

Practice Guidelines

Guidelines for Professional Engineering Practice in New York State

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct *only* if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this Guideline.

Guideline 1: Defining the Terms for Providing Professional Services

As a licensed professional engineer, you are required to practice within your authorized scope of practice, as defined in the Education Law, Commissioner's Regulations and Rules of the Board of Regents. It is your responsibility to be knowledgeable of any restrictions that are based on law or regulation, as well as those that relate specifically to your area of professional competence.

The Rules of the Board of Regents define as unprofessional conduct any practice by a licensed professional engineer that is beyond the licensee's scope of professional competence. Therefore, if you are not competent to provide a service, even one that falls within the legal scope of practice for your profession, 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 beyond your personal scope of competence, you can be charged with professional misconduct.

At the outset of service, you should provide your client with information regarding the services that you or your firm can provide to clients, all fees and relevant business procedures, and the expectations required of clients receiving these services. You should involve your clients in the development and implementation of any project to the fullest extent of their abilities.

Consumers' Rights

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

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

Licensure Requirements

In the State of New York, professional licensure and registration is required to practice engineering and utilize the title "Professional Engineer". Upon satisfaction of the statutory requirements of Section 7206, a license may be awarded and is valid for the life of the holder unless revoked, annulled or suspended by the Board of Regents. To practice the profession, current registration, renewable every three (3) years with the New York State Education Department is required. Education Law clearly states that only a person licensed or otherwise authorized shall practice engineering or use the title "Professional Engineer".

Scope of Services

The practice of engineering means any service or work, the performance of which requires engineering education, training, and experience in the application of engineering knowledge and data, and the application of special knowledge of the mathematical, physical, and engineering sciences to services such as:

- Consultation
- Investigation
- Evaluation
- Planning
- Design of engineering works and systems
- Engineering surveys
- Oversight for the purposes of determining if work is proceeding in compliance with drawings and specifications

The above listed items may embrace such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, chemical, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.

Persons and/or entities that practice any branch of engineering (such as civil, environmental, electrical, mechanical, etc.); who, by verbal claim, signature, advertisement, letterhead, or card, or in any other way, represent themselves to be engineers or, through the use of some other title, imply that they are licensed professional engineers, or who hold themselves out as able to perform, or does perform, any engineering service, work or any other service designated by the practitioners which is recognized as engineering, shall be construed to practice or offer to practice engineering within the meaning and intent of Section 7202.

Anyone who aids or abets three or more persons, who use a professional title despite no authority to do so, shall be guilty of a class E felony. Anyone who employs three or more persons who use a professional title in the course of such employment, when not authorized to use such title, shall be guilty of a class E felony.

A person who is authorized to use the title "professional engineer" in another state or jurisdiction may use such title on a business card or letterhead in New York State as long as the jurisdiction within which the person is authorized to practice is clearly indicated.

Health of Engineer

In New York, practicing engineering with impaired ability due to the influence of alcohol or drugs shall be deemed gross incompetence. However, the Professional Assistance Program provides assistance and an opportunity for rehabilitation of a licensed engineer. The engineer who has a substance problem, but who has not harmed a client, may be referred to the New York State Education Department – Office of the Professions' Professional Assistance Program for confidential assistance as an alternative to a disciplinary proceeding.

Citations of Pertinent [Law, Rules or Regulations](#):

- Education Law, section 6509 – *"unprofessional conduct"*
- Education Law, section 6512 – *"unauthorized practice a crime"*
- Education Law, section 6513 – *"unauthorized use of a professional title a crime"*
- Education Law, section 7201 – *"definition of practice of engineering"*
- Education Law, section 7202 – *"Practice of engineering and use of title "professional engineer"*
- Education Law, section 7206 – *"requirements for a license as a professional engineer"*
- Education Law, section 7208 – *"exempt persons"*
- Regents Rules, part 29.1 – *"general provisions"*
- Regents Rules, part 29.3 – *"general provisions for design professions"*

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Guideline 2: Permissible Forms of Practice

According to Section 7202 of the New York State Education Law, "Only a person licensed or otherwise authorized under this article shall practice engineering or use the title 'professional engineer'." A "person licensed" is an individual that has qualified by education, experience and examination and has been issued a New York State professional engineering license by the State Education Department. Persons "otherwise authorized" may include an individual person licensed in another state that has applied for and received a limited permit to practice for a specific time period, or with respect to a specific project, within New York State. Limited permits shall only be issued to individual persons and not to business entities of any kind.

