

65-1516. Professional incompetence; unprofessional conduct; defined. As used in this act:

- (a) "Professional incompetence" means:
- (1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence as determined by the board.
 - (2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.
 - (3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice optometry.
- (b) "Unprofessional conduct" means:
- (1) Using fraudulent or false advertisement.
 - (2) Engaging in the practice of optometry as an agent or employee of a person not licensed under the optometry law.
 - (3) Conduct likely to deceive, defraud or harm the public.
 - (4) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction.
 - (5) Aiding or abetting the practice of optometry by an unlicensed, incompetent or impaired person.
 - (6) Allowing another person or organization to use the licensee's license to practice optometry.
 - (7) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice.
 - (8) The use of any false, fraudulent or deceptive statement in any document connected with the practice of optometry.
 - (9) Obtaining any fee by fraud, deceit or misrepresentation.
 - (10) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.
 - (11) Performing unnecessary tests, examinations or services which have no legitimate optometric purpose.
 - (12) Charging an excessive fee for services rendered.
 - (13) Prescribing, dispensing, administering, distributing a prescription drug or substances, in an excessive, improper or inappropriate manner or quantity or not in the course of the licensee's professional practice.
 - (14) Repeated failure to practice optometry with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.
 - (15) Failure to keep written optometry records which describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.
 - (16) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.
 - (17) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee of peers.
 - (18) Allowing improper interference with the licensee's professional judgment in providing patient care.
 - (19) Allowing optometric services to be provided by a person or entity not qualified to do so under state law.
 - (20) Failure to disclose to the patient the identity of the licensee who performs optometric services before the time optometric services are performed.
 - (21) Failure to maintain minimum standards for ophthalmic goods and services provided by the licensee determined by rules and regulations of the board.
 - (22) Willful betrayal of a patient's confidence.
 - (23) Prescribing, purchasing, administering, selling or giving away prescription drugs, including a controlled substance, for other than legal and legitimate purposes.

History: L. 1990, ch. 223, § 12; L. 1999, ch. 23, § 6; Apr. 1.