, and frequency of any inspections of patient information.
- (g) In the event that a practitioner does not have space available to permit the inspection of patient information, the practitioner may, in the alternative, furnish a qualified person a copy of such information within ten days.
- (h) A provider may request the opportunity to review the patient information with the qualified person requesting such information, but such review shall not be a prerequisite for furnishing the information.
- (i) A provider may make available for inspection either the original or a copy of patient information.

## 3. Limitations on access.

**Note: Laws, rules and regulations are current as of the date of this publication**

- (a) Upon receipt of a written request by a qualified person to inspect or copy patient information, a practitioner may review the information requested. Unless the practitioner determines pursuant to paragraph (d) of this subdivision that
  - (i) the requested review of the information can reasonably be expected to cause substantial and identifiable harm to the subject or others which would outweigh the qualified person's right to access to the information, or
  - (ii) the material requested is personal notes and observations, or the information requested would have a detrimental effect as defined in subdivision two of this section, review of such patient information shall be permitted or copies provided.
- (b) Upon receipt of a written request by a qualified person to inspect patient information maintained by a facility, the facility shall inform the treating practitioner of the request. The treating practitioner may review the information requested. Unless the treating practitioner determines, pursuant to paragraph (d) of this subdivision that the requested review of the information can reasonably be expected to cause substantial and identifiable harm to the subject or others which would outweigh the qualified person's right of access to the information or would have a detrimental effect as defined in subdivision two of this section, review of such patient information shall be permitted or copies provided.
- (c) A subject over the age of twelve years may be notified of any request by a qualified person to review his/her patient information, and, if the subject objects to disclosure, the provider may deny the request. In the case of a facility, the treating practitioner shall be consulted.
- (d) The provider may deny access to all or a part of the information and may grant access to a prepared summary of the information if, after consideration of all the attendant facts and circumstances, the provider determines that
  - (i) the request to review all or a part of the patient information can reasonably be expected to cause substantial and identifiable harm to the subject or others which would outweigh the qualified person's right of access to the information, or would have a detrimental effect as defined in subdivision two of this section, or
  - (ii) the material requested is personal notes and observations. In conducting such review, the provider may consider, among other things, the following factors:
    - (i) the need for, and the fact of, continuing care and treatment;
    - (ii) the extent to which the knowledge of the information may be harmful to the health or safety of the subject or others; (iii) the extent to which the information contains sensitive material disclosed in confidence to the practitioner or treating practitioner by family members, friends and other persons;
    - (iv) the extent to which the information contains sensitive materials disclosed to the practitioner or the treating practitioner by the subject which would be injurious to the subject's relationships with other persons, except when the subject is requesting information concerning himself or herself; and
    - (v) in the case of a minor making a request for access pursuant to subdivision two of this section, the age of the subject.
- (e) In the event of a denial of access, the qualified person shall be informed by the provider of such denial, and whether the denial is based on the reasonable expectation that release of the information can reasonably be expected to cause substantial and identifiable harm to the subject or others which outweighs the qualified person's right of access to the information or on the reasonable expectation that release of the information would have a detrimental effect as defined in subdivision two of this section, or on the basis that the materials sought to be reviewed constitute personal notes and observations, and of the qualified person's right to obtain, without cost, a review of the denial by the appropriate medical record access review committee. If the qualified person requests such review, the provider shall, within ten days of receipt of such request, transmit the information including personal notes and observations as defined herein, to the chairman of the appropriate committee with a statement setting forth the specific reasons for which access was denied. After an in camera review of the materials provided and after providing all parties a reasonable opportunity to be heard, the committee shall promptly make a written determination whether the requested review of the information can reasonably be expected to cause substantial and identifiable harm to the subject or others which outweighs the qualified person's right of access to the information pursuant to paragraph (d) of this subdivision or whether the requested review would have a detrimental effect as defined in subdivision two of this section, or whether all or part of the materials sought to be reviewed constitute personal notes and observations, and shall accordingly determine whether access to all or part of such materials shall be granted. In the event that the committee determines that the request

for access shall be granted in whole or in part, the committee shall notify all parties and the provider shall grant access pursuant to such determination.

- (f) In the event that access is denied in whole or in part because the requested review of information can reasonably be expected to cause substantial and identifiable harm to the subject or others which would outweigh the qualified person's right of access to the information, or would have a detrimental effect as defined in subdivision two of this section, the committee shall notify the qualified person of his or her right to seek judicial review of the provider's determination pursuant to this section: provided however, that a determination by the committee as to whether materials sought to be reviewed constitute personal notes and observations shall not be the subject of judicial review. Within thirty days of receiving notification of such decision, the qualified person may commence, upon notice, a special proceeding in supreme court for a judgment requiring the provider to make available the information for inspection or copying. The court upon such application and after an in camera review of the materials provided including the determination and record of the committee, and after providing all parties an opportunity to be heard, shall determine whether there exists a reasonable basis for the denial of access. The relief available pursuant to this section shall be limited to a judgement requiring the provider to make available to the qualified person the requested information for inspection or copying.
- (g) Where the written request for patient information under this section is signed by a distributee of a deceased subject for whom a personal representative has not been appointed, or from the holder of a power of attorney from such a distributee, a copy of a certified copy of the certificate of death of the subject shall be attached to the written request.
- (h) Where the written request for patient information under this section is signed by the holder of a power of attorney, a copy of the power of attorney shall be attached to the written request. A written request under this subdivision shall be subject to the duration and terms of the power of attorney.
- (i) The release of patient information shall be subject to:
  - (i) article twenty-seven-F of this chapter in the case of confidential HIV-related information;
  - (ii) section seventeen of this article and sections twenty-three hundred one, twenty-three hundred six and twenty-three hundred eight of this chapter in the case of termination of a pregnancy and treatment for a sexually transmitted disease;

(iii) article thirty-three of the mental hygiene law; and

(iv) any other provisions of law creating special requirements relating to the release of patient information, including the federal health insurance portability and accountability act of 1996 and its implementing regulations.

- 4. Medical record access review committees. The commissioner shall appoint medical record access review committees to hear appeals of the denial of access to patient information as provided in paragraph (e) of subdivision three of this section. Members of such committees shall be appointed by the commissioner from a list of nominees submitted by statewide associations of providers in the particular licensed profession involved; provided, however, that, with respect to patient information maintained by a psychiatrist, the list of nominees shall be composed of psychiatrists. In the case of the licensed physicians, such association shall be the medical society of the state of New York. Such medical record access review committees shall consist of no less than three nor more than five licensed professionals. The commissioner shall promulgate rules and regulations necessary to effectuate the provisions of this subdivision.
- 5. Annual report. The commissioner shall submit an annual report on or before December thirty-first to the governor and the legislature. Such report shall include, but not be limited to, the number of requests for committee review of providers' denial of access and the committees' determinations thereon.
- 6. Disclosure to third persons. Whenever a health care provider, as otherwise authorized by law, discloses patient information to a person or entity other than the subject of such information or to other qualified persons, either a copy of the subject's written authorization shall be added to the patient information or the name and address of such third party and a notation of the purpose for the disclosure shall be indicated in the file or record of such subject's patient information maintained by the provider provided, however, that for disclosures made to government agencies making payments on behalf of patients or to insurance companies licensed pursuant to the insurance law such a notation shall only be entered at the time the disclosure is first made. This subdivision shall not apply to disclosure to practitioners or other personnel employed by or under contract with the facility, or to government agencies for purposes of facility inspections or professional conduct investigations. Any disclosure made pursuant to this section shall be limited to that information necessary in light of the reason for disclosure. Information so disclosed should be kept confidential by the party receiving such information and the limitations on such disclosure in this section shall apply to such party.
- 7. Applicability of federal law. Whenever federal law or applicable federal regulations affecting the release of patient

information are a condition for the receipt of federal aid, and are inconsistent with the provisions of this section, the provisions of federal law or federal regulations shall be controlling.

8. Challenges to accuracy. A qualified person may challenge the accuracy of information maintained in the patient information and may require that a brief written statement prepared by him or her concerning the challenged information be inserted into the patient information. This statement shall become a permanent part of the patient information and shall be released whenever the information at issue is released. This subdivision shall apply only to factual statements and shall not include a provider's observations, inferences or conclusions. A facility may place reasonable restrictions on the time and frequency of any challenges to accuracy.
9. Waivers void. Any agreement by an individual to waive any right to inspect, copy or seek correction of patient information as provided for in this section shall be deemed to be void as against public policy and wholly unenforceable.
10. Nothing contained in this section shall restrict, expand or in any way limit the disclosure of any information pursuant to articles twenty-three, thirty-one and forty-five of the civil practice law and rules or section six hundred seventy-seven of the county law.
11. No proceeding shall be brought or penalty assessed, except as provided for in this section, against a health care provider, who in good faith, denies access to patient information.
12. Immunity from liability. No health care provider shall be subjected to civil liability arising solely from granting or providing access to any patient information in accordance with this section.

# LAWS, RULES & REGULATIONS APPLICABLE TO ALL PROFESSIONS

## Education Law Article 130 General Provisions

### Subarticle 1 Introductory Summary

#### §6500 Introduction.

This title provides for the regulation of the admission to and the practice of certain professions. This first article applies to all the professions included in this title, except that prehearing procedures and hearing procedures in connection with the regulation of professional conduct of the profession of medicine and physician's assistants and specialist's assistants shall be conducted pursuant to the provisions of Title II-A of article two of the public health law. Each of the remaining articles applies to a particular profession.

#### §6501 Admission to a profession (licensing).

Admission to practice of a profession in this state is accomplished by a license being issued to a qualified applicant by the education department. To qualify for a license an applicant shall meet the requirements prescribed in the article for the particular profession and shall meet the requirements prescribed in section 3-503 of the general obligations law.

#### §6501-a Disclosure with respect to loans made or guaranteed by the New York state higher education services corporation.

Every application for a license issued pursuant to the provisions of this article shall contain a question inquiring whether the applicant has any loans made or guaranteed by the New York state higher education services corporation currently outstanding, and if so, whether such applicant is presently in default on any such loan. The name and address of any applicant who answers either or both of such questions in the affirmative shall be transmitted to such corporation by the department prior to the date on which such license is issued.

#### §6502 Duration and registration of a license.

1. A license shall be valid during the life of the holder unless revoked, annulled or suspended by the board of regents or in the case of physicians, physicians practicing under a limited permit, physician's assistants, specialist's assistants and medical residents, the licensee is stricken from the roster of such licensees by the board of regents on the order of the state board for professional medical conduct in the department of health. A licensee must register with the

department and meet the requirements prescribed in section 3-503 of the general obligations law to practice in this state.

2. The department shall establish the beginning dates of the registration periods for each profession and mail an application for registration conforming to the requirements of section 3-503 of the general obligations law to every licensee currently registered at least four months prior to the beginning of the registration period for the respective profession.
3. An application for registration and the required registration fee shall be submitted together with or as a part of the application for a license. A person initially licensed or a licensee resuming practice after a lapse of registration during the last two years of a triennial registration period shall receive a prorated refund of one-third of the total registration fee for each full year of the triennial period that has elapsed prior to the date of registration. Except as provided in subdivision three-a of this section, the department shall renew the registration of each licensee upon receipt of a proper application, on a form prescribed by the department and conforming to the requirements of section 3-503 of the general obligations law, and the registration fee. Any licensee who fails to register by the beginning of the appropriate registration period shall be required to pay an additional fee for late filing of ten dollars for each month that registration has been delayed. No licensee resuming practice after a lapse of registration shall be permitted to practice without actual possession of the registration certificate.
- 3-a. Prior to issuing any registration pursuant to this section and section sixty-five hundred twenty-four of this chapter, the department shall request and review any information relating to an applicant which reasonably appears to relate to professional misconduct in his or her professional practice in this and any other jurisdiction. The department shall advise the director of the office of professional medical conduct in the department of health of any information about an applicant which reasonably appears to be professional misconduct as defined in sections sixty-five hundred thirty and sixty-five hundred thirty-one of this chapter, within seven days of its discovery. The registration or re-registration of such applicant shall not be delayed for a period exceeding thirty days unless the director finds a basis for

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recommending summary action pursuant to subdivision twelve of section two hundred thirty of the public health law after consultation with a committee on professional conduct of the state board for professional medical conduct, if warranted. Re-registration shall be issued if the commissioner of health fails to issue a summary order pursuant to subdivision twelve of section two hundred thirty of the public health law within ninety days of notice by the department pursuant to this subdivision. Re-registration shall be denied if the commissioner of health issues a summary order pursuant to subdivision twelve of section two hundred thirty of the public health law.

4. Any licensee who is not engaging in the practice of his profession in this state and does not desire to register shall so advise the department. Such licensee shall not be required to pay an additional fee for failure to register at the beginning of the registration period.
5. Licensees shall notify the department of any change of name or mailing address within thirty days of such change. Failure to register or provide such notice within one hundred eighty days of such change shall be willful failure under section sixty-five hundred thirty of this chapter.
6. The fee for replacement of a lost registration certificate or license or for registration of an additional office shall be ten dollars.
7. An additional fee of twenty-five dollars shall be charged for the licensure or registration of any applicant who submits a bad check to the department.

#### **§6503 Practice of a profession.**

Admission to the practice of a profession (1) entitles the licensee to practice the profession as defined in the article for the particular profession, (2) entitles the individual licensee to use the professional title as provided in the article for the particular profession, and (3) subjects the licensee to the procedures and penalties for professional misconduct as prescribed in this article (sections sixty-five hundred nine, sixty-five hundred ten, and sixty-five hundred eleven).

#### **§6504 Regulation of the professions.**

Admission to the practice of the professions (licensing) and regulation of such practice shall be supervised by the board of regents (section sixty-five hundred six) and administered by the education department (section sixty-five hundred seven), assisted by a state board for each profession (section sixty-five hundred eight).

#### **§6505 Construction.**

No definition of the practice of a profession shall be construed to restrain or restrict the performance of similar acts authorized in the definition of other professions.