Section 7210 of the New York State Education Law requires that all business entities (not individual licensees) legally permitted to provide professional engineering services in New York State obtain a "Certificate of Authorization" from the State Education Department. The law also allows, but does not require, licensed individuals who are legally permitted to provide professional engineering services in New York State as sole proprietors to obtain a "Certificate of Authorization".

Professional engineering services may be provided by a professional service corporation (PSC) authorized under Article 15 or 15-A of the New York State Business Corporation Law. PSCs authorized under Article 15 (domestic) are special corporations in which each of the shareholders, officers and directors must be licensed by New York State. For PSCs authorized under Article 15-A (foreign PSCs) only the individual actually providing the professional service must be licensed in New York State although all of the officers, directors and shareholders must be licensed in some jurisdiction. Professional limited liability companies and foreign professional limited liability companies may also provide professional engineering services if and only if all members are licensed in New York State. Finally, such services may also be provided by professional partnerships, registered limited liability partnerships and foreign registered limited liability partnerships provided that all partners are licensed in New York State.

There is one last special class of corporations that may legally provide professional engineering services in New York State. These are general business corporations that on April 15, 1935, and continuously thereafter, have lawfully engaged in the practice of professional engineering in New York State and whose chief executive officer is a licensed professional engineer under the laws of the State of New York (often referred to as "grandfathered" corporations). These corporations must remain in full compliance of Education Law; section 7209(6.) or risk losing their ability to offer professional engineering services.

In summary, the following business entities may provide professional engineering services in the State of New York with a "Certificate of Authorization".

1. sole proprietorships (Certificate of Authorization is optional)
2. domestic and foreign professional service corporations
3. domestic and foreign professional service limited liability companies
4. professional partnerships
5. registered limited liability partnerships
6. foreign registered limited liability partnerships
7. "grandfathered" general business corporations under section 7209

No other entity or individual except those described in the preceding may practice professional engineering in New York State. In particular, the fact that a general business corporation may be authorized under the laws of another state to practice there does not qualify the entity to practice professional engineering services in New York State. It is also important to note that a person who is licensed (or otherwise authorized) to practice in New York State and is an officer or employee of a general business corporation operating in New York State or in a state other than New York cannot provide professional engineering services in New York as an officer or employee of that firm. Lastly, in cases where an entity is not authorized to provide professional engineering services, such as a general contractor, that entity can not subcontract with, or employ, a licensed professional engineer in order to provide engineering services to a third party client. A licensed professional engineer may not subcontract with an entity not authorized to provide engineering services, for example a general contractor for the purposes of providing professional engineering services.

Any professional engineering services performed for a project or site located in New York, whether for a New York client or an out-of-state client, are subject to the laws of this State and must be performed by a person licensed and registered or otherwise authorized to practice in New York State.

The laws of the State are clear in regard to unauthorized practice. Section 6512(1.) of the Education Law makes it a class E felony for anyone not authorized to practice that practices or offers to practice or holds themselves out as being able to practice professional engineering. Section 6509 defines professional misconduct as, among other things, permitting, aiding or abetting an unlicensed person to perform activities requiring a license, and, section 6512(2.) makes it a class E felony for *anyone*, including a public official, to knowingly aid or abet three or more unlicensed persons to practice a profession requiring a license.

The Offering of Multiple Design Services

Multiple professional design services (disciplines) may be practiced by a Professional Service Corporation (PC), Professional Service Limited Liability Company (PLLC), or Registered Limited Liability Partnership (LLP). These are limited to the design professions licensed pursuant to Article 145, 147 and 148 (engineering, land surveying, architecture, and landscape architecture).

