**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**502 BOARD OF COMPLEMENTARY HEALTH CARE PROVIDERS**

**Chapter 7: GROUNDS FOR DISCIPLINE**

**Summary**: This chapter references the statutory grounds for discipline against licensees and includes examples of prohibited conduct that may result in discipline.

**1. [deleted]**

**2. Grounds for Discipline**

Grounds for discipline are set forth in 10 MRSA §8003(5-A)(A) and 32 MRSA §12503-A.

**3. Examples of Grounds for Discipline**

The following grounds for discipline in 10 MRSA §8003(5-A)(A) include but are not limited to the conduct described below.

 1. **Fraud, Deceit or Misrepresentation** (10 MRSA §8003(5-A)(A)(1))

 A. The practice of fraud, deceit or misrepresentation in obtaining a license includes, but is not limited to:

 (1) Falsification or misrepresentation of education or experience of an applicant;

 (2) Falsification or misrepresentation of a recommendation from a consultant or peer;

 (3) Cheating on a license examination;

 (4) Withholding or misrepresenting any information requested on the application, including any information regarding criminal or disciplinary action taken by any state against an applicant; or

 (5) Impersonating another applicant.

 B. The practice of fraud, deceit or misrepresentation in connection with services rendered as an acupuncturist, ~~or~~ naturopathic doctor, certified midwife or certified professional midwife includes, but is not limited to:

 (1) *[deleted]*

 (2) Misrepresenting the type or status of license held, the professional designation for the license held, or qualifications to practice;

 (3) Committing or aiding another to commit fraud, deceit or corruption in billing, payment or insurance reimbursement procedures;

 (4) Engaging in false, misleading or deceptive advertising;

(5) Billing clients, patients or third-party providers for services not

rendered; or

 (6) Impersonating another licensee.

2. **Aiding or Abetting Unlicensed Practice** (10 MRSA §8003(5-A)(A)(8))

 Aiding or abetting a person not duly licensed to represent themselves as an acupuncturist, naturopathic doctor, certified midwife or certified professional midwife includes, but is not limited to:

 A. Assisting another to practice beyond the scope of the license held, or without a license;

 B. Supervising or providing consultation to an unlicensed person representing themselves as licensed, or to a licensed person practicing beyond the scope or the license held; or

 C. Making a referral to an unlicensed person representing themselves as licensed, or to a licensed person practicing beyond the scope of the license held.

3. **Gross Negligence, Incompetence or Misconduct** (10 MRSA §8003(5-A)(A)(2))

 Gross negligence, incompetence or misconduct in the practice of acupuncture, naturopathic medicine, or midwifery includes, but is not limited to:

 A. Intentionally or recklessly causing physical or emotional harm to a client or patient;

 A-1. Failing to practice acupuncture in accordance with the Clean Needle Technique Manual for Acupuncturists: Guidelines and Standards for the Clean and Safe Clinical Practice of Acupuncture, 6th Edition (National Acupuncture Foundation November 1, 2009).

The board incorporates the above-mentioned Clean Needle Technique Manual into this chapter by reference. Copies of the Clean Needle Technique Manual may be obtained through retail booksellers, including the following:

* Atlas Books, 30 Amberwood Pkwy., Ashland, OH 44805

[www.atlasbooks.com](http://www.atlasbooks.com)

* Council of Colleges of Acupuncture and Oriental Medicine (CCAOM)

 <https://www.ccaom.org/ccaom/Clean_Needle_Technique.asp>

 B. Failing to maintain the confidentiality of client or patient information, except as otherwise required by law;

 C. Practicing acupuncture, naturopathic medicine, or midwifery when the licensee’s physical or mental ability to practice is impaired by alcohol or drugs or when the health or safety of a client or patient may reasonably be deemed to be at risk due to the licensee’s use of alcohol or drugs;

C-1. Abuse of authority to obtain and administer drugs constitutes conduct derogatory to the standards of practice for certified midwives and certified professional midwives and is defined as obtaining or administering drugs:

1. For conditions beyond the certified professional midwife’s scope of practice or inconsistent with current accepted evidence-informed clinical practice;
2. For other than therapeutic or prophylactic purposes;
3. To individuals who are not clients of the certified professional midwife or who are not within the midwife’s certification scope of practice; or
4. In an unsafe manner or without adequate instructions to clients according to acceptable and prevailing standards of practice.