#### **§6505-a Professional referrals.**

There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any association or society of professionals authorized to practice under this title, or any employee, agent, or member thereof, for referring any person to a member of the profession represented by such association or society provided that such referral was made without charge as a service to the public, and without malice, and in the reasonable belief that such referral was warranted, based upon the facts disclosed.

#### **§6505-b Course work or training in infection control practices.**

Every dentist, registered nurse, licensed practical nurse, podiatrist, optometrist and dental hygienist practicing in the state shall, on or before July first, nineteen hundred ninety-four and every four years thereafter, complete course work or training appropriate to the professional's practice approved by the department regarding infection control and barrier precautions, including engineering and work practice controls, in accordance with regulatory standards promulgated by the department, in consultation with the department of health, which shall be consistent, as far as appropriate, with such standards adopted by the department of health pursuant to section two hundred thirty-eight of the public health law to prevent the transmission of HIV/HBV in the course of professional practice. Each such professional shall document to the department at the time of registration commencing with the first registration after July first, nineteen hundred ninety-four that the professional has completed course work or training in accordance with this section, provided, however that a professional subject to the provisions of paragraph (f) of subdivision one of section twenty-eight hundred five-k of the public health law shall not be required to so document. The department shall provide an exemption from this requirement to anyone who requests such an exemption and who (i) clearly demonstrates to the department's satisfaction that there would be no need for him or her to complete such course work or training because of the nature of his or her practice or (ii) that he or she has completed course work or training deemed by the department to be equivalent to the course work or training approved by the department pursuant to this section. The department shall consult with organizations representative of professions, institutions and those with expertise in infection control and HIV and HBV with respect to the regulatory standards promulgated pursuant to this section.

#### **§6505-c Articulation between military and civilian professional careers.**

1. The commissioner shall develop, jointly with the director of the division of veterans' affairs, a program to facilitate articulation between participation in the military service of the United States or the military service of the state and admission to practice of a profession. The commissioner and the director shall identify, review and evaluate professional training programs offered through either the military service

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- of the United States or the military service of the state which may, where applicable, be accepted by the department as equivalent education and training in lieu of all or part of an approved program. Particular emphasis shall be placed on the identification of military programs which have previously been deemed acceptable by the department as equivalent education and training, programs which may provide, where applicable, equivalent education and training for those professions which are critical to public health and safety and programs which may provide, where applicable, equivalent education and training for those professions for which shortages exist in the state of New York.
2. The commissioner and the director shall prepare a list of those military programs which have previously been deemed acceptable by the department as equivalent education and training in lieu of all or part of an approved program no later than the thirtieth of August, two thousand three. On and after such date, such list shall be made available to the public and applicants for admission to practice of a profession.
  3. The commissioner and the director shall prepare a list of those military programs which may provide, where applicable, equivalent education and training for those professions which are critical to public health and safety, programs which may provide, where applicable, equivalent education and training for those professions for which shortages exist in the state of New York and any other military programs which may, where applicable, be accepted by the department as equivalent education and training in lieu of all or part of an approved program no later than the thirty-first of October, two thousand three. On and after such date, such list shall be made available to the public and applicants for admission to practice of a profession.
  4. Such lists shall be prepared annually no later than the thirtieth of June thereafter with additions and deletions made jointly by the commissioner and the director and made available to the public and applicants for admission to practice of a profession on such date.

## Subarticle 2 State Management

### §6506 Supervision by the board of regents.

The board of regents shall supervise the admission to and the practice of the professions. In supervising, the board of regents may:

- (1) Promulgate rules, except that no rule shall be promulgated concerning article 131-A of this chapter;
- (2) Establish by rule, high school, preprofessional, professional and other educational qualifications required for licensing in the professions regulated by this title;
- (3) Charter schools offering educational programs for the professions regulated by this title, and no such school shall operate in this state without such a charter, except Columbia University, any school chartered by special act of the legislature prior to September one, nineteen hundred seventy-one, and schools specifically authorized to conduct such programs by the regents;
- (4) Appoint such committees as it deems necessary and compensate members of such committees who are not members of the board of regents or the department up to one hundred dollars per day for each day devoted to committee functions, together with their necessary expenses;
- (5) Waive education, experience and examination requirements for a professional license prescribed in the article relating to the profession, provided the board of regents shall be satisfied that the requirements of such article have been substantially met;
- (6) Indorse a license issued by a licensing board of another state or country upon the applicant fulfilling the following requirements:
  - (a) Application: file an application with the department;
  - (b) Education: meet educational requirements in accordance with the commissioner's regulations;
  - (c) Experience: have experience satisfactory to the board and in accordance with the commissioner's regulations;
  - (d) Examination: pass an examination satisfactory to the board and in accordance with the commissioner's regulations;
  - (e) Age: be at least twenty-one years of age;
  - (f) Citizenship or immigration status: be a United States citizen or an alien lawfully admitted for permanent residence in the United States;
  - (g) Character: be of good moral character as determined by the department; and
  - (h) Prior professional conduct: where an application is submitted for licensure endorsement in any profession regulated by this title and the board of regents determines that while engaged in practice in another jurisdiction the applicant: (i) has been subject to disciplinary action by a duly authorized professional disciplinary agency of such other jurisdiction, where the conduct upon which the disciplinary action was based would, if committed in New York state, constitute

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practicing the profession beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion under the laws of New York state, or (ii) has voluntarily or otherwise surrendered his or her professional license in another jurisdiction after a disciplinary action was instituted by a duly authorized professional disciplinary agency of such other jurisdiction, based on conduct that would, if committed in New York state, constitute practicing the profession beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion under the laws of New York state, the board of regents shall evaluate the conduct and may deny licensure endorsement to the applicant based on such conduct;

- (7) Direct the department to remedy any error, omission, delay or other circumstance in the issuance or registration of a license;
- (8) Designate a professional conduct officer, who shall be the chief administrative officer of the office of the professions, or his designee, in connection with professional licensing and misconduct proceedings and criminal matters, such officer to be empowered to issue subpoenas and administer oaths in connection with such proceedings;
- (9) Establish by rule, standards of conduct with respect to advertising, fee splitting, practicing under a name other than that of the individual licensee (when not specifically authorized), proper use of academic or professional degrees or titles tending to imply professional status, and such other ethical practices as such board shall deem necessary, except that no rule shall be established concerning article 131-A of this chapter; and
- (10) Delegate to department officers the disposition of any licensing matters pursuant to rules.

#### **§6507 Administration by the education department.**

1. The commissioner and the department shall administer the admission to and the practice of the professions.
2. In administering, the commissioner may:
  - a. Promulgate regulations, except that no regulations shall be promulgated concerning article 131-A of this chapter;
  - b. Conduct investigations;
  - c. Issue subpoenas;
  - d. Grant immunity from prosecution in accordance with section 50.20 of the criminal procedure law to anyone subpoenaed in any investigation or hearing conducted pursuant to this title; and

- e. Excuse, for cause acceptable to the commissioner, the failure to register with the department. Such excuse shall validate and authorize such practitioner's right to practice pending registration.
3. The department assisted by the board for each profession, shall:
    - a. Establish standards for preprofessional and professional education, experience and licensing examinations as required to implement the article for each profession. Notwithstanding any other provision of law, the commissioner shall establish standards requiring that all persons applying, on or after January first, nineteen hundred ninety-one, initially, or for the renewal of, a license, registration or limited permit to be a physician, chiropractor, dentist, registered nurse, podiatrist, optometrist, psychiatrist, psychologist, licensed master social worker, licensed clinical social worker, licensed creative arts therapist, licensed marriage and family therapist, licensed mental health counselor, licensed psychoanalyst, or dental hygienist shall, in addition to all the other licensure, certification or permit requirements, have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. The coursework or training shall be obtained from an institution or provider which has been approved by the department to provide such coursework or training. The coursework or training shall include information regarding the physical and behavioral indicators of child abuse and maltreatment and the statutory reporting requirements set out in sections four hundred thirteen through four hundred twenty of the social services law, including but not limited to, when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failing to report. Such coursework or training may also include information regarding the physical and behavioral indicators of the abuse of individuals with mental retardation and other developmental disabilities and voluntary reporting of abused or neglected adults to the office of mental retardation and developmental disabilities or the local adult protective services unit. Each applicant shall provide the department with documentation showing that he or she has completed the required training. The department shall provide an exemption from the child abuse and maltreatment training requirements to any applicant who requests such an exemption and who shows, to the department's satisfaction, that there would be no need because of the nature of his or her practice for him or her to complete such training;
    - b. Review qualifications in connection with licensing requirements; and
    - c. Provide for licensing examinations and reexaminations.

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4. The department shall:
  - a. Register or approve educational programs designed for the purpose of providing professional preparation which meet standards established by the department.
  - b. Issue licenses, registrations, and limited permits to qualified applicants;
  - c. (i) Issue a certificate of authority to a qualified professional service corporation being organized under section fifteen hundred three of the business corporation law or to a university faculty practice corporation being organized under section fourteen hundred twelve of the not-for-profit corporation law on payment of a fee of ninety dollars, (ii) require such corporations to file a certified copy of each certificate of incorporation and amendment thereto within thirty days after the filing of such certificate or amendment on payment of a fee of twenty dollars, (iii) require such corporations to file a triennial statement required by section fifteen hundred fourteen of the business corporation law on payment of a fee of one hundred five dollars.
  - d. Revoke limited permits on the recommendation of the committee on professional conduct for the profession concerned, except for limited permits issued to physicians, physician's assistants and specialist's assistants which shall be subject to sections two hundred thirty, two hundred thirty-a, two hundred thirty-b and two hundred thirty-c of the public health law;
  - e. Maintain public records of licenses issued and retain in its files identifying data concerning each person to whom a license has been issued;
  - f. Collect the fees prescribed by this title or otherwise provided by law;
  - g. Prepare an annual report for the legislature, the governor and other executive offices, the state boards for the professions, professional societies, consumer agencies and other interested persons. Such report shall include but not be limited to a description and analysis of the administrative procedures and operations of the department based upon a statistical summary relating to (i) new licensure, (ii) discipline, (iii) complaint, investigation, and hearing backlog, (iv) budget, and (v) the state boards for the professions. Information provided shall be enumerated by profession; and
  - h. Establish an administrative unit which shall be responsible for the investigation, prosecution and determination of alleged violations of professional conduct.
5. Where an application is submitted for licensure or a limited permit in any profession regulated by this title and the

commissioner determines that while engaged in practice in another jurisdiction: (i) the applicant has been subject to disciplinary action by a duly authorized professional disciplinary agency of such other jurisdiction, where the conduct upon which the disciplinary action was based would, if committed in New York state, constitute practicing the profession beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion under the laws of New York state, or (ii) the applicant has voluntarily or otherwise surrendered his or her professional license in another jurisdiction after a disciplinary action was instituted by a duly authorized professional disciplinary agency of such other jurisdiction based on conduct that would, if committed in New York state, constitute practicing the profession beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion under the laws of New York state, the department shall evaluate the conduct and the commissioner may deny licensure or issuance of a limited permit to the applicant based on such conduct.

6. The commissioner and the department shall perform any other functions necessary to implement this title.

**§6508 Assistance by state boards for the professions.**

1. A board for each profession shall be appointed by the board of regents on the recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing, practice, and conduct. The composition of each board shall be as prescribed in the article relating to each profession. Within each board a committee on licensing may be appointed by the board chairman.

Except as provided in paragraph (a) of this subdivision, the membership of each professional licensing board shall be increased by one member, and each such board shall have at least one public representative who shall be selected by the board of regents from the general public.

- a. The membership of the professional licensing boards created under sections sixty-five hundred twenty-three, sixty-eight hundred four, sixty-nine hundred three, and seventy-four hundred three of this chapter shall be increased by two members, and each such board shall have at least two public representatives, who shall be selected by the board of regents from the general public.
- b. For the purposes of this title, a "public representative" shall be a person who is a consumer of services provided by those licensed or otherwise supervised or regulated by the boards created hereunder, and shall not be, nor within five years immediately preceding appointment have been:

- (i) a licensee or person otherwise subject to the supervision or regulation of the board to which appointed; or
  - (ii) a person maintaining a contractual relationship with a licensee of such board, which would constitute more than two percentum of the practice or business of any such licensee, or an officer, director, or representative of such person or group of persons.
2. Each board, or its committee on licensing, shall select or prepare examinations, may conduct oral and practical examinations and reexaminations, shall fix passing grades, and assist the department in other licensing matters as prescribed by the board of regents.
  3. Each board shall conduct disciplinary proceedings as prescribed in this article and shall assist in other professional conduct matters as prescribed by the board of regents.
  4. Members of each board shall be appointed by the board of regents for five-year terms except that the terms of those first appointed shall be arranged so that as nearly as possible an equal number shall terminate annually. A vacancy occurring during a term shall be filled by an appointment by the board of regents for the unexpired term. Each state professional association or society may nominate one or more candidates for each appointment to be made to the board for its profession, but the board of regents shall not be required to appoint candidates so nominated. Former members of a board may be re-appointed by the board of regents, on the recommendation of the commissioner, to serve as members of the board solely for the purposes of disciplinary proceedings, proceedings relating to the moral character of

an applicant for licensure, and proceedings relating to applications for the restoration of a professional license. In addition, each board shall establish a roster of auxiliary members from candidates nominated by professional associations or societies for appointment by the board of regents, on the recommendation of the commissioner, to serve as members of the board solely for the purposes of disciplinary proceedings, proceedings relating to the moral character of an applicant for licensure, and proceedings relating to applications for the restoration of a professional license.

5. Each member of a board shall receive a certificate of appointment, shall before beginning his term of office file a constitutional oath of office with the secretary of state, shall receive up to one hundred dollars as prescribed by the board of regents for each day devoted to board work, and shall be reimbursed for his necessary expenses. Any member may be removed from a board by the board of regents for misconduct, incapacity or neglect of duty.
6. Each board shall elect from its members a chairman and vice-chairman annually, shall meet upon call of the chairman or the department, and may adopt bylaws consistent with this title and approved by the board of regents. A quorum for the transaction of business by the board shall be a majority of members but not less than five members.
7. An executive secretary to each board shall be appointed by the board of regents on recommendation of the commissioner. Such executive secretary shall not be a member of the board, shall hold office at the pleasure of, and shall have the powers, duties and annual salary prescribed by the board of regents.