- PC – A Domestic Professional Service Corporation may provide multiple services in the design professions provided that there is a shareholder, director, or officer licensed and currently registered to practice each of the professions which the corporation is being organized to practice. In the case of a Foreign Professional Service Corporation that provides multiple services in the design professions, there must be a shareholder, director, or officer licensed and currently registered to practice each of the professions which the corporation is being organized to practice in New York State and the original jurisdiction.
- PLLC – A Professional Service Limited Liability Company may provide multiple services in the design professions provided there is a manager/owner licensed in New York State to practice every professional service offered by the PLLC. In the case of foreign PLLC offering services in multiple design professions, each manager/owner must be licensed to practice said profession in New York State and the original jurisdiction.
- LLP – A Registered Limited Liability Partnership may provide multiple services in the design professions provided that there is a partner licensed in New York State to practice every professional service offered by the LLP. In the case of a Foreign LLP offering services in multiple design professions, each partner must be licensed to practice said profession in New York State and the original jurisdiction.

Citations of Pertinent [Law, Rules or Regulations](#):

- Education Law, section 6509 – *“unprofessional conduct”*
- Education Law, section 6512 – *“unauthorized practice of a crime”*
- Education Law, section 7201 – *“definition of practice of engineering”*
- Education Law, section 7202 – *“practice of engineering and use of title “professional”*

engineer”

- Education Law, section 7209 – *“special provisions”*
- Education Law, section 7210 – *“certificates of authorization”*
- Regents Rules, part 29.1 – *“general provisions”*
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Guideline 3: Professional Seals and Signatures

I. Meaning of Seal and Signature

The seal and signature of a licensee on a document indicates that the licensee takes professional responsibility for the work and to the best of the licensee's knowledge and ability, the work represented in the document is accurate, in conformance with applicable codes at the time of submission and has been prepared in conformance with normal and customary standards of practice and with a view to the safeguarding of life, health, property and public welfare.

II. Application of Seal and Signature

Section 7209 of Article 145 of the State Education Law requires every professional engineer to have a seal. It does not specify the type of seal to be used, with an embossing seal, rubber stamp or electronic version all being acceptable to the Department and the State Board for Engineering and Land Surveying.

Section 7209 also identifies when a professional engineer is required to sign and seal documents. In general, all plans, specifications and reports prepared by the professional engineer or by a full-time or part-time subordinate under their supervision, shall be signed and sealed when filed with public officials. In addition, whenever a document is signed and sealed, a stamp is required with appropriate wording warning that it is a violation of this law for any person to alter any document that bears the seal of a professional engineer, unless the person is acting under the direction of a licensed professional engineer. For information on changing documents sealed and signed by a professional engineer refer to Section IV below.

Whatever the means of production, on all documents on which a seal is required, there shall be visible the required image, satisfying the provisions of Sections 7209, and Part 68.10 of the Regulations of the Commissioner, and which clearly and legibly shows both the professional engineer's name and license number. The documents are to be signed by the professional engineer whose name appears on the seal in such a manner that neither the name nor the number appearing on the seal is obscured in any way.

Regulations of the Commissioner - Part 68.10 describes the requirements of the seal to be used in the State of New York. For those that are licensed on or after July 1, 1984, seals used by licensed professional engineers shall be circular in shape, approximately 1 3/4 inches in diameter, bearing the legend at the top of the outer band "STATE OF NEW YORK" and at the bottom "LICENSED PROFESSIONAL ENGINEER". In the inner circle, the licensee's name is placed above the Great Seal of New York and the license number, with no other letters or numbers, is placed below the Great Seal.

III. Electronic Seal and Signature (E-Signature)

New York State allows the use of an electronic signature with the same validity and effect as the use of a signature affixed by hand. An electronic signature is an electronically generated identifier that is unique to the person using it. The Electronic Signature and Records Act (ESRA) defines what constitutes an electronic signature in New York State and describes its specific uses and limitations.

The use of electronic signatures is voluntary by both public and private entities. A state or local municipality is not required to accept electronic signatures.

ESRA does not define a specific protocol to perform electronic signatures. It does describe the security level and performance requirements associated with the exchange and validation process. Therefore, before an electronic signature is transmitted, an agreement between both parties is required to permit a valid exchange of electronic information in a compatible manner.