 D. Practicing acupuncture, naturopathic medicine, or midwifery when the licensee’s physical or mental ability to practice is impaired by physical, psychological or mental impediment;

 E. *[deleted]*

 F. Failing to provide adequate supervision of an intern by an acupuncturist with supervisory responsibility over that intern;

 G. *[deleted]*

 H. *[deleted]*

 I. Paying, accepting or soliciting any payment or consideration for the referral of a client or patient;

J. Falsifying, inaccurately recording or omitting information from client or patient records;

K. Billing clients, patients or third-party providers inaccurately, excessively or unfairly;

 L. Exercising undue influence on the client or patient, including the promotion for sale of goods, services or drugs, so as to exploit the client or patient for the financial gain of the acupuncturist, naturopathic doctor, certified midwife or certified professional midwife;

M. Failing to maintain professional boundaries in relationships with clients or patients or engaging in a dual relationship that impairs treatment, exploits practitioner/client/patient trust, or fosters an undue dependency of the patient on the practitioner;

 N. Failing to report an incident of child or adult abuse or neglect as mandated by state law;

 O. Engaging in conduct which evidences a lack of knowledge, or inability to apply principles or skills to carry out the practice of acupuncture, naturopathic medicine, or midwifery;

 P. *[deleted]*

 Q. Engaging in sexual misconduct with a client or patient. Sexual misconduct in the practice of acupuncture, naturopathic medicine or midwifery is any unwelcomed behavior of a sexual nature. This behavior is non-diagnostic and/or nontherapeutic, may be verbal or physical, and may include expressions or gestures that have a sexual connotation or that a reasonable person would construe as such.

 There are two levels of sexual misconduct: sexual violation and sexual impropriety. Behavior listed in both levels may constitute grounds for disciplinary action.

 (1) “Sexual violation” is any conduct by an acupuncturist, naturopathic doctor, certified midwife or certified professional midwife with a client or patient that is sexual or may be reasonably interpreted as sexual, even when initiated by or consented to by a client or patient, including but not limited to:

 (a) Sexual intercourse, genital to genital contact;

 (b) Oral to genital contact;

 (c) Oral to anal contact or genital to anal contact;

 (d) Kissing in a sexual manner (e.g. french kissing);

 (e) Any touching of a body part for any purpose other than appropriate examination, treatment, or comfort, or where the client or patient has refused or has withdrawn consent;

 (f) Encouraging the client or patient to masturbate in the presence of the acupuncturist, naturopathic doctor, certified midwife or certified professional midwife or masturbation by the acupuncturist, naturopathic doctor, certified midwife or certified professional midwife while the client or patient is present; and

 (g) Offering to provide practice-related services, such as drugs, in exchange for sexual favors.

 (2) “Sexual impropriety” is behavior, gestures, or expressions by the acupuncturist, naturopathic doctor, certified midwife or certified professional midwife that are seductive, sexually suggestive, or sexually demeaning to a client or patient, including but not limited to the following. All circumstances will be considered in determining whether sexual impropriety has occurred:

 (a) Kissing;

 (b) Disrobing, draping practices or touching of the client’s or patient’s clothing that reflect a lack of respect for the client’s or patient’s privacy; deliberately watching a client’s or patient dress or undress, instead of providing privacy for disrobing;

 (c) Subjecting a client or patient to an examination in the presence of another when the acupuncturist, naturopathic doctor, certified midwife or certified professional midwife has not obtained the verbal or written consent of the client or patient or when consent has been withdrawn;

 (d) Examination or touching of genitals without the use of gloves;

 (e) Inappropriate comments about or to the client or patient, including but not limited to making sexual comments about a client’s or patient’s body or underclothing; making sexualized or sexually demeaning comments to a client or patient, criticizing the client’s or patient’s sexual orientation or gender identity; making comments about potential sexual performance during an examination or consultation (except when the examination or consultation is pertinent to the issue of sexual function or dysfunction); requesting details of sexual history or sexual likes or dislikes when not clinically indicated;

 (f) Using the acupuncturist, naturopathic doctor, certified midwife or certified professional midwife client or patient relationship to solicit a date or initiate a romantic relationship;

 (g) Initiation by the acupuncturist, naturopathic doctor, certified midwife or certified professional midwife of conversation regarding the sexual problems, preferences, or fantasies of the acupuncturist, or naturopathic doctor, certified midwife or certified professional midwife; and

 (h) Examining the client or patient without verbal or written consent;

R. Engaging in a sexual relationship with a former client or patient within the 12-month period following the end of the professional relationship; or

S. Engaging in a sexual relationship with a former client or patient after the 12‑month period following the end of the professional relationship that exploits the trust established during the professional relationship.

STATUTORY AUTHORITY:

 32 MRS §§ 12503, 12543(1)

EFFECTIVE DATE:

August 11, 1998 (as “Enforcement and Disciplinary Procedures”)

NON-SUBSTANTIVE CORRECTIONS:

 November 23, 1998 - grammatical corrections in §3(C)(15 1st paragraph, 15(b) 1st paragraph, and 15(b)(5)).

AMENDED:

 November 4, 2013 – filing 2013-265 (as “Grounds for Discipline”)

 March 1, 2021 – filing 2021-052