### **Subarticle 3 Professional Misconduct**

#### **§6509. Definitions of professional misconduct.**

Each of the following is professional misconduct, and any licensee found guilty of such misconduct under the procedures prescribed in section sixty five hundred ten shall be subject to the penalties prescribed in section sixty five hundred eleven:

- (1) Obtaining the license fraudulently,
- (2) Practicing the profession fraudulently, beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion or negligence or incompetence on more than one occasion,
- (3) Practicing the profession while the ability to practice is impaired by alcohol, drugs, physical disability, or mental disability,
- (4) Being habitually drunk or being dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects,

(5)

- (a) Being convicted of committing an act constituting a crime under:
  - (i) New York State law or,
  - (ii) Federal law or,
  - (iii) The law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State law;
- (b) Having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state;

**Note: Laws, rules and regulations are current as of the date of this publication**

- (c) Having been found by the commissioner of health to be in violation of article thirty three of the public health law.
- (d) Having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state.
- (6) Refusing to provide professional service to a person because of such person's race, creed, color, or national origin,
- (7) Permitting, aiding or abetting an unlicensed person to perform activities requiring a license,
- (8) Practicing the profession while the license is suspended, or wilfully failing to register or notify the department of any change of name or mailing address, or, if a professional service corporation wilfully failing to comply with sections fifteen hundred three and fifteen hundred fourteen of the business corporation law or, if a university faculty practice corporation wilfully failing to comply with paragraphs (b), (c) and (d) of section fifteen hundred three and section fifteen hundred fourteen of the business corporation law,
- (9) Committing unprofessional conduct, as defined by the board of regents in its rules or by the commissioner in regulations approved by the board of regents,
- (10) A violation of section twenty eight hundred three d or twenty eight hundred five k of the public health law.
- (11) A violation of section six thousand five hundred five b of this chapter by a professional other than a professional subject to the provisions of paragraph (f) of subdivision one of section twenty eight hundred five k of the public health law.
- (12) In the event that the department of environmental conservation has reported to the department alleged misconduct by an architect or professional engineer in making a certification under section nineteen of the tax law (relating to the green building tax credit) the board of regents, upon a hearing and a finding of willful misconduct, may revoke the license of such professional or prescribe such other penalty as it determines to be appropriate.

**§6509-a. Additional definition of professional misconduct; limited application.**

Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license or registration of a person subject to the provisions of articles one hundred thirty two, one hundred thirty three, one hundred thirty six, one hundred thirty seven, one hundred thirty nine, one hundred forty one, one hundred forty three, one hundred forty four, one hundred fifty six, one hundred fifty nine and one hundred sixty four of this chapter may be revoked, suspended or annulled or such person may be subject to any other penalty provided in section sixty five hundred eleven of this article in accordance with the provisions and procedure of this article for the following:

That any person subject to the above enumerated articles, has directly or indirectly requested, received or participated in the division, transference, assignment, rebate, splitting or refunding of a fee for, or has directly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of professional care, or service, including x ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory services or supplies, x ray laboratory services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies or any other goods, services or supplies prescribed for medical diagnosis, care or treatment under this chapter, except payment, not to exceed thirty three and one third per centum of any fee received for x ray examination, diagnosis or treatment, to any hospital furnishing facilities for such examination, diagnosis or treatment. Nothing contained in this section shall prohibit such persons from practicing as partners, in groups or as a professional corporation or as a university faculty practice corporation nor from pooling fees and moneys received, either by the partnerships, professional corporations, university faculty practice corporations or groups by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnerships, corporations or groups be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement; provided that no such practice as partners, corporations or in groups or pooling of fees or moneys received or shared, division or apportionment of fees shall be permitted with respect to care and treatment under the workers' compensation law except as expressly authorized by the workers' compensation law. Nothing contained in this chapter shall prohibit a medical or dental expense indemnity corporation pursuant to its contract with the subscriber from prorationing a medical or dental expense indemnity allowance among two or more professionals in proportion to the

services rendered by each such professional at the request of the subscriber, provided that prior to payment thereof such professionals shall submit both to the medical or dental expense indemnity corporation and to the subscriber statements itemizing the services rendered by each such professional and the charges therefor.

**§6509-b. Additional definition of professional misconduct; arrears in payment of support; limited application.**

1. The provisions of this section shall apply in all cases of licensee or registrant arrears in payment of child support or combined child and spousal support referred to the board of regents by a court pursuant to the requirements of section two hundred forty four c of the domestic relations law or pursuant to section four hundred fifty eight b of the family court act.
2. Upon receipt of an order from the court pursuant to one of the foregoing provisions of law, the board of regents, if it finds such person to be so licensed or registered, shall within thirty days of receipt of such order from the court, provide notice to the licensee or registrant of, and cause the regents review committee to initiate, a hearing which shall be held at least twenty days and no more than thirty days after the sending of such notice to the licensee or registrant. The hearing shall be held solely for the purpose of determining whether there exists as of the date of the hearing proof that full payment of all arrears of support established by the order of the court to be due from the licensee or registrant have been paid. Proof of such payment shall be a certified check showing full payment of established arrears or a notice issued by the court or by the support collection unit where the order is payable to the support collection unit designated by the appropriate social services district. Such notice shall state that full payment of all arrears of support established by the order of the court to be due have been paid. The licensee or registrant shall be given full opportunity to present such proof of payment at the hearing in person or by counsel. The only issue to be determined by the regents review committee as a result of the hearing is whether the arrears have been paid. No evidence with respect to the appropriateness of the court order or ability of the respondent party in arrears to comply with such order shall be received or considered by the committee.
3. Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license or registration of a person subject to the provisions of this title and/or subject to the provisions of title two A of article two of the public health law shall be suspended if, at the hearing provided for by subdivision two of this section, the licensee or registrant fails to present proof of payment as required by such subdivision. Such suspension shall not be lifted unless the court or the support collection unit, where the court order is payable to the support collection unit designated by the appropriate social services district, issues notice to the

regents review committee that full payment of all arrears of support established by the order of the court to be due have been paid.

4. The board of regents shall inform the court of all actions taken hereunder as required by law.
5. This section applies to support obligations paid pursuant to any order of child support or child and spousal support issued under provisions of article three A or section two hundred thirty six or two hundred forty of the domestic relations law, or article four, five or five A of the family court act.
6. Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the provisions of this section shall apply to the exclusion of any other requirements of this article and to the exclusion of any other requirement of law to the contrary.

**§6509-c. Additional definition of professional misconduct; failure to comply in paternity or child support proceedings; limited application.**

1. The provisions of this section shall apply in all cases of licensee or registrant failure after receiving appropriate notice, to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding referred to the board of regents by a court pursuant to the requirements of section two hundred forty-four-c of the domestic relations law or pursuant to section four hundred fifty-eight-b or five hundred forty-eight-b of the family court act.
2. Upon receipt of an order from the court pursuant to one of the foregoing provisions of law, the board of regents, if it finds such person to be so licensed or registered, shall within thirty days of receipt of such order from the court, provide notice to the licensee or registrant that his or her license or registration shall be suspended in sixty days unless the conditions as set forth in subdivision three of this section are met.
3. Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license or registration of a person subject to the provisions of this title and/or subject to the provisions of title two-A of article two of the public health law shall be suspended unless the court terminates its order to commence suspension proceedings. Such suspension shall not be lifted unless the court issues an order to the board of regents terminating its order to commence suspension proceedings.
4. The board of regents shall inform the court of all actions taken hereunder as required by law.
5. This section applies to paternity or child support proceedings commenced under, and support obligations paid pursuant to

any order of child support or child and spousal support issued under provisions of section two hundred thirty-six or two hundred forty of the domestic relations law, or article four, five, five-A or five-B of the family court act.

6. Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the provisions of this section shall apply to the exclusion of any other requirements of this article and to the exclusion of any other requirement of law to the contrary.

#### **§6510. Proceedings in cases of professional misconduct.**

In cases of professional misconduct the proceedings shall be as follows:

1. Preliminary procedures.
  - a. Complaint. A complaint of a licensee's professional misconduct may be made by any person to the education department.
  - b. Investigation. The department shall investigate each complaint which alleges conduct constituting professional misconduct. The results of the investigation shall be referred to the professional conduct officer designated by the board of regents pursuant to section sixty-five hundred six of this article. If such officer decides that there is not substantial evidence of professional misconduct or that further proceedings are not warranted, no further action shall be taken. If such officer, after consultation with a professional member of the applicable state board for the profession, determines that there is substantial evidence of professional misconduct, and that further proceedings are warranted, such proceedings shall be conducted pursuant to this section. If the complaint involves a question of professional expertise, then such officer may seek, and if so shall obtain, the concurrence of at least two members of a panel of three members of the applicable board. The department shall cause a preliminary review of every report made to the department pursuant to section twenty-eight hundred three-e as added by chapter eight hundred sixty-six of the laws of nineteen hundred eighty and sections forty-four hundred five-b of the public health law and three hundred fifteen of the insurance law, to determine if such report reasonably appears to reflect conduct warranting further investigation pursuant to this subdivision.
  - c. Charges. In all disciplinary proceedings other than those terminated by an administrative warning pursuant to paragraph a of subdivision two of this section, the department shall prepare the charges. The charges shall state the alleged professional misconduct and shall state concisely the material facts but not the evidence by which the charges are to be proved.

- d. Records and reports as public information. In all disciplinary proceedings brought pursuant to this section or in any voluntary settlement of a complaint between the licensee and the department, the department shall notify the licensee in writing that the record and reports of such disciplinary proceeding or of such voluntary settlement shall be considered matters of public information unless specifically excepted in this article, or in any other law or applicable rule or regulation.
- e. Service of charges and notice of hearing. In order to commence disciplinary proceedings under this title, service of a copy of the charges and notice of hearing must be completed twenty days before the date of the hearing if by personal delivery, and must be completed twenty-five days before the date of the hearing if by any other method.
- f. Service of charges and of notice of hearing upon a natural person. Personal service of the charges and notice of any hearing pursuant to subdivision two or three of this section upon a natural person shall be made by any of the following methods:
  - (1) by delivery within the state to the person to be served; or
  - (2) by delivery within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and either: (i) by mailing by certified mail, return receipt requested, to the person to be served at his or her last known residence, or (ii) by mailing by certified mail, return receipt requested, to the person to be served at his or her last address on file with the division of licensing services of the department in an envelope bearing the legend "personal and confidential," provided that, in either case: such delivery and mailing shall be effected within twenty days of each other; service pursuant to this subparagraph shall be complete ten days after either the delivery, or the mailing, whichever is later; and proof of service shall, among other things, identify such person of suitable age and discretion and state the date, time and place of such service; or
  - (3) where service under subparagraphs one and two of this paragraph cannot be made with due diligence, a copy of the charges and the notice of hearing shall be served by certified mail, return receipt requested, to the person's last known address on file with the division of licensing services of the department or by affixing the charges and the notice of hearing to the door of either the actual place of business, dwelling place or usual place of abode of the person

to be served; provided that: service pursuant to this subparagraph shall be complete ten days after such mailing, and proof of service shall set forth the department's efforts of due diligence.

- g. Service of charges and notice of hearing outside of the state. A natural person subject to the jurisdiction of the department may be served with a copy of the charges and the notice of hearing outside of the state in the same manner as service is made within the state, by any person authorized to make service within the state of New York or by any person authorized to make service by the laws of the state, territory, possession or country in which service is made or by any duly qualified attorney or equivalent in such jurisdiction.

## 2. Expedited procedures.

- a. Violations. Violations involving professional misconduct of a minor or technical nature may be resolved by expedited procedures as provided in paragraph b or c of this subdivision. For purposes of this subdivision, violations of a minor or technical nature shall include, but shall not be limited to, isolated instances of violations concerning professional advertising or record keeping, and other isolated violations which do not directly affect or impair the public health, welfare or safety. The board of regents shall make recommendations to the legislature on or before June first, nineteen hundred eighty-one, for the further definition of violations of a minor or technical nature. The initial instance of any violation of a minor or technical nature may be resolved by the issuance of an administrative warning pursuant to paragraph b of this subdivision. Subsequent instances of similar violations of a minor or technical nature within a period of three years may be resolved by the procedure set forth in paragraph c of this subdivision.
- b. Administrative warning. If a professional conduct officer, after consultation with a professional member of the state board, determines that there is substantial evidence of professional misconduct but that it is an initial violation of a minor or technical nature which would not justify the imposition of a more severe disciplinary penalty, the matter may be terminated by the issuance of an administrative warning. Such warnings shall be confidential and shall not constitute an adjudication of guilt or be used as evidence that the licensee is guilty of the alleged misconduct. However, in the event of a further allegation of similar misconduct by the same licensee, the matter may be reopened and further proceedings instituted as provided in this section.
- c. Determination of penalty on uncontested minor violations. If a professional conduct officer, after consultation with a professional member of the state board, determines that there is substantial evidence of a

violation of a minor or technical nature, and of a nature justifying a penalty as specified in this paragraph, the department may prepare and serve charges either by personal service or by certified mail, return receipt requested. Such charges shall include a statement that unless an answer is received within twenty days denying the charges, the matter shall be referred to a violations committee consisting of at least three members of the state board for the profession, at least one of whom shall be a public representative, for determination. The violations panel shall be appointed by the executive secretary of the state board. The licensee shall be given at least fifteen days notice of the time and place of the meeting of the violations committee and shall have the right to appear in person and by an attorney and to make a statement to the committee in mitigation or explanation of the misconduct. The department may appear and make a statement in support of its position. The violations committee may issue a censure and reprimand, and in addition, or in the alternative, may impose a fine not to exceed five hundred dollars for each specification of minor, or technical misconduct. If the fine is not paid within three months the matter may be reopened and shall be subject to the hearing and regents decision procedures of this section. The determination of the panel shall be final and shall not be subject to the regents decision procedures of this section. If an answer is filed denying the charges, the matter shall be processed as provided in subdivision three of this section.