The NYS Office For Technology (OFT) has been designated by ESRA as the facilitator responsible to promote the use of electronic signatures and records. The NYS Law and Regulations, OFT Guidelines and other articles can be found on OFT's website

<http://www.cio.ny.gov/policy/ESRA/esra.htm>  .

IV. Alterations to Work

As described in Section II above, all plans, specifications, and reports to which the seal of a professional engineer has been applied, must also be stamped with appropriate wording warning that it is a violation of this law for any person to alter a document in any way, unless acting under the direction of a licensed professional engineer. If a document bearing the seal of an engineer is altered, the altering engineer shall affix to the document their seal and the notation "altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.

V. Sealing Work Prepared by Others

The Rules of the Board of Regents Part 29.1 addresses unprofessional conduct in all professions regulated by the Board of Regents, and Part 29.3 specifically addresses conduct in the design professions of engineering, architecture, land surveying and landscape architecture, with Part 29.3(a)(3) and (4) addressing the sealing of work prepared by others.

Situations where this might be considered appropriate would include, but not be limited to:

- o Construction documents prepared by an owner or his unlicensed employee, where the proposed project is to be built for the owner, not for a third party.
- o Construction documents owned by an individual, such as those purchased through the mail from an out-of-state business entity. Frequently these would be plans for a house or pre-engineered building for the purchaser's occupancy. Such documents must be reviewed by a New York professional engineer as described below and made site-specific. Depending on the condition of such documents after the review (i.e., clarity after all revisions or additions have been made), the professional engineer shall incorporate such documents into the set of documents to be submitted to the appropriate authority, and it shall be signed and sealed by the professional engineer. Before a building is built, the plans must be thoroughly reviewed and the plans sealed by a professional engineer or another authorized professional. Written documentation must be retained for a period of six years.
- o Engineering documents prepared by a corporation for franchisees, such as fast-food chains. In such case the documents shall be reviewed by a New York licensed professional engineer as described below and made site-specific. All safety-related aspects should be clarified, and all necessary site work information should be clearly provided.
- o Engineering documents for prefabricated and pre-engineered devices and structures may also be reviewed and sealed by New York licensed professional engineers. In the review process the professional engineer is responsible for verifying that the device or structure has been designed to meet or exceed the code requirements for the particular site on which the device or structure is to be used or erected. Typically the professional engineer or his/her consultants may provide the necessary site specific design work for the project.
- o In those instances where an unauthorized individual or firm has rendered

engineering services in this state to a client for a project in this state, and a New York licensed professional engineer subsequently becomes aware of the fact, such professional engineer should report the incident to the Education Department such that an investigation of the unauthorized practitioner might be conducted.

Sect. 29.3(a)(3) requires that when a licensee reviews work prepared by others, a thorough written evaluation of the work must be prepared and retained by the licensee for a period of not less than six years. This report shall include and address:

- A thorough written evaluation of drawings and specifications; reports; design calculations and references to applicable codes and standards against which the work was checked.
- The report shall identify the common name of the project; owner of the project and/or the client; the preparer of the documents; date of evaluation; documents reviewed, with listing of dates of issue.
- Conformance with applicable codes including, but not limited to: town, city, state and federal codes; appropriate professional standards (ASME, IEEE, ASTM, etc.).

In signing and sealing work prepared by others, the licensee may correct, alter, or add to the existing documents or prepare additional documents to address items found inappropriate or missing. When the documents meet the appropriate standards, they may then be signed and sealed by the licensee. A licensee who seals and signs the documents may be seen as accepting all responsibility for the work as though the licensee had personally prepared all documents.

When the scope of review is limited work to individual aspects of the work, the licensee should indicate this by noting such on the sealed and signed documents. Refer to Section IV above – Alterations To Work.

VI. VI. Best Practices For Drawings, Specifications and Reports

On all drawings which are intended to convey engineering information and services, a title block should be provided. The title block should contain:

- the name and location of the firm providing the engineering services;
- the name of the project and project location;
- the client for whom the services have been provided;
- the date the work was completed.

In addition the title block may contain identification of those who prepared and checked the documents, as well as drawing numbers and such similar incidental items as are customary.

