

So You Wanted To Be A Licensed Professional Geologist: What Does It Mean To Be a Professional and What Happens If You Fail To Act Like One?

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Advisory Notice: New York State Professional Geology Licensure

As of November 21, 2016, New York State Education Department will be accepting applications for licensure under the grandparent provision or through endorsement for applicants who are licensed in another jurisdiction.

Opportunity to be licensed under grandparent provision expires on November 20, 2017.

Information on applying for licensure through the endorsement process when the applicant is licensed in another jurisdiction available on NYS DOE website.

<http://www.op.nysed.gov/prof/geo/>

Please note: For those NOT eligible to apply for licensing under the grandparent provisions, in order to be licensed, must take the ASBOG Fundamentals of Geology examination and/or Practice of Geology examination:

NEITHER IS BEING GIVEN AT THIS TIME and the website advises potential applicants to keep checking the website.

Education Law

Article 145, Professional Engineering, Land Surveying and Geology

*§7200. Introduction.

This article applies to the professions of engineering, land surveying and geology. The general provisions for all professions contained in article one hundred thirty of this title apply to this article.

*NB Effective November 21, 2016

*§7204-b. Practice of geology and the use of title “professional geologist.”

Only a person licensed or otherwise authorized under this article shall practice geology or use the title “professional geologist.”

*NB Effective November 21, 2016

Personal Guess: This simply can't be applicable as of the effective date, November 21, 2016. Exams for those who can't qualify for the license through the grandfather provision will have to be given so that everyone can be licensed no later than November 20, 2017.

Presumably – but not clear – you can continue to practice geology in New York without a license until November 20, 2017.

Education Law

Title VIII - The Professions

§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....

Education Law

Article 130 General Provisions

Subarticle 3, Professional Misconduct

Before going to the statutes and regulations defining misconduct, their import is clear based on the penalties for violations.

Education Law

Title VIII - The Professions

§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 ... are:

- (1) censure and reprimand,
- (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, ...

With that in mind – let's look at the statutes and regulations defining “misconduct” applicable to licensed geologists.

Education Law §6509: Definitions of professional misconduct.

Each of the following is professional misconduct and exposes the violator to the penalties just outlined:

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;

c. Having been found by the commissioner of health to be in violation of article thirty-three of the public health law.
[Dealing with controlled substances]

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 willfully failing to register or notify the department of any change of name or mailing address,...

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,
[Part 29 – Unprofessional Conduct]
(So there's more)

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

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 ****

[Your license is suspended unless you prove at a hearing you paid the money due]

Let's Go Back To Education Law

Article 130 General Provisions

Subarticle 3, Professional Misconduct

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 – these regulations are in addition to what is set out in the statute.

Rules of the Board of Regents

Part 29, Unprofessional Conduct

Effective October 5, 2011

§ 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, *** 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 ... client, including the promotion of the sale of services, goods, ... in such manner as to exploit the ...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 ... 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, ...

5. conduct in the practice of a profession which evidences moral unfitness to practice the profession;

6. willfully making or filing a false report, or failing to file a report required by law or by the Education Department, or willfully impeding or obstructing such filing, or inducing another person to do so;

7. failing to make available to a ... 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 ... client;

8. revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the ... 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,

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 ... client or his or her legal representative;

12. advertising or soliciting for patronage that is not in the public interest:

- i. Advertising or soliciting not in the public interest shall include, but not be limited to, advertising or soliciting that:
 - a. is false, fraudulent, deceptive or misleading;
 - b. guarantees any service;
 - c. makes any claim relating to professional services or products or the cost or price therefore which cannot be substantiated by the licensee, who shall have the burden of proof;

d. makes claims of professional superiority which cannot be substantiated by the licensee, who shall have the burden of proof; or

e. offers bonuses or inducements in any form other than a discount or reduction in an established fee or price for a professional service or product.

ii. The following shall be deemed appropriate means of informing the public of the availability of professional services:

a. informational advertising not contrary to the foregoing prohibitions; and

b. the advertising in a newspaper, periodical or professional directory or on radio or television of fixed prices, or a stated range of prices, for specified routine professional services, provided that if there is an additional charge for related services which are an integral part of the overall service being provided by the licensee, the advertisement shall so state, and provided further that the advertisement indicates the period of time for which the advertised prices shall be in effect.

iii. a. all licensees placing advertisements shall maintain, or cause to be maintained, an exact copy of each advertisement, transcript, tape or videotape thereof as appropriate for the medium used, for a period of one year after its last appearance. This copy shall be made available for inspection upon demand of the Education Department;

b. a licensee shall not compensate or give anything of value to representatives of the press, radio, television or other communications media in anticipation of or in return for professional publicity in a news item;

iv. Testimonials, demonstrations, dramatizations, or other portrayals of professional practice are permissible provided that they otherwise comply with the rules of professional conduct and further provided that the following conditions are satisfied:

a. the ... 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 ... client;

c. reasonable disclaimers are included as to any statements made or results achieved in a particular matter;

- d. the use of fictional situations or characters may be used if no testimonials are included; and
- e. fictional client testimonials are not permitted;

13. failing to respond within 30 days to written communications from the Education Department or the Department of Health and to make available any relevant records with respect to an inquiry or complaint about the licensee's unprofessional conduct. ***

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.

§6510 Proceedings in cases of professional misconduct.

In cases of professional misconduct the procedure is spelled out in Education Law §6510.

All relevant statutes and regulations, and all notices from the Department of Education regarding licensing and significant dates, are found on its website:

<http://www.op.nysed.gov/prof/geo/>

Enjoy Your New Status!

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