- d. Convictions of crimes or administrative violations. In cases of professional misconduct based solely upon a violation of subdivision five of section sixty-five hundred nine of this article, the professional conduct officer may prepare and serve the charges and may refer the matter directly to a regents review committee for its review and report of its findings, determination as to guilt, and recommendation as to the measure of discipline to be imposed. In such cases the notice of hearing shall state that the licensee may file a written answer, brief and affidavits; that the licensee may appear personally before the regents review committee, may be represented by counsel and may present evidence or sworn testimony on behalf of the licensee, and the notice may contain such other information as may be considered appropriate by the department. The department may also present evidence or sworn testimony at the hearing. A stenographic record of the hearing shall be made. Such evidence or sworn testimony offered at the meeting of the regents review committee shall be limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. The presiding officer at the meeting of the regents review committee may, in his or her discretion, reasonably limit the number of witnesses whose testimony will be received and the length of time

any witness will be permitted to testify. In lieu of referring the matter to the board of regents, the regents review committee may refer any such matter for further proceedings pursuant to paragraph b or c of this subdivision or subdivision three of this section.

3. Adversary proceedings. Contested disciplinary proceedings and other disciplinary proceedings not resolved pursuant to subdivision two of this section shall be tried before a hearing panel of the appropriate state board as provided in this subdivision.

a. Notice of hearing. The department shall set the time and place of the hearing and shall prepare the notice of hearing. The notice of hearing shall state (1) the time and place of the hearing, (2) that the licensee may file a written answer to the charges prior to the hearing, (3) that the licensee may appear personally at the hearing and may be represented by counsel, (4) that the licensee shall have the right to produce witnesses and evidence in his behalf, to cross-examine witnesses and examine evidence produced against him, and to issue subpoenas in accordance with the provisions of the civil practice law and rules, (5) that a stenographic record of the hearing will be made, and (6) such other information as may be considered appropriate by the department.

b. Hearing panel. The hearing shall be conducted by a panel of three or more members, at least two of whom shall be members of the applicable state board for the profession, and at least one of whom shall be a public representative who is a member of the applicable state board or of the state board for another profession licensed pursuant to this title. The executive secretary for the applicable state board shall appoint the panel and shall designate its chairperson. After the commencement of a hearing, no panel member shall be replaced. A determination by the administrative officer of a need to disqualify or remove any panel member will result in the disqualification or removal of the panel and cause a new panel to be appointed. In addition to said panel members, the department shall designate an administrative officer, admitted to practice as an attorney in the state of New York, who shall have the authority to rule on all motions, procedures and other legal objections and shall draft a report for the hearing panel which shall be subject to the approval of and signature by the panel chairperson on behalf of the panel. The administrative officer shall not be entitled to a vote.

c. Conduct of hearing. The evidence in support of the charges shall be presented by an attorney for the department. The licensee shall have the rights required to be stated in the notice of hearing. The panel shall not be bound by the rules of evidence, but its determination of guilt shall be based on a preponderance of the evidence. A hearing which has been initiated shall not be

discontinued because of the death or incapacity to serve of one member of the hearing panel.

d. Results of hearing. The hearing panel shall render a written report which shall include (1) findings of fact, (2) a determination of guilty or not guilty on each charge, and (3) in the event of a determination of guilty, a recommendation of the penalty to be imposed. For the panel to make a determination of guilty, a minimum of two of the voting members of the panel must vote for such a determination. A copy of the report of the hearing panel shall be transmitted to the licensee.

4. Regents decision procedures.

a. Regents review committee. The transcript and report of the hearing panel shall be reviewed at a meeting by a regents review committee appointed by the board of regents. The regents review committee shall consist of three members, at least one of whom shall be a regent.

b. Regents review committee meetings. The review shall be based on the transcript and the report of the hearing panel. The licensee may appear at the meeting, and the regents review committee may require the licensee to appear. The licensee may be represented by counsel. The department shall notify the licensee at least seven days before the meeting (1) of the time and place of the meeting, (2) of his right to appear, (3) of his right to be represented by counsel, (4) whether or not he is required to appear, and (5) of such other information as may be considered appropriate. After the meeting, the regents review committee shall transmit a written report of its review to the board of regents. In cases referred directly to the regents review committee pursuant to paragraph d of subdivision two of this section, the review shall be based upon the charges, the documentary evidence submitted by the department, any answer, affidavits or brief the licensee may wish to submit, and any evidence or sworn testimony presented by the licensee or the department at the hearing, pursuant to the procedures described by paragraph d of subdivision two of this section.

c. Regents decision and order. The board of regents (1) shall consider the transcript, the report of the hearing panel, and the report of the regents review committee, (2) shall decide whether the licensee is guilty or not guilty on each charge, (3) shall decide what penalties, if any, to impose as prescribed in section sixty-five hundred eleven of this article, and (4) shall issue an order to carry out its decisions. Such decisions shall require the affirmative vote of a majority of the members of the board of regents. If the board of regents disagrees with the hearing panel's determination of not guilty, it shall remand the matter to the original panel for reconsideration or to a new panel for a new hearing. The

- panel's determination of not guilty on reconsideration or a new hearing shall be final. The order shall be served upon the licensee personally or by certified mail to the licensee's last known address and such service shall be effective as of the date of the personal service or five days after mailing by certified mail. The licensee shall deliver to the department the license and registration certificate which has been revoked, annulled, suspended, or surrendered within five days after the effective date of the service of the order. If the license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, the licensee shall submit an affidavit to that effect, and shall deliver such license or certificate to the department when located.
5. Court review procedures. The decisions of the board of regents may be reviewed pursuant to the proceedings under article seventy-eight of the civil practice law and rules. Such proceedings shall be returnable before the appellate division of the third judicial department, and such decisions shall not be stayed or enjoined except upon application to such appellate division after notice to the department and to the attorney general and upon a showing that the petitioner has a substantial likelihood of success.
  6. The provisions of subdivisions one through four of this section shall not be applicable to proceedings in cases of professional misconduct involving the medical profession, except as provided in paragraph m of subdivision ten of section two hundred thirty of the public health law.
  7. Notwithstanding any other provision of law, persons who assist the department as consultants or expert witnesses in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, or criminal prosecutions for unauthorized practice, shall not be liable for damages in any civil action or proceeding as a result of such assistance, except upon proof of actual malice. The attorney general shall defend such persons in any such action or proceeding, in accordance with section seventeen of the public officers law.
  8. The files of the department relating to the investigation of possible instances of professional misconduct, or the unlawful practice of any profession licensed by the board of regents, or the unlawful use of a professional title or the moral fitness of an applicant for a professional license or permit, shall be confidential and not subject to disclosure at the request of any person, except upon the order of a court in a pending action or proceeding. The provisions of this subdivision shall not apply to documents introduced in evidence at a hearing held pursuant to this chapter and shall not prevent the department from sharing information concerning investigations with other duly authorized public agencies responsible for professional regulation or criminal prosecution.
  9. A disciplinary proceeding under subdivision three or four of this section shall be treated in the same manner as an action or proceeding in supreme court for the purpose of any claim by counsel of actual engagement.
- §6510-b. Temporary surrender of licenses during treatment for drug or alcohol abuse.**
1. The license and registration of a licensee who may be temporarily incapacitated for the active practice of a profession licensed pursuant to title eight of this chapter, except professionals licensed pursuant to article one hundred thirty one or article one hundred thirty one b thereof, and whose alleged incapacity is the result of a problem of drug or alcohol abuse which has not resulted in harm to a patient or client, may be voluntarily surrendered to the department, which may accept and hold such license during the period of such alleged incapacity or the department may accept the surrender of such license after agreement to conditions to be met prior to the restoration of the license. The department shall give written notification of such surrender to the licensing authorities of any other state or country in which the licensee is authorized to practice. In addition to the foregoing, the department shall also give written notification of such surrender, for professionals licensed pursuant to articles one hundred thirty two, one hundred thirty three, one hundred thirty five, one hundred thirty seven, one hundred thirty nine and one hundred forty one of this chapter to the commissioner of health or his designee, and where appropriate to each hospital at which the professional has privileges, is affiliated, or is employed. The licensee whose license is so surrendered shall notify all persons who request professional services that he or she has temporarily withdrawn from the practice of the profession. The department may provide for similar notification of patients or clients and of other interested parties, as appropriate under the circumstances of the professional practice and responsibilities of the licensee. The licensure status of such licensee shall be "inactive" and he or she shall not be authorized to practice the profession and shall refrain from practice in this state or in any other state or country. The voluntary surrender shall not be deemed to be an admission of disability or of professional misconduct, and shall not be used as evidence of a violation of subdivision three or four of section sixty five hundred nine of this chapter, unless the licensee practices while the license is "inactive"; and any such practice shall constitute a violation of subdivision eight of said section. The surrender of a license under this subdivision shall not bar any disciplinary action except action based solely upon the provisions of subdivision three or four of section sixty five hundred nine of this chapter, and only if no harm to a patient has resulted; and shall not bar any civil or criminal action or proceeding which might be brought without regard to such surrender. A surrendered license shall be restored upon a showing to the satisfaction of the department that the licensee is not incapacitated for the active practice of the profession, provided that the

department may, by order of the commissioner, impose reasonable conditions on the licensee, if it determines that because of the nature and extent of the licensee's former incapacity, such conditions are necessary to protect the health, safety and welfare of the public. Prompt written notification of such restoration shall be given to all licensing bodies which were notified of the temporary surrender of the license.

2. There shall be appointed within the department, by the board of regents, a committee on drug and alcohol abuse, which shall advise the board of regents on matters relating to practice by professional licensees with drug or alcohol abuse problems, and which shall administer the provisions of this section. The board of regents shall determine the size, composition, and terms of office of such committee, a majority of the members of which shall be persons with expertise in problems of drug or alcohol abuse. The committee shall recommend to the board of regents such rules as are necessary to carry out the purposes of this section, including but not limited to procedures for the submission of applications for the surrender of a license and for the referral of cases for investigation or prosecution pursuant to section sixty five hundred ten of this chapter if a licensee fails to comply with the conditions of an approved program of treatment. There shall be an executive secretary appointed by the board of regents to assist the committee. Determinations by the committee relating to licensees shall be made by panels of at least three members of the committee designated by the executive secretary, who shall also designate a member of the state board for the licensee's profession as an ex officio nonvoting member of each panel. In the case of a determination relating to a licensed nurse, at least one panel member must be a registered professional nurse licensed by the state.
3. Application for the surrender of a license pursuant to this section shall be submitted to the committee, and shall identify a proposed treatment or rehabilitation program, and shall include a consent to the release of all information concerning the licensee's treatment to the committee. All information concerning an application, other than the fact of the surrender of the license and the participation in the program and the successful completion or failure of or withdrawal from the program, shall be strictly confidential, and may not be released by the committee to any person or body without the consent of the licensee. The immunity from disciplinary action conferred by this section shall be conditioned upon the approval of the treatment or rehabilitation program by the committee and its successful completion by the applicant and the elimination of the incapacity to practice. Approval of a treatment or rehabilitation program by the committee shall not constitute a representation as to the probability of success of the program or any assumption of financial responsibility for its costs.

4. The immunity from disciplinary action conferred by this section may be revoked by the committee upon a finding that the licensee has failed to successfully complete the program or that the incapacity to practice has not been eliminated. Such revocation shall be made only after notice and an opportunity to be heard, but no adjudicatory hearing shall be required. The matter shall be referred for appropriate proceedings pursuant to section sixty five hundred ten of this chapter. The license must be returned unless charges are served pursuant to section sixty five hundred ten within thirty days after the revocation of the approval of the special treatment afforded by this section.
5. The commissioner is authorized to adopt regulations to carry out the purposes of this section, including but not limited to the notice of temporary inactive status to be required in different professions and practice situations and the measures required upon temporary withdrawal from practice.
6. No individual who serves as a member of a committee whose purpose is to confront and refer either to treatment or to the department licensees who are thought to be suffering from alcoholism or drug abuse shall be liable for damages to any person for any action taken by such individual provided such action was taken without malice and within the scope of such individual's function as a member of such committee, and provided further that such committee has been established by and functions under the auspices of an association or society of professionals authorized to practice under this title.
7. In addition to the provisions of section two thousand eight hundred three-e of the public health law, any entity licensed pursuant to articles thirty-six, forty and forty-four of the public health law, and any mental hygiene facilities, and correctional, occupational, school and college health services shall provide a report to the office of professional discipline when there is a suspension, restriction, termination, curtailment or resignation of employment or privileges in any way related to a licensed nurse that is impaired when the impairment is alleged to have been caused by a drug-related problem. Any person, facility, or corporation which makes a report pursuant to this section in good faith shall have immunity from any liability, civil or criminal, for having made such a report except where the conduct constitutes negligence, gross negligence or intentional misconduct. For the purpose of any proceeding, civil or criminal, the good faith of any person, facility or corporation required to make a report shall be presumed. Such presumption may be rebutted by any competent evidence.

#### **§6510-c. Nurse peer assistance programs.**

1. As used in this section:
  - a. "Drug-related problem" means a problem or problems that are related to the use, misuse or addiction to drugs or alcohol.

**Note: Laws, rules and regulations are current as of the date of this publication**

b. "Participant" means an individual licensed pursuant to article one hundred thirty-nine of this title who has or may have a drug-related problem.

c. "Approved nurse peer assistance program" means a program operated by the New York State Nurses Association or a statewide professional association of nurses which has experience in providing peer assistance services to nurses who have drug-related problems which are designed to help a participant or a licensee's employer and has been approved by the department in accordance with criteria established in regulations of the commissioner.

d. "Peer assistance services" includes assessing the needs of a participant, including early identification of drug-related problems, and providing information, support, and advice as requested by a participant.

