

STATE OF NEW YORK DEPARTMENT OF HEALTH

Office of Professional Medical Conduct

What is Medical Misconduct?

There are almost 50 acts and behaviors that are defined as professional misconduct for physicians. Those definitions can be found in New York Education Law Sections 6530 and 6531. They range from obtaining a medical license fraudulently and refusing to treat someone due to race, creed or color to practicing with gross incompetence or while impaired by substance abuse or physical or mental disability.

The New York State Health Department's Office of Professional Medical Conduct (OPMC) is responsible for investigating complaints against physicians, physician assistants and specialist assistants. The Board for Professional Medical Conduct, comprised of 230 physicians and lay members, is responsible for adjudicating medical misconduct cases.

The vast majority of New York's more than 60,000 licensed physicians will never need to worry about the precise definitions of medical misconduct because they practice quality medicine and respect and care for their patients and their profession. However, understanding what constitutes misconduct can help make even the best physicians aware of the state's expectations for their practice and conduct so they can be sure to avoid any problems.

The law identifies physician practices and conduct that are considered inappropriate and actionable. While some may seem minor deviations to practitioners, it should be understood that every charge is considered significant. Frequently, physicians are charged with more than a single misconduct count. It is not unusual, for example, for a physician to be charged with negligence and incompetence as well as failure to keep accurate medical records.

Allegations of negligence and incompetence, practicing while impaired and sexual misconduct are dealt with swiftly because of the great potential for patient harm.

What do these allegations actually mean?

NEGLIGENCE

Negligence has traditionally been defined as the failure to exercise the care that would be used by a reasonable prudent physician in the same situation. Under the law, two or more acts of negligence in the practice of medicine will support a charge of physician misconduct. On the other hand, a single act of gross negligence will support a misconduct charge. Gross negligence is defined as a single act of negligence of egregious proportions or multiple acts which cumulatively amount to egregious or conspicuously bad conduct.

Physicians have a responsibility to exercise reasonable care when treating their patients. When a physician deviates from accepted medical standards in the treatment of a patient, he or she has breached that responsibility and is negligent. Unlike a malpractice action, negligence in the medical discipline setting does not require that an injury actually result from a physician's deviation from accepted standards. The fact that the act failed to meet the standard of care is sufficient basis for action.

INCOMPETENCE

A physician who does not possess the requisite skill or knowledge to practice medicine is considered incompetent. There is a clear distinction between negligence and incompetence. Negligence relates to an act or an omission of a physician which constitutes a breach in his or her duty to care for the patient. Incompetence relates to the physician's lack of required knowledge or skill to perform necessary acts for patients. As with negligence, state law requires proof of practicing with incompetence on more than one occasion for prosecution.

Gross incompetence is charged when a practitioner shows a complete lack of ability to perform acts or procedures that are part of his profession. Unlike ordinary incompetence, gross incompetence involves a total and flagrant lack of necessary knowledge or ability to practice. For example, a physician who failed to diagnose and treat one patient and improperly treated another, resulting in the death of both patients, was found guilty of gross incompetence. Another physician was found guilty of gross incompetence for failing to conduct even the most rudimentary examination of a patient complaining of classic symptoms of a myocardial infarction and then discharged the patient home.

IMPAIRMENT

A physician once contacted the OPMC outraged by a section of the Education Law that defined misconduct as practicing the profession while impaired by physical disability. He argued that the provision discriminated against physicians with physical disabilities. He was assuaged when it was pointed out that the statute indicates a physician must be "impaired" by a physical disability, not merely disabled. There are certainly physicians with physical or mental disabilities who are able to serve their patients with skill and dedication. These physicians are managing their disabilities and have chosen career paths that make it possible for them to continue practicing.

Those physicians whose physical or mental impairments compromise their patients' safety are prosecuted by OPMC. If they can later prove that they have been rehabilitated or show they can adopt a type of practice that is suited to their impairment, they may be allowed to resume practice. OPMC monitors both their condition and their practice.

Substance abusing physicians are a danger to their patients and OPMC moves swiftly to remove these physicians from practice. Physicians impaired by drugs or alcohol who have caused no patient harm may be allowed to temporarily surrender their licenses and undergo rehabilitation. When a physician's addiction has resulted in patient injury, he or she is prosecuted, typically resulting in a license suspension or revocation. Physicians who can prove they have been rehabilitated may have their licenses restored, but they are closely monitored for relapses and their practices may also be monitored.

SEXUAL ABUSE

Sexual abuse may include inappropriate and/or suggestive remarks, improper touching and actual physical violations such as rape. Physicians involved in improper sexual contacts or behaviors with patients may be charged with moral unfitness, physical or verbal abuse of a patient and other sections of the medical conduct statute depending on the circumstances and the nature of the behavior.

The State Education law specifically prohibits any physical contact of a sexual nature between a psychiatrist and a patient. Similarly, ethical standards governing the medical profession have articulated clear prohibitions addressed to sexual relations between a physician and a patient.

Regardless of specialty, physician sexual misconduct is a behavior that exploits the physician-patient relationship. It leaves patients humiliated, mistreated and exploited. Physicians diminish themselves and their profession by engaging in sexual misconduct.

OTHER MISCONDUCT DEFINITIONS

Fraud - Fraudulent practice involves the intentional misrepresentation or concealment of a known fact within the practice of the profession. Fraudulent practice can be exhibited in many different ways. For example, such practices can include knowingly submitting false bills for services or submitting false or exaggerated medical reports. Fraudulent practice may also include giving false statements on an application for hospital privileges or prescribing controlled substances for other than a good faith medical purpose.

Convictions/Discipline by Other Jurisdictions - Being found guilty of a crime or having been disciplined by another state medical board or other government

agency may form the basis for a misconduct action in New York.

Referral Fees and Fee Splitting - Offering, giving, soliciting or receiving any fee or consideration from a third party for a referral of a patient or in connection with the performance of professional services is the basis for a misconduct action. Permitting any person to share in the fees you receive for professional services is also defined as misconduct. The only persons who may share in such fees are partners, employees, consultants or subcontractors or associates in a professional firm.

Advertising/Self-Promotion - The State Education Law sets specific parameters for physician advertising with which practitioners should become familiar before embarking on an advertising campaign. Physicians found to be exercising undue influence on a patient by promoting the sale of services, goods, appliances or drugs to exploit the patient for financial gain can be prosecuted for misconduct. Physicians may also be cited for guaranteeing satisfaction or a cure will result from services provided and for claiming or using any secret or special method of treatment which they will not reveal to the State Department of Health.

Patient Abandonment/Staff Supervision - Physicians may not abandon or neglect patients under their care who are in need of immediate services. They must make reasonable arrangements for the continuation of such care. Physicians are also expected to adequately oversee staff authorized to perform duties only if under a practitioner's supervision. Physicians must not delegate professional responsibilities to unqualified individuals.

For a complete list of medical misconduct definitions, see Education Law Sections 6530 and 6531.