Similar information shall be provided on the title page of all specifications and reports

Engineers should legibly indicate their name and business address on all engineering documents. Engineering documents which are issued for preliminary or conceptual use shall clearly note the intended purpose of such documents. When elements of the project are shown on an engineering document only for information or clarification and the Engineer does not intend to accept responsibility for the elements, the engineer shall clearly note on the documents the extent of his/her responsibility.

Engineers should clearly note on any preliminary engineering documents that such documents are not in final form, but are being transmitted to the public agency for review, comments and interpretations. The documents may subsequently be revised by the engineer to reflect resolution of issues with the public agency prior to final action by the agency. Changes, revisions and modifications to a project may prompt additional document submittal for agency approval action on the same project.

Citations of Pertinent [Law, Rules or Regulations](#):

- Education Law, section 7201 – *“definition of practice of engineering”*

Education Law, section 7202 – *“practice of engineering and use of title “professional engineer”*

- Education Law, section 7209 – *“special provisions”*
- Education Law, section 7210 – *“certificates of authorization”*
- Regents Rules, part 29.1 – *“general provisions”*Regents Rules, part 29.3 – *“general provisions for design professions”*

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Guideline 4: Design Delegation

The following practice guidelines addressing Design Delegation, developed by the State Boards for Architecture, Engineering and Land Surveying, and Landscape Architecture, with input from the Industry Advisory Council, were designed to provide assistance in the implementation of section 29.3(b)(2) of the Rules of the Board of Regents. Given the evolving nature of practice, these guidelines may be discontinued or updated as appropriate. Consequently, when a licensee faces a question as to a course of action which involves matters of "good practice," the guidelines may be of assistance in giving a general understanding of the intent of statute and rule; however, the original language of the statute or rule should also be consulted. Having applied the statute or rule to the particular situation at hand, the licensee then has a basis for making the appropriate decision.

Throughout the construction process, from the first meeting of client and design professional through completion of the project, it is in the interest of all parties to know what is involved in the project and where the responsibilities lie in relationship to the work required by the Construction Contract Documents. The Principal Design firm should convey in a manner the firm deems most appropriate, to the project owner, the contractor and the subcontractors, the full scope and nature of the project and those elements being delegated for the design by another licensee.

The following language addresses Section 29.3(b)(2) of the Regents Rules which contains the circumstances and requirements under which design may be delegated. Also provided is a condensed restatement of the formal language with guidance as to how the statement may be implemented.

I. Unprofessional Conduct

Section 29.3(b)(2)

REGENT'S RULE:

"Unprofessional conduct shall not be construed to include:

participation as a delegator, or delegatee in delegating or accepting delegation, through an intermediate entity not authorized to provide professional design services, of specifically defined work involving the performance of a design function requiring a professional license,"

GUIDANCE:

A design professional may delegate through, or accept delegation from, a contractor or subcontractor for the design of certain ancillary building components or systems under the following circumstance:

For the items being delegated that involve those design services for which a license is required, it should be stated clearly that those delegated design functions shall be performed by design professionals currently licensed or otherwise authorized by the State Education Department.

II. Design Parameters

Section 29.3 (b) (2) (b)

REGENTS RULE:

"the delegator shall specify in writing to the delegatee all parameters which the design must satisfy;"

GUIDANCE:

The Architect, Professional Engineer, Land Surveyor or Landscape Architect of Record (the delegator) shall provide performance specifications in writing for the delegated components or systems.

The delegator must provide sufficient information, in writing, for the delegatee (the licensee to whom the work is delegated) to understand the scope and nature of the delegated work and its connection to the general design. The information that is required to perform the delegated design functions shall be commensurate with the nature of the project, and may include, but is not limited to, technical data, loads, references to the American Society for Testing and Materials and other performance standards and other relevant and related conditions as appropriate and contained in the construction contract documents.

III. Performance Specifications

Section 29.3 (b) (2) (c)

REGENTS RULE:

"the design function shall be required to be performed in accordance with performance specifications established by the delegator;"

GUIDANCE:

The design professional to whom the design function has been delegated (the delagatee) shall design the component or system in accordance with the performance specifications.

After carefully reading the performance specifications, the delegatee should make any requests for clarification in writing to the design professional of record through the Contractor/Subcontractor.