2.

a. The department shall provide funds, including but not limited to a portion of the funds made available pursuant to the provisions of this section, for services provided by an approved nurse peer assistance program. Funds used to provide services shall not be used for the treatment of participants. Funded services shall include, but not be limited to:

1. providing peer assistance services for nurses with drug-related problems;
2. maintaining a toll-free telephone information line for anonymous nurses, their employers, and others to provide assistance in the identification of services and information for nurses dealing with drug-related problems;
3. training monitors for the professional assistance program;
4. arranging for mental health consultants to assess nurses for the professional assistance program, as needed; and
5. preparing written assessments of nurses who have been referred from the professional assistance program.

b. An additional fee of fifteen dollars shall be paid at the time of application for licensure and first registration and every registration by those licensed pursuant to article one hundred thirty-nine of this title for the purpose of implementing this program. The funds made available under this provision shall be deposited in the office of professions special revenue account for its purposes in implementing this section. The department may use a portion of this amount for its administrative expenses incurred in implementing this program including, but not limited to, employment of personnel,

the costs of approving and contracting with a peer assistance program as required by this section and outreach activities to promote this program.

3. No approved nurse peer assistance program or individual who serves in an approved nurse peer assistance program shall be liable in damages to any person for any action taken or not taken or recommendations made unless, based on the facts disclosed by a participant, the conduct of the program or person with respect to the person asserting liability constituted negligence, gross negligence, or intentional misconduct.

4. All information concerning a participant gathered by the approved nurse peer assistance program shall be strictly confidential and may not be released to any person or body without the consent of the participant, except upon the order of a court in a pending action or proceeding. Aggregate data may be released to the committee on drug and alcohol abuse.

#### **§6510-d. Voluntary non-disciplinary surrender of a license.**

A professional who is licensed pursuant to article one hundred thirty-nine of this title may voluntarily surrender a license to the committee on drug and alcohol abuse when such licensee requests to be monitored and/or receive peer support services in relation to the use, misuse or addiction to drugs. The committee shall accept such voluntary non-disciplinary surrender of a license and provide for expedited reinstatement of the license if the licensee meets criteria set by the committee. Such criteria will include, but not be limited to, confidence that the licensee's use of drugs and/or alcohol has not resulted in harm to a patient or client and the licensee is not incapacitated, unfit for practice or a threat to the health, safety and welfare of the public. Such voluntary surrender, if accepted by the committee, shall result in an immediate reinstatement of the license and shall provide immunity from a violation of subdivision three or four of section six thousand five hundred nine of this article and cannot be deemed an admission or used as evidence in professional misconduct. Acceptance by the committee shall not require a report to the department of health or to any employer or licensing authority of another jurisdiction, nor require any disclosure to patients or to the public that such license has been temporarily surrendered, except if it is subsequently determined by the department that a participant being monitored by the department is found to have used drugs and/or alcohol which has resulted in harm to a patient or client.

#### **§6511. Penalties for professional misconduct.**

The penalties which may be imposed by the board of regents on a present or former licensee found guilty of professional misconduct (under the definitions and proceedings prescribed in sections sixty five hundred nine, sixty-five hundred ten and sixty-five hundred ten-a of this article) are:

- (1) censure and reprimand,

**Note: Laws, rules and regulations are current as of the date of this publication**

- (2) suspension of license, (a) wholly, for a fixed period of time; (b) partially, until the licensee successfully completes a course of retraining in the area to which the suspension applies; (c) wholly, until the licensee successfully completes a course of therapy or treatment prescribed by the regents;
- (3) revocation of license,
- (4) annulment of license or registration,
- (5) limitation on registration or issuance of any further license,
- (6) a fine not to exceed ten thousand dollars, upon each specification of charges of which the respondent is determined to be guilty,
- (7) a requirement that a licensee pursue a course of education or training, and
- (8) a requirement that a licensee perform up to one hundred hours of public service, in a manner and at a time and place as directed by the board. The board of regents may stay such penalties in whole or in part, may place the licensee on probation and may restore a license which has been revoked. Any fine imposed pursuant to this section or pursuant to subdivision two of section sixty five hundred ten of this article may be sued for and recovered in the name of the people of the state of New York in an action brought by the attorney general. In such action the findings and determination of the board of regents or of the violations committee shall be admissible evidence and shall be conclusive proof of the violation and the penalty assessed.

## **Subarticle 4 Unauthorized Acts**

### **§6512. Unauthorized practice a crime.**

1. Anyone not authorized to practice under this title who practices or offers to practice or holds himself out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts, or who practices any profession as an exempt person during the time when his professional license is suspended, revoked or annulled, or who aids or abets an unlicensed person to practice a profession, or who fraudulently sells, files, furnishes, obtains, or who attempts fraudulently to sell, file, furnish or obtain any diploma, license, record or permit purporting to authorize the practice of a profession, shall be guilty of a class E felony.
2. Anyone who knowingly aids or abets three or more unlicensed persons to practice a profession or employs or holds such unlicensed persons out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts, or who knowingly aids or abets three or more persons to practice any profession as exempt persons during the time when the professional licenses of such persons are suspended, revoked or annulled, shall be guilty of a class E felony.

### **§6513. Unauthorized use of a professional title a crime.**

1. Anyone not authorized to use a professional title regulated by this title, and who uses such professional title, shall be guilty of a class A misdemeanor.
2. Anyone who knowingly aids or abets three or more persons not authorized to use a professional title regulated by this title, to use such professional title, or knowingly employs three or more persons not authorized to use a professional title regulated by this title, who use such professional title in the course of such employment, shall be guilty of a class E felony.

### **§6514. Criminal proceedings.**

1. All alleged violations of sections sixty five hundred twelve or sixty five hundred thirteen of this article shall be reported to the department which shall cause an investigation to be instituted. All alleged violations of section sixty five hundred thirty one of the education law shall be reported to the department of health which shall cause an investigation to be instituted. If the investigation substantiates that violations exist, such violations shall be reported to the attorney general with a request for prosecution.
2. The attorney general shall prosecute such alleged offenses in the name of the state, provided, however, in the event of alleged violations of article one hundred fifty five of this title, a district attorney may prosecute such alleged offenses in the name of the state provided, however, that any district attorney may prosecute such offenses where they are incidental to a criminal prosecution instituted by him under other statutes.
3. All criminal courts having jurisdiction over misdemeanors are hereby empowered to hear, try and determine alleged violations under this title, which constitute misdemeanors, without indictment and to impose applicable punishment of fines or imprisonment or both. It shall be necessary to prove in any prosecution under this title only a single prohibited act or a single holding out without proving a general course of conduct.
4. A proceeding before a committee on professional conduct shall not be deemed to be a criminal proceeding within the meaning of this section.

### **§6515. Restraint of unlawful acts.**

Where a violation of this title is alleged to have occurred, the attorney general or, in the event of alleged violations of article

one hundred fifty five of this title occurring in cities having a population of one million or more, the corporation counsel may apply to the supreme court within the judicial district in which such violation is alleged to have occurred for an order enjoining or restraining commission or continuance of the unlawful acts complained of. The remedy provided in this section shall be in addition to any other remedy provided by law or to the proceedings commenced against a licensee under this title.

#### **6516. Civil enforcement proceedings and civil penalties.**

1. Issuance of cease and desist order. Whenever the department has reasonable cause to believe that any person has violated any provision of section sixty-five hundred twelve or sixty-five hundred thirteen of this article, the department may issue and serve upon such person a notice to cease and desist from such violation. Such cease and desist order shall be served personally by the department. If personal service can not be made after due diligence and such fact is certified under oath, a copy of the order shall be made by certified mail, return receipt requested, to the person's last known address by the department.
2. Contents of cease and desist order. The cease and desist order shall be in writing and shall describe with particularity the nature of the violation, including a reference of the specific provision or provisions of law alleged to have been violated and an order to the respondent to cease any unlawful activity. The cease and desist order shall advise the respondent (a) of the right to contest the order by requesting a hearing within thirty days of the service of the cease and desist order before a hearing officer designated by the department (b) of the right to request a stay of the cease and desist order at the time a hearing is requested and (c) shall set forth the respondent's rights at such a hearing pursuant to subdivision five of this section.
3. Civil penalties. Civil penalties up to five thousand dollars may be imposed for each violation and the respondent may be ordered to make restitution to any person who has an interest in any money or property, either real or personal, acquired by the respondent as a result of a violation. Whenever the department concludes that civil penalties and/or restitution may be warranted because of the egregiousness of the unlawful activity, it may serve, along with the cease and desist order, a notice of a hearing on the allegations of unlawful activity and the department's intention to order the respondent to make restitution and/or impose a civil penalty. The notice should specify the civil penalty sought for each violation.
4. Request for hearing. If the respondent to a cease and desist order contests the cease and desist order, the respondent shall request a hearing conducted by the department within thirty days of the receipt of the cease and desist order. Such a hearing shall be scheduled, and the requesting party notified of the date, within fifteen days of the receipt of the request for a hearing. If the respondent requests a stay of the cease

and desist order, the hearing officer shall determine whether the cease and desist order should be stayed in whole or in part within five working days of the request for a stay. The respondent may file a written answer to the cease and desist order prior to the hearing. A stenographic record of the hearing shall be made.

5. Conduct of hearing. The evidence in support of the cease and desist order shall be presented by an attorney for the department. The respondent may appear personally and may be represented by counsel at the hearing, may produce witnesses and evidence in his or her behalf at the hearing, may cross-examine witnesses and examine evidence produced against him or her at the hearing, and may issue subpoenas in accordance with section three hundred four of the state administrative procedure act. The hearing officer shall not be bound by the rules of evidence, but his or her determination that a violation of section sixty-five hundred twelve or sixty-five hundred thirteen of this article has occurred shall be based on a preponderance of the evidence. A hearing which has been initiated shall not be discontinued because of the death or incapacity of the hearing officer. In the event of a hearing officer's death or incapacity to serve, a new hearing officer shall be designated by the department to continue the hearing. The new hearing officer shall affirm in writing that he or she has read and considered evidence and transcripts of the prior proceedings.
6. Results of hearing. The hearing officer designated by the department shall render a written report which shall include (a) findings of fact, (b) a determination on each violation alleged in the cease and desist order, (c) a determination as to whether to accept, reject, or modify any of the terms of the cease and desist order in whole or in part, and (d) the civil penalty imposed, if any. A copy of the hearing officer's written report shall be served upon the respondent with a notice setting forth the respondent's rights to an administrative appeal within ten days of the conclusion of the hearing.
7. Appeals. The decision of the hearing officer shall be final, except that it may be appealed to a regents review committee within twenty days of the receipt of the hearing officer's report. The initiation of an appeal shall not in and of itself affect the validity or terms of the cease and desist order. The regents review committee shall consist of three members, at least one of whom shall be a regent. The review shall be based on the transcript and the report of the hearing officer. The respondent may appear at the meeting, and the regents review committee may require the respondent to appear. The respondent may be represented by counsel. The department shall notify the respondent at least ten days before the meeting (a) of the time and place of the meeting, (b) of the right to appear, (c) of the right to be represented by counsel, (d) whether or not the respondent is required to appear, and (e) of such other information as may be considered appropriate. After the meeting, the regents review committee shall transmit a written report of its review to the board of

regents. The board of regents (i) shall consider the transcript, the report of the hearing officer, and the report of the regents review committee, (ii) shall decide whether the respondent has violated each charge in the cease and desist order, (iii) shall decide what penalties, if any, to impose as prescribed in this section, and (iv) shall issue an order to carry out its decisions. Such decisions shall require the affirmative vote of a majority of the members of the board of regents. The order shall be served upon the respondent personally or by certified mail to the respondent's last known address and such service shall be effective as of the date of the personal service or five days after mailing by certified mail. The decisions of the board of regents under this section may be reviewed in a proceeding pursuant to article seventy-eight of the civil practice law and rules brought in the supreme court, Albany county. Such decisions shall not be stayed or enjoined except upon application to such supreme court pursuant to article sixty-three of the civil practice law and rules with notice to the department and to the attorney general.

8. General enforcement of cease and desist order. In any case where the cease and desist order is confirmed by the board of regents or where the respondent does not request an administrative hearing within the allotted time or does not appeal the decision of the hearing officer within the allotted time, an action or proceeding may be filed in the name of the state of New York seeking a restraining order, injunction, appropriate writ, or judgment against any person who violates the terms of the cease and desist order.
9. Special enforcement of civil monetary penalties. Provided that no appeal is pending on the imposition of such civil penalty, in the event such civil penalty imposed by the department remains unpaid, in whole or in part, more than forty-five days after written demand for payment has been sent by first class mail to the address of the respondent, a notice of impending default judgment shall be sent by first class mail to the respondent. The notice of impending default judgment shall advise the respondent: (a) that a civil penalty

was imposed on the respondent; (b) the date the penalty was imposed; (c) the amount of the civil penalty; (d) the amount of the civil penalty that remains unpaid as of the date of the notice; (e) the violations for which the civil penalty was imposed; and (f) that a judgment by default will be entered in the supreme court, Albany county unless the department receives full payment of all civil penalties due within twenty days of the date of the notice of impending default judgment. If full payment shall not have been received by the department within thirty days of mailing of the notice of impending default judgment, the department shall proceed to enter with such court a statement of the default judgment containing the amount of the penalty or penalties remaining due and unpaid, along with proof of mailing of the notice of impending default judgment. The filing of such judgment shall have the full force and effect of a default judgment duly docketed with such court pursuant to the civil practice law and rules and shall in all respects be governed by that chapter and may be enforced in the same manner and with the same effect as that provided by law in respect to execution issued against property upon judgments of a court of record. A judgment entered pursuant to this subdivision shall remain in full force and effect for eight years notwithstanding any other provision of law.

## **Regents Rules Part 17**

### **Disciplinary Proceedings in the Professions**

#### **§17.1 Complaints or other information.**

All complaints or other information relating to licensees authorized to practice a profession under title VIII of the Education Law shall be referred to the director of the Office of Professional Discipline.

#### **§17.2 Investigation.**

The director of the Office of Professional Discipline or that officer's designee shall, in matters involving possible professional misconduct, initiate an investigation of each such complaint or other information.

#### **§17.3 Prosecution or settlement of disciplinary proceedings.**

Prosecution or settlement of disciplinary proceedings shall be conducted as provided in title VIII of the Education Law, and as provided in this Part.

#### **§17.4 Reports.**

The director of the Office of Professional Discipline or that officer's designee shall submit a report by April first of each year on the status of cases investigated during the previous year, as well as on the disposition of any criminal or civil matters processed through the office, to the chairman of the State Board for each of the professions supervised by the Board of Regents.

**Note: Laws, rules and regulations are current as of the date of this publication**

### §17.5 Consent orders.

Disciplinary proceedings conducted pursuant to the provisions of title VIII of the Education Law may be disposed of in accordance with the following procedure:

- (a) A licensee who is under investigation, or against whom charges have been voted, who admits guilt to at least one of the acts of misconduct alleged or charged, in full satisfaction of all allegations or charges, or who does not contest the allegations or charges or who cannot successfully defend against at least one of the acts of misconduct alleged or charged, shall notify the director of the Office of Professional Discipline or the director's designee.
- (b) If the director of the Office of Professional Discipline or the director's designee, a designated member of the State Board for the applicable profession, and the licensee agree to a statement by the licensee admitting guilt to one or more of the allegations or charges or setting forth a decision not to contest the allegations or charges or stating that the licensee cannot successfully defend against such allegations or charges and agreeing to a proposed penalty, and if a designated member of the Board of Regents thereafter agrees to such statement and proposed penalty, and if the Committee on the Professions thereafter agrees to such statement and proposed penalty, a written application, signed by all the above except the Committee on the Professions, shall be submitted by the licensee to the Board of Regents based upon the statement and proposed penalty consenting to the issuance of an order of the Commissioner of Education or his or her designee effectuating such penalty. The provisions of this section shall apply to licensees subject to disciplinary proceedings conducted pursuant to title VIII of the Education Law. They shall be applicable to individuals licensed or registered pursuant to articles 131 or 131-B of title VIII of the Education Law for those cases in which charges of professional misconduct were served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991. They shall also be applicable to licensees and registrants subject to article 137 of the Education Law. With respect to such licensees subject to articles 131 or 131-B of title VIII of the Education Law, the agreement of the director of the Office of Professional Medical Conduct or that officer's designee, and of the Commissioner of Health or his or her designee, to the statement and proposed penalty and their signatures on the application shall be required in lieu of the agreement and signature of the director of the Office of Professional Discipline. With respect to such licensees subject to the provisions of articles 131 or 131-B of title VIII of the Education Law, the term State Board as used in this section means the State Board for Professional Medical Conduct. With respect to licensees and registrants subject to article 137 of the Education Law, the agreement of the executive secretary of the State Board for Pharmacy to the statement and proposed penalty and his or her signature on the application shall also be required.

- (c) The application shall be in such form and shall contain such substance as is acceptable to the director of the Office of Professional Discipline or the director's designee.
- (d) In the event an application is not granted by the Board of Regents, nothing contained therein shall be binding upon the licensee or construed to be an admission of any act of misconduct alleged or charged, and such application shall not be used against the licensee in any way. Any such application shall be kept in strict confidence during the pendency of the disciplinary proceeding. In addition, such denial by the Board of Regents shall be without prejudice to the continuance of the disciplinary proceeding and the final determination by the Board of Regents pursuant to the provisions of the Education Law.
- (e) In the event the Board of Regents grants the application, the commissioner or his or her designee shall issue an order in accordance therewith.

### §17.6 Surrender of license.

Disciplinary proceedings conducted pursuant to the provisions of title VIII of the Education Law may be disposed of in accordance with the following procedure:

- (a) A licensee who is under investigation or against whom charges have been voted, who wishes to surrender his or her license to practice any of the professions enumerated in title VIII, shall notify the director of the Office of Professional Discipline or that officer's designee.
- (b) An application to surrender a license shall be based upon a statement that the licensee admits guilt to at least one of the acts of misconduct alleged or charged, in full satisfaction of all allegations or charges, or does not contest the allegations or charges, or cannot successfully defend against at least one of the acts of misconduct alleged or charged. If the director or the director's designee, a designated member of the State Board for the applicable profession, and the licensee agree to such statement, and if a designated member of the Board of Regents thereafter agrees to such statement, and if the Committee on the Professions thereafter agrees to such statement, a written application, signed by the licensee, shall be submitted to the Board of Regents. The application shall be in such form and shall contain such substance as is acceptable to the director of the Office of Professional Discipline or the director's designee. The provisions of this section shall apply to licensees subject to disciplinary proceedings conducted pursuant to title VIII of the Education Law. They shall be applicable to individuals licensed or registered pursuant to articles 131 or 131-B of title VIII of the Education Law for those cases in which charges of professional misconduct were served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991. They shall also be applicable to licensees and registrants subject to article 137 of the Education Law. With respect to

such licensees subject to articles 131 or 131-B of title VIII of the Education Law, the agreement of the director of the Office of Professional Medical Conduct or that officer's designee and the Commissioner of Health or his or her designee to the statement, and their signature on the application, shall be required in lieu of the agreement and signature of the director of the Office of Professional Discipline. With respect to such licensees subject to articles 131 or 131-B of title VIII of the Education Law, the term State Board as used in this section means the State Board for Professional Medical Conduct. With respect to licensees and registrants subject to article 137 of the Education Law, the agreement of the executive secretary of the State Board of Pharmacy to the statement and his or her signature on the application shall also be required.

- (c) In the event the application is not granted by the Board of Regents, nothing contained therein shall be binding upon the licensee or construed to be an admission of any act of misconduct alleged or charged, and such application shall not be used against the licensee in any way. The application shall be kept in strict confidence during the pendency of the disciplinary proceeding. In addition, any such denial by the Board of Regents shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board of Regents pursuant to the provisions of the Education Law.
- (d) In the event the Board of Regents grants the application, the commissioner or his or her designee shall issue an order in accordance therewith.

#### **§17.7 Violation of probation.**

- (a) Upon the receipt of information indicating that the respondent may be in violation of any of the terms or conditions of respondent's probation, the department shall conduct an investigation.
- (b) The director of the Office of Professional Discipline shall review the results of the investigation and if the director determines that a violation of probation proceeding is warranted, the director shall give notice to the respondent, by letter, of the facts forming the basis of the alleged violation of respondent's probation. The respondent, in said letter, shall be requested to indicate whether there is any dispute as to the facts, and shall be informed that if respondent disputes any of the facts the respondent shall be entitled to a hearing thereon.
- (c) If the respondent does not dispute the facts forming the basis of the alleged violation of probation, the matter shall be submitted to the Regents Review Committee for its review and recommendations(s) [sic] as to whether, based upon the undisputed facts, there has been a violation of the terms or conditions of respondent's probation and, if so, as to the measure of discipline to be imposed upon the respondent.

(d) If the respondent disputes any of the facts forming the basis of the alleged violation of probation, the respondent shall be afforded a hearing before a hearing officer appointed by the commissioner to hear and make findings of fact, conclusions of law and recommendation(s). The department shall give the respondent at least 10 days' notice of the hearing, 15 if by mail. The evidence in support of the application shall be presented by counsel on behalf of the department and the respondent shall also have the right to be represented by counsel. The department and the respondent have the right to produce witnesses and other evidence, to cross-examine witnesses, and to examine any other evidence produced at the hearing. A stenographic record of the hearing will be made, and the hearing officer shall not be bound by the rules of evidence, but the findings of fact and conclusions of law of the hearing officer shall be based upon substantial evidence.

- (e) The report of the hearing officer shall be reviewed by the Regents Review Committee.
- (f) The Regents Review Committee shall notify the respondent, at least seven days before its meeting, of the time and place of such meeting, and shall also notify the respondent of the opportunity to appear in person and to be represented by counsel at such meeting.
- (g) The Regents Review Committee shall transmit the report of the hearing officer and a written report of its review to the Board of Regents. The final determination shall be made by the Board of Regents, and the commissioner or his or her designee shall issue an order implementing such determination.
- (h) The measure of discipline to be imposed for any violation of probation may be to continue the respondent on probation for a period in addition to the period of probation imposed in the original order, or to terminate the probation, vacate the stay of execution, and impose any measure of discipline authorized by section 6511 of the Education Law. A violation of probation shall constitute unprofessional conduct, and may constitute the basis for proceedings under either the provisions of section 6510 of the Education Law or of this Part.

#### **§17.8 Hearing panel; administrative officers.**

Findings of fact, recommendations as to penalties to be imposed, and any other actions taken by a hearing panel in disciplinary proceedings, except as hereinafter set forth, shall be made by majority vote. Any determination of guilt shall require a minimum of a four fifths vote of the hearing panel. An administrative officer, admitted to practice as an attorney in the State of New York, shall rule on all motions, procedures and other legal objections, and draft a report which shall reflect the determination and recommendation of the panel and be subject to

the approval of and signature by the panel chairperson on behalf of the panel. The administrative officer shall not be entitled to a vote.

### **§17.9 Summary suspensions.**

- (a) If the director of the Office of Professional Discipline or that officer's designee believes that the public health, safety or welfare imperatively requires emergency action against a professional license, certificate, registration, permit or other authorization of the licensee to practice under title VIII of the Education Law, the director or the director's designee may make an application, on behalf of the department, to the Board of Regents for the summary suspension of said authorization pending the prompt institution prosecution and completion of formal disciplinary proceedings as provided under section 6510 of the Education Law.
- (b) Summary suspension proceedings shall be commenced by the service on the licensee of a notice of hearing and a verified petition. The notice of hearing shall state the time and place of oral argument on the application for summary suspension and the regent designated by the chancellor to hear the matter, and shall include a copy of this rule. The notice of hearing and petition shall be personally served upon the licensee no later than five days prior to the date set for oral argument. If personal service cannot be made after due diligence, the notice of hearing and petition may be served by certified mail, to the licensee's last known address, not less than eight days prior to the date set for oral argument. The petition shall set forth the basis for the application and shall include sworn statements upon personal knowledge and/or exhibits demonstrating probable cause to believe that respondent has committed professional misconduct and that the public health, safety or welfare imperatively requires emergency action to summarily suspend respondent's license. A verified answer and any

sworn statements and supporting exhibits may be served by respondent upon the director of the Office of Professional Discipline or the director's designee no later than two days prior to the date set for oral argument. The director of the Office of Professional Discipline or the director's designee may serve a verified reply, together with any sworn statement and supporting exhibits, to the answer no later than the day prior to the date of oral argument. The answer and/or reply may be served by certified mail by mailing to the addressee no later than three and two days, respectively, prior to the date set for oral argument. The petition, answer and reply, together with any sworn statement and supporting exhibits, shall be transmitted at the time of service of each paper to the regent designated to hear the case. Saturdays, Sundays and legal holidays shall be excluded in calculating the periods of time set forth in this subdivision.

- (c) At the oral argument, the Office of Professional Discipline and respondent and/or his or her attorney shall have the right to be heard, but no testimony shall be taken and no transcript of oral arguments shall be required. No further papers shall be submitted at the oral argument except by permission of the regent designated to conduct the proceeding.
- (d) The regent designated by the chancellor to conduct the proceeding shall submit a written report of his or her conclusions and recommendation(s) to the Board of Regents, which shall determine whether to grant or deny the application for summary suspension. A determination by the Board of Regents granting the application must be based upon a finding that the public health, safety or welfare imperatively requires emergency action.
- (e) Any determination of the Board of Regents shall be without prejudice to the department or licensee in any subsequent formal disciplinary proceeding.

## **Regents Rules Part 24**

### **Committee on the Professions**

applicants for licensure or other authorizations to practice in accordance with the following standards.

- (a) Preprofessional education.
  - (1) The Committee on the Professions may accept graduation from a professional program which is either registered by the department or nationally accredited in lieu of a maximum of six semester hours of preprofessional education.
  - (2) The Committee on the Professions may accept postsecondary study satisfactory to the department and performed after completion of professional study requirements in lieu of a maximum of 30 semester hours of required preprofessional study.

### **§24.1 Membership.**

The Committee on the Professions shall consist of three department officers designated by the Board of Regents pursuant to section 6506(10) of the Education Law.

### **§24.2 Purpose.**

The Committee on the Professions shall review and make recommendations or determinations in licensing and disciplinary matters as provided in this Part or pursuant to referrals from the Board of Regents.

### **§24.3 Standards.**

The Committee on the Professions shall review and determine questions of the preprofessional or professional education of

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- (b) Professional education. As the equivalent of a professional program registered by the department, the Committee on the Professions may accept a professional program which is:
- (1) offered by an institution accredited by an accrediting organization acceptable to the department or recognized by appropriate civil authorities of the country in which the school is located as an acceptable program of preparation for professional practice;
  - (2) designed and conducted by the degree-granting institution to prepare graduates for the professional practice of the profession in the State or country in which the institution is located; and
  - (3) demonstrated to be the substantial equivalent in scope, content and resources to a program meeting the requirements established by Part 52 of this Title for the registration of a professional licensure qualifying program in the State.

- (c) Waiver of citizenship requirement for an alien physician. The Committee on the Professions shall be authorized to grant a one-time three-year waiver of the citizenship requirement for medical licensure to an alien physician, provided that such applicant:
- (1) applies for medical licensure;
  - (2) meets all requirements for a medical license except citizenship;
  - (3) agrees to maintain lawful immigration status; and
  - (4) agrees to practice in an area which has been designated by the State Education Department as medically underserved.

**§24.4 Review of appeals - education or experience.**

The Committee on the Professions may review and determine appeals for licensing determinations of the department staff relating to education or experience requirements if the chairman of the committee determines that the appeal involves a substantial or novel question which should be reviewed by the committee.

**§24.5 Review of appeals - license surrender and restoration.**

The Committee on the Professions shall review and determine appeals pursuant to section 18.7 of this Title relating to the voluntary surrender and restoration of licenses.

**§24.6 Review of questions of moral character.**

The Committee on the Professions shall review and determine questions of moral character in accordance with the provisions of Part 28 of this Title.