IV. Delegatee Responsibility and Requirements

Section 29.3(b) (2) (d) and 29.3 (b) (3) (iv)

REGENTS RULE:

"the delegatee shall be required to be licensed or otherwise legally authorized to perform the design work involved and shall be required to sign and certify any design prepared."

"Certify means a written statement by a licensee confirming responsibility for the work and attesting that the work prepared meets the specifications (as well as conforming to governing codes applicable at the time the work was prepared), and conforms to the prevailing standards of practice."

GUIDANCE:

The person responsible for the design of the component or system shall be a New York licensee, or otherwise authorized, and shall sign and certify his/her design work.

The Construction Contract documents shall specify the manner in which the designs shall be certified as to meeting the specifications and standards of practice expected of licensees in New York State for projects of similar size and complexity. The delegatee will be professionally responsible for the delegated design work; therefore, before signing and certifying the work, a professional judgment should be made about the reliability and quality of the work.

V. Delegator Responsibility and Requirements

Section 29.3(b)(2)(e) & (f)

REGENTS RULE:

"the delegator shall be required to review and approve the design submitted by the delagatee for conformance with the established specifications and parameters and such determination shall be in writing;"

"the delegator shall be required to determine that the design prepared by the delagatee conforms to the overall project design and can be integrated into such design and such determination shall be in writing."

GUIDANCE:

The Architect, Professional Engineer, Land Surveyor, or Landscape Architect of Record is required to review and determine that the delegated component or system design conforms to the performance specifications and any subsequent amendments; to the overall project design; and that it can be integrated into the building system. The Design Professional of Record shall be required to provide written notification of the decision or the submittal may be so marked (Approved; Disapproved; Revise/Resubmit). If not approved, a clear explanation should be provided.

Citations of Pertinent [Law, Rules or Regulations](#):

- Education Law, section 6509 – *"unprofessional conduct"*
- Education Law, section 6512 – *"unauthorized practice of a crime"*
- Education Law, section 6513 - *"unauthorized use of a professional title a crime"*
- Education Law, section 7201 – *"definition of practice of engineering"*
- Education Law, section 7202 – *"practice of engineering and use of title "professional engineer"*
- Education Law, section 7206 - *"requirements for a license as a professional engineer"*
- Education Law, section 7208 – *"exempt persons"*
- Regents Rules, part 29.1 – *"general provisions"*
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Memorandum on Professional Practice Guidelines

March 15, 1999

To: Professional State Board Members

From: Johanna Duncan-Poitier

Subject: Professional Practice Guidelines

I write to clarify the purpose and use of practice guidelines developed by Professional State Boards. Practice guidelines provide guidance regarding the implementation of Rules of the New York State Board of Regents to practitioners for the promotion of good practice. Because of questions recently posed about the meaning and use of these guidelines, the following is a more detailed description of the purpose, benefits and limitations of this important tool.

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

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

The Board of Regents' supervision and the State Education Department's administration of professional regulation is guided by the Education Law, Regents Rules and Commissioner's Regulations. To meet their responsibility to assist in regulating the practice of the professions, several professional State Boards have developed practice guidelines to assist licensed professionals in understanding how to apply the law and accompanying rules and regulations in their daily practice. They are intended to provide licensees with guidance to promote good practice and prevent incidents of professional misconduct. ¹

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

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

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

In formal disciplinary hearings, a guideline may not be used in deliberations unless the

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

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

As an articulation of good practice, guidelines are a very important tool for the State Education Department in meeting its critical mission of promoting good practice. I appreciate the thoughtfulness and dedication all of the State Professional Board Members bring to matters of professional licensure, practice, and discipline. Your role in the disciplinary process in describing and interpreting what is good practice are essential in assisting the Regents and the Department in matters of practice. If you have any questions in this matter, please contact Doug Lentivech in the Office of Professional Responsibility at 518-486-1765 or e-mail at dlentivech@mail.nysed.gov.

Again, my appreciation to you for the time, dedication, and professional expertise you devote to regulation.

cc:

Frank Muñoz

Fred Burgess

Douglas Lentivech

Executive Secretaries, State Boards and Professional Assistance Committee

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