**§24.7 Review in other cases.**

- (a) The Committee on the Professions shall review and submit its recommendation to the Board of Regents for final determinations in the following cases:
- (1) applications pursuant to Education Law, section 6506(5), for the waiver of an education, experience or examination requirement on the ground that the requirement has been substantially met; and
  - (2) petitions for restoration of a professional license which has been revoked or surrendered pursuant to sections 6510 or 6510-a of the Education Law or title II-A of article 2 of the Public Health Law. For individuals served prior to June 20, 1997 with an order of revocation, acceptance of surrender, or denial of an application for restoration or reinstatement by vote of the Board of Regents, at least one year shall have elapsed from the date of such service for the acceptance by the department of a petition to the Board of Regents for restoration of a license or certificate, except that a period of time during which the license was suspended during the pendency of the discipline proceeding may reduce the one-year waiting period. For individuals served on or after June 20, 1997 with an order of revocation, acceptance of surrender, or denial of an application for restoration or reinstatement by vote of the Board of Regents, at least three years shall have elapsed from the date of such service for the acceptance by the department of a petition to the Board of Regents for restoration of a license or certificate, except that a period of time during which the license was suspended during the pendency of the discipline proceeding may reduce the three-year waiting period. This section shall not apply to restoration of licenses which have been temporarily surrendered pursuant to Education Law, section 6520-b, or Public Health Law, section 230(13).
    - (i) Materials submitted in response to the Committee on the Professions' recommendation to the Board of Regents shall be filed no later than 15 days following the postmarked date of the written notification of the decision or recommendation of the Committee on the Professions.
    - (ii) If an applicant has failed to remain current with developments in the profession, and a substantial question is presented as to the applicant's current fitness to enter in to the active practice of the profession, the Board of Regents may require that the applicant take and obtain satisfactory grades on a proficiency examination satisfactory to the department prior to the issuance of a license or limited permit.
    - (iii) An applicant shall pay to the department a fee of \$750 at the time he or she submits an application

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for the restoration of a professional license, which has been revoked or surrendered as prescribed in this paragraph.

- (b) The Committee on the Professions shall review and determine whether to agree to the following:
- (1) a statement upon which an application for a consent order is based and proposed penalty, pursuant to section 17.5 of this Title; and
  - (2) a statement upon which an application to surrender a license is based, pursuant to section 17.6 of this Title.

#### **§24.8 Unacceptable practice protocols.**

The Committee on the Professions shall review and determine appeals from findings of unacceptable practice protocols involving nurse practitioners and collaborating physicians.

#### **§28.1 Determination of good moral character.**

The determination of whether an applicant for authorization to practice a profession, under title VIII of the Education Law, is of good moral character shall be made in accordance with the procedures specified in this Part.

#### **§28.2 Information.**

All information indicating that an applicant has been convicted of a crime, or has committed an act which raises a reasonable question as to the applicant's moral character, shall be referred to the director of the Office of Professional Discipline or his or her designee.

#### **§28.3 Investigation.**

The director of the Office of Professional Discipline, or his or her designee, shall arrange for a full and complete investigation of the circumstances surrounding such conviction or act. If it is determined that a reasonable question exists as to the applicant's moral character, then the director, or his or her designee, shall submit the results of the investigation, including any letters of reference from peers or others which may have been submitted by the applicant, to a panel of the appropriate professional State Board for its review. The panel shall consist of three or more members of the State Board.

#### **§28.4 Review.**

Upon such review, the panel, by majority vote, may conclude in favor of the applicant to the effect that the moral character of the applicant is adequate for licensure, thereby fulfilling that licensure requirement, and the applicant and the director of the Division of Professional Licensing Services shall be notified of such conclusion by the Office of Professional Discipline. If,

#### **§24.9 Reconsideration.**

An application for reconsideration of a determination made by the Committee on the Professions or by the Board of Regents following a Committee on the Professions recommendation may be accepted upon a showing that the original action was based on an error of law, or that there is new and material evidence which was not previously available, or that circumstances have changed subsequent to the original determination.

## **Regents Rules Part 28**

### **Determination of Good Moral Character in the Professions**

upon such review, the panel concludes, by a majority vote, that a substantial question exists as to the moral character of the applicant, the applicant shall be notified thereof. Upon the written request of the applicant, within 30 days after receipt of such notice, the department shall schedule a hearing on such question.

#### **§28.5 Hearing.**

The applicant shall be given 15 days' notice, by mail, of the time and place of the hearing and a statement of the matters asserted which raised the question of the applicant's moral character. The applicant may be represented at the hearing by an attorney, may cross-examine witnesses, may produce witnesses, and may present evidence in support of the applicant's good moral character. The hearing, at which a verbatim record shall be taken, shall take place before a panel consisting of three or more members of the appropriate professional State Board, and before an administrative officer admitted to practice as an attorney in the State of New York, designated by the department. Such administrative officer shall have authority to rule on all motions, procedures and other legal objections, but shall not be entitled to vote in the determination of the panel. The determination of the panel shall be made by a majority vote of the panel and shall be rendered in a written report which shall be drafted by the administrative officer, shall reflect the determination and recommendations of the panel, and shall be subject to the approval of and signature by the panel chairperson on behalf of the panel. Copies of the report shall be forwarded to the director of the Division of Professional Licensing Services and to the applicant.

## **§28.6 Appeal.**

The applicant or the director of the Office of Professional Discipline may appeal the determination of the panel concerning the licensure requirement of good moral character by filing a written notice of appeal therefrom with the Committee on the Professions within 30 days after service of the report of the panel upon the party taking the appeal. In the event no appeal is taken from the determination of the panel, the determination of the panel shall be final. In the event either party appeals from the determination of the panel, the appellant may submit a brief to the Committee on the Professions and the opposing party within 30 days after filing the notice of appeal. An answering brief may be filed by the opposing party with the Committee on the Professions within 20 days after the receipt by the opposing party of the brief submitted by the appellant. The Committee on the Professions may affirm, reverse or modify the determination of the panel and/or make such other determination as it may deem just and proper under the circumstances. The determination of the Committee on the Professions shall be final and copies thereof shall be forwarded to the applicant and to the director of the Office of Professional Discipline.

## **§28.7 Reapplication.**

Whether or not the applicant appeals from the determination of the panel, the applicant may reapply for licensure to the director of the Division of Professional Licensing Services after the expiration of 18 months from the date of service of the report of the panel.

## **§28.8 Proficiency examination.**

If the Committee on the Professions determines that the applicant otherwise meets the moral character requirements, but has failed to remain current with developments in the profession, and a substantial question is presented as to the applicant's current fitness to enter into the active practice of the profession, the Committee on the Professions may require that the applicant take and obtain satisfactory grades on a proficiency examination satisfactory to the department prior to the issuance of a license or limited permit.

## **Regents Rules Part 29 Unprofessional Conduct**

### **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;

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- (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 therefor 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;

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(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  
occupational therapy assistant  
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  
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

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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.

(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 gloves at all times when touching blood, saliva, other body fluids or secretions, mucous membranes, non-intact 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 eye wear 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 to 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.

- 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.

#### **§ 29.14 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:

### **COMMISSIONER'S REGULATIONS**

#### **Part 59**

#### **General Provisions**

#### **§59.1 Applicability.**

- (a) As used in this Subchapter, license shall mean a permanent authorization, issued pursuant to title VIII of the Education Law, to practice a profession or to use a professional title.
- (b) The provisions of this Part shall apply to admission to the licensing examination and to the issuance of licenses in each of the professions supervised by the Board of Regents except as may otherwise be provided in this Subchapter with respect to specific professions.

the date of approval, registration or accreditation of the program and approval of the accrediting organization by the department. The department may accept graduation by a transfer student from an unaccredited program of professional education, provided such student satisfies the educational requirements of statute and regulation in accordance with this Part and as otherwise provided in this Subchapter with respect to the specific profession, and further provided that such student completes not less than the final year in the unaccredited program to which he has transferred.

#### **§59.2 Education requirements.**

- (a) An applicant for a professional license shall satisfy all education requirements before being admitted to a professional licensing examination, except that the department may accept professional examination grades earned in another state or jurisdiction of the United States prior to completion of professional education if the applicant was licensed in that jurisdiction on the basis of said examination and both the grades and the examination satisfy requirements in this State. Education requirements for a professional license shall include any preprofessional education or experience required as a prerequisite for admission to a registered program of professional education. The department, in its discretion, may accept in satisfaction of a professional education requirement, the completion of an approved or registered program or a program accredited by a professional accreditation organization acceptable to the department. The department, in its discretion, may also accept graduation by a transfer student from such a program, provided such student has completed not less than the final year of professional education in such program subsequent to

- (b) Education and experience required for the issuance of a license or limited permit shall have been performed in accordance with all requirements of the jurisdiction in which it took place. The department may require contemporaneous evidence of the education and/or experience required for the issuance of a license or limited permit.

#### **§59.3 English proficiency requirement.**

An applicant for licensure whose application is based upon credit granted for the completion of courses of study in a country where English is not the principal language spoken shall demonstrate proficiency in English by passing an examination in English proficiency acceptable to the department or by passing a licensing examination acceptable to the department given in English.

#### **§59.4 Citizenship or immigration status requirements.**

In those professions where citizenship or immigration status is required for licensure, an applicant shall submit evidence satisfactory to the department of compliance with such requirement.

**Note: Laws, rules and regulations are current as of the date of this publication**

### §59.5 Professional examinations.

- (a) The department may develop its own examinations or may select in whole or in part examinations developed or administered by other organizations. Unless specifically authorized by the department, no examination shall be deemed acceptable which has been used in its entirety during the five years previous to the current administration.
- (b) Applications for admission to a licensing examination, including all required fees shall be completed and filed not less than 60 days prior to the examination. When the department finds that the application is complete and that the requirements for admission to an examination have been met, it will issue to the applicant an admission card which will include the date, time and place of the examination and entitle the applicant to admission thereto.
  - (1) The department may accept applications for admission to department conducted examinations after the filing date for such examinations provided that the department is able to review and process such applications in a timely manner and that there are adequate examination facilities and materials available. Such applications shall require the payment of the late filing fee enumerated in Section 59.9 of this Part, which shall be in addition to the regular admission or reexamination fee. If, upon review of a late application, the department determines that the applicant is ineligible to be admitted to the examination, the department shall retain the late filing fee. In the event that the department is unable to review a late application, the late filing fee shall be refunded.
  - (2) The department may waive the late filing fee or delay the required date for filing in cases where notification to the applicant of the results of the previous examination are released less than 75 days prior to the next examination.
- (c) For the purpose of identification for admission to the examination, the applicant shall present the current admission card with a photograph attached and, at the conclusion of the examination, return the card to the department representative conducting the examination. A candidate shall permit fingerprints to be taken during each part of an examination.
- (d) Licensing examinations shall be held at times and places determined by the commissioner and conducted under the following conditions. Any candidate violating such conditions may be dismissed from the examination by the department representative, and the examination paper of such candidate shall be deemed a failure. At the discretion of the department, such candidate may be denied admission to subsequent licensing examinations.
  - (1) No candidate shall enter any examination more than 60 minutes after the scheduled admission time, nor shall any candidate leave the examination until 60 minutes have elapsed from the scheduled admission time. No candidate shall leave a department administered practical or clinical examination until dismissed by the chief examiner.
  - (2) Compensatory time may be granted candidates arriving late for an examination, at the discretion of the department.
  - (3) A candidate shall not obtain unauthorized possession of examination materials.
  - (4) During the examination, no candidate shall give or receive help, or communicate with any other candidate in any way, except upon the express permission of the department representative.
  - (5) A candidate shall bring into the examination room only such books and other materials as are indicated on the admission card and permitted by the department.
  - (6) A candidate shall not remove from the examination room any of the materials provided for an examination, and shall not reproduce or reconstruct any portion of the examination or answer paper, or aid in such reproduction or reconstruction by any means, unless authorized by the department. Such materials include examination booklets, individual examination questions, answer sheets or score sheets, instructions and any reference tables or papers which were provided by the department and which may have been used in the course of the examination.
- (e) Papers will be scored and candidates notified of success or failure by the department or its designee. If the candidate has failed, the department will advise when and on what basis the candidate may be reexamined and of any procedure for review of the failed examination.
- (f) The passing score in each component of each part of the licensing examination shall be determined as provided by law and shall be computed without rounding. In those examinations administered by the department, unless otherwise provided in the regulations pertaining to a specific profession, a candidate may retain credit for scores earned on examination parts for a period not to exceed five years from the examination date. A candidate who is reexamined in a part already passed shall not retain credit for such part from earlier examinations. In those professions which use national or regional examinations administered by the Department, this subdivision shall apply whether or not the examination is taken in the State of New York.

(g) In those professions where reviews of examination papers are permitted, candidates will be allowed to review only those parts of the examination which they failed with a score of 60 or higher. In those professions which permit candidates to pass on average all scores used in computing the average are reviewable. A request for review of an examination paper or score may be made in writing to the department not later than 30 days after examination grades are released by the department. A candidate shall not remove from the reviewing site any of the materials provided for the review of an examination given previously, and shall not reproduce or reconstruct any portion of the examination or the answer paper, or aid in such reproduction or reconstruction by any means, unless authorized by the department. No one other than the candidate will be permitted access to examination materials. Where examinations are offered under contract with testing agencies, reviews shall be consistent with these contracts, where applicable. All reviews shall be conducted at sites selected and supervised by the department or an authorized testing agency.

(h) An applicant who has been admitted to a professional licensing examination conducted by the department and subsequently fails to appear for such an examination twice shall forfeit any remaining fee credits for that examination. The applicant, upon subsequently applying for readmission to that examination, shall pay all required admission fees.

#### **§59.6 License by endorsement.**

An applicant for endorsement of a license issued by another jurisdiction shall establish that the applicant:

- (a) meets all requirements of section 6506 (6) of the Education Law;
- (b) has had satisfactory professional experience of at least two years following initial licensure, unless a different period is provided in the regulations pertaining to a particular profession; and
- (c) has not attempted unsuccessfully a licensing examination used by the State of New York either prior to or after making application for licensure by endorsement, unless such applicant has later passed a comparable licensing examination.

#### **§59.7 Licenses and initial registrations.**

When the candidate fulfills all requirements for licensure, the department shall issue a first registration certificate and a license. The first registration shall be for the remainder of the applicable registration period. Pursuant to section 6502 of the Education Law the registration fee shall be prorated for those persons newly licensed and registered, or reactivating registration, during the second or third year of a registration period.

#### **§59.8 Registration for professional practice.**

- (a) Each licensee shall be responsible for registering with the department. Failure to register shall subject the practitioner to the late fee set forth in section 6502 (3) of the Education Law. Any practitioner who willfully refuses to register shall be subject to the penalties set forth in section 6511 of such law.
- (b) A licensee not practicing or using a restricted title in New York State or an individual practicing only in a setting which is exempt from licensure in accordance with law may allow registration to lapse without being subject to the late fee set forth in section 6502 of the Education Law, by notifying the department of their cessation of practice or exemption in the State. At such time as the licensee may choose to resume practice or enter practice in a nonexempt setting in New York State, a registration certificate may be issued upon the filing of a proper application and the payment of the required registration fee.
- (c) Registration certificates shall be conspicuously displayed by each licensee in each office in which the profession is practiced. In instances where licensees regularly practice at more than one professional office, registration certificates shall be obtained for each office bearing the licensee's name and the exact address of each such office upon making proper application to the department and submitting a fee. Where practice is carried on in other than individual offices, each licensee shall have a current registration certificate available for inspection at all times.
- (d) Registration periods for each profession shall be in accordance with schedules established by the department.
- (e) Each professional practitioner shall notify the department in writing of any change of name or address not later than 30 days after such change.
- (f) When an applicant or licensee pays a fee by a personal check and it is subsequently not honored by the issuing institution, the applicant or licensee must subsequently pay by a certified check, a bank check, or a money order. The replacement payment shall include any late and penalty charges required under section 6502 (3) and (7) of the Education Law.
- (g) Any licensee who fails to submit a replacement registration payment as required in subdivision (f) of this section, shall have his or her registration voided 60 days from the date the department sends notification that said fee was not honored by the issuing institution.

#### **§59.9 Special service fees.**

The department will charge the following fees for special services not otherwise provided by Education Law:

**Note: Laws, rules and regulations are current as of the date of this publication**

- (a) for the issuance of a trainee permit in ophthalmic dispensing, \$25;
- (b) for certification of completion of pharmacy internship, \$20;
- (c) for admission to the fundamental theory section of the examination in landscape architecture, \$50 and for each subsequent reexamination, \$50, the remainder of the fee set forth in section 7324 of the Education Law to be paid prior to admission to the remainder of the examination;
- (d) for certification of licensure or examination grades to another jurisdiction, \$20;
- (e) for certification in acupuncture of a licensed physician or dentist, \$150;
- (f) for the issuance of an additional registration certificate, \$10;
- (g) for the issuance of a letter of eligibility to undertake clinical clerkships, \$30;
- (h) for the issuance of a Medical Science Knowledge Profile (MSKP) or satisfactory equivalent examination certificate to undertake clinical clerkships, \$20;
- (i) for review by the department of an examination conducted by the department, \$25;
- (j) for rescoring of an examination conducted by the department, \$20;
- (k) for verification by the department of the transcript of an applicant or licensee, \$20;
- (l) for admission to the Special Purpose Examination (SPEX) in medicine, \$175;
- (m) for late filing for admission to a licensing examination, \$50;
- (n) for written verification of licensure and/or registration status, \$10;
- (o) for reregistration of a licensee whose six-month registration has expired due to his or her failure to satisfy child support or combined child and spousal support obligations as prescribed in section 3-503 of the General Obligations Law, an amount equal to the licensee's registration fee; and
- (p) for provision of a non-mandatory photo identification card for professionals licensed and registered pursuant to Title VIII of the Education Law, a fee not to exceed \$35 for the cost of administration.

**§59.10 Professional service corporations.**

- (a) Applications to the State Education Department for the issuance of a certificate pursuant to Business Corporation

Law, section 1503 (b) (ii), shall be made by submitting to the department a fully executed certificate of incorporation which complies with the provisions of such section and of section 1512 of such law, and which sets forth or has annexed to it an affidavit of one of the original officers, directors or shareholders of the corporation setting forth the name of each individual who is to be one of the original shareholders, directors or officers of the corporation.

- (b) If the name of a proposed professional service corporation contains the name of a deceased person, the certificate of incorporation, when submitted to the department for the issuance of a certificate pursuant to Business Corporation Law, section 1503 (b) (ii) shall be accompanied by an affidavit of one of the subscribers to the certificate of incorporation establishing compliance with the provisions of Business Corporation Law, section 1512 (a) (2).
- (c) A certificate pursuant to Business Corporation Law, section 1503 (b) (ii) may be issued when:
  - (1) the proposed name of the corporation appropriately describes the profession practiced and the services to be provided; and
  - (2) if the proposed name of the corporation includes a reference to a specialized area of professional practice, satisfactory evidence is submitted of compliance with any provision of Part 29 of this Title, rules of the Board of Regents restricting or regulating the use of specialty titles or announcements of limitations of practice in the particular profession.

**§59.11 Refunds.**

Monies received by the State Education Department pursuant to section 110 of the Education Law, may be refunded as follows:

- (a) Full refunds may be granted when:
  - (1) the fee submitted is an overpayment;
  - (2) the requested service cannot be provided;
  - (3) a written request for the refund of a registration fee is received prior to the beginning of that registration period; or
  - (4) a registrant who has paid a registration fee is deceased prior to the beginning of that registration period and a written refund request is received within one year of the date of death.
- (b) Partial refunds not to exceed 50 percent of the licensure application fee may be granted if an applicant for any practice authorization elects to withdraw such application prior to the issuance or denial by the department of such

**Note: Laws, rules and regulations are current as of the date of this publication**

authorization, and such applicant has not been admitted to a department conducted examination. Each applicant who has at any time withdrawn an application and received a refund shall be required to pay in full all fees upon submitting any subsequent application.

**§59.12 Training regarding child abuse and maltreatment reporting.**

- (a) All persons applying on or after January 1, 1991 for the issuance or renewal of a license/registration or limited permit in medicine, chiropractic, dentistry, dental hygiene, registered professional nursing, podiatry, optometry, psychology and any other professions listed in section 6507 (3) (a) of the Education Law shall submit documentation acceptable to the department of the completion of two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment and obtained either from a provider approved by the department pursuant to Part 57 of this Title or as a matriculant in a registered program under Section 52.2 (c) (12) of this Title, unless the applicant receives an exemption from such requirement as provided in subdivision (b) of this section.
- (b) The department may exempt an applicant or licensee from the coursework or training requirement of subdivision (a) of this section upon receipt of a written application for such exemption establishing that there would be no need to complete the coursework or training because the nature of the applicant's/licensee's practice excludes contact with children. It is the professional responsibility of the licensee who holds an exemption to notify the department in writing, within 30 days, when the nature of the practice changes to the extent that the basis for the exemption ceases to exist.

**§59.13 Training regarding infection control practices.**

- (a) Commencing July 2, 1994, all persons applying for the issuance of a license or renewal of a registration in dentistry, registered professional nursing, licensed practical nursing, podiatry, optometry, dental hygiene, or any other profession subject to the requirements of section 6505-b of the Education Law shall affirm to the department, and maintain and/or submit such documentation as the department may require, that they have completed, in the four years immediately preceding such application, course work or training in infection control and barrier precautions which is approved by the department, pursuant to Part 58 of this Title, or which is approved as part of a program registered pursuant to Part 52 of this Title. As provided in subdivision (b) of this section, an applicant may be exempted from the infection control and barrier precautions course work or training requirement; or as provided in subdivision (c) of this section, may be exempted from the requirement to document the completion of such course work or training.

- (b) The department may exempt an applicant for registration from the course work or training required pursuant to subdivision (a) of this section either upon receipt of:
  - (1) a written application for such exemption establishing that there would be no need to complete the course work or training because the nature of the applicant's/licensee's practice does not require the use of infection control techniques or barrier precautions; or
  - (2) documentation satisfactory to the department that the applicant/licensee has completed course work or training equivalent to that approved by the department, pursuant to Part 58 of this Title.
- (c) Maintenance or submittal of documentation pursuant to subdivision (a) of this section is not required of any dentist or podiatrist who is subject to the provisions of paragraph (f) of subdivision (1) of section 2805-k of the Public Health Law and who attests at the time of registration that documentation requirements have been met as required in the Public Health Law.
- (d) If there are changes in the nature of the practice of a licensee who has been granted an exemption under paragraph (b) (1) of this section and such changes require the licensee to use infection control techniques or barrier precautions, the licensee shall notify the department in writing of the change within 30 days of such change. If the licensee has not taken approved course work or training in infection control and barrier precautions during the four years immediately preceding the change in practice, the licensee shall obtain such course work or training within 90 days of the change in practice.



# ADDRESS/NAME CHANGE FORM

## INSTRUCTIONS

Use this form to report a change in your address and/or name. Please read these instructions carefully and be sure you complete the appropriate sections of this form. Please print clearly in ink.

- **For address changes only:** Complete Sections I, II, and IV. **For address changes only,** you may fax this form to the Records and Archives Unit at 518-486-3617 or provide the required information by E-mail: oparchiv@mail.nysed.gov. Your records will be updated. Currently registered licensed professionals will be sent a new registration certificate.
- **For name changes only:** Complete Sections I, III, IV and V. **Name changes** require an original notarized signature in your new name and cannot be accepted prior to your official change of name. Sign the Section IV affidavit and have your signature notarized by a notary public. Currently registered licensed professionals will be sent a new registration certificate.
- **For address and name changes:** Complete all sections.

Licensed professionals can check the Office of the Professions' Web site at www.op.nysed.gov to verify your name, city, state, registration expiration date, and license number on record.

**NOTE:** Important information and registration renewals will be sent to the address on file for you. **You must notify the Department in writing within 30 days if your address or name changes.**

### Section I: Your General Information

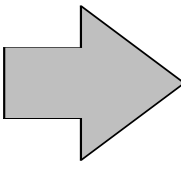
1. Name (currently on record): \_\_\_\_\_
2. Social Security Number:       Birth Date: Month   Day   Year    
 Telephone: Home: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Work: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
 E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_
3. Are you reporting an address and/or name change?  address change  name change  both
4. Effective date of change: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ **(Note: Changes cannot be accepted until after the effective date.)**
5. Licensure status in New York State:  
 I am an applicant for licensure in New York State for the licensed profession(s) of: \_\_\_\_\_  
 I am currently licensed in New York State in the profession(s) of: \_\_\_\_\_ (see list of professions on page 2)  
(see list of professions on page 2)

_____	New York State license number: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
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### Section II: Address Change (please print)

Information <u>C</u> urrently On Record	➔	New Information
Apt./Bldg. _____		Apt./Bldg. _____
Street _____		Street _____
City _____		City _____
State _____		State _____
Zip Code <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		Zip Code <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Province or Country (if not U.S.) _____		Province or Country (if not U.S.) _____

**Section III: Name Change (please print)** If you are reporting a name change, please sign using your **NEW** name in Section IV. Your new signature must be notarized for any name changes. **If you are currently registered you will receive a new registration certificate.**

Information <u>Currently</u> On Record		New Information
Last Name _____		Last Name _____
First Name _____		First Name _____
Middle or Initial _____		Middle or Initial _____

Check here if you wish to have your existing license parchment replaced with one in your **NEW** name. Enclose your **original parchment** and a **\$10 check or money order** made payable to the New York State Education Department with your request. You will be sent a new parchment.

**Section IV: Affidavit**

*I declare and affirm that the statements above are true, complete, and correct. I understand that any false or misleading information in, or in connection with, my application or this notification may be cause for denial or loss of licensure and may result in criminal prosecution.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Section V: For Name Changes Only: Notary Certification And Identification**

State of \_\_\_\_\_ County of \_\_\_\_\_ On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this application and acknowledged to me that he/she executed the application and swore that the statements made by him/her in the application and all supporting materials are true, complete, and correct.

Notary Public signature \_\_\_\_\_

Notary ID number \_\_\_\_\_

Expiration date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

Notary Stamp

**Professional Titles Licensed Under Education Law**

(See item #5 on page 1 of the form.)

Acupuncturist  
Architect  
Athletic Trainer  
Audiologist  
Certified Clinical Laboratory Technician  
Certified Dental Assistant  
Certified Histological Technician  
Certified Public Accountant  
Certified Shorthand Reporter  
Chiropractor  
Clinical Laboratory Technologist  
Creative Arts Therapist  
Cytotechnologist  
Dental Hygienist  
Dentist  
Dietitian/Nutritionist  
Interior Designer

Landscape Architect  
Land Surveyor  
Licensed Clinical Social Worker  
Licensed Master Social Worker  
Licensed Practical Nurse  
Marriage and Family Therapist  
Massage Therapist  
Medical Physicist  
Mental Health Counselor  
Midwife  
Nurse Practitioner  
Occupational Therapist  
Occupational Therapy Assistant  
Ophthalmic Dispenser  
Optometrist  
Pharmacist  
Physical Therapist

Physical Therapist Assistant  
Physician  
Podiatrist  
Professional Engineer  
Psychoanalyst  
Psychologist  
Public Accountant  
Registered Physician Assistant  
Registered Professional Nurse  
Registered Specialist Assistant  
Respiratory Therapist  
Respiratory Therapy Technician  
Speech-Language Pathologist  
Veterinarian  
Veterinary Technician

**New Applicants**  
**mail to** → New York State Education Department, Office of the Professions, Division of Professional Licensing Services, (insert name of profession from above list) Unit, 89 Washington Avenue, Albany, NY 12234-1000.

**Licensees**  
**mail to** → New York State Education Department, Office of the Professions, Division of Professional Licensing Services, Records and Archives Unit, 89 Washington Avenue, Albany, NY 12234-1000.



THE STATE EDUCATION DEPARTMENT  
Office of the Professions  
Division of Professional Licensing Services  
89 Washington Avenue  
Albany, NY 12234-1000