

**K.A.R. 100-76-7. Unprofessional conduct; definitions.** Each of the following terms, as used in K.S.A. 2016 Supp. 65-7616 and amendments thereto and this article of the board's regulations, shall have the meaning specified in this regulation:

(a) "Unprofessional conduct" shall mean any of the following:

(1) Soliciting patients through the use of fraudulent or false advertisements or profiting by the acts of those representing themselves to be agents of the licensee;

(2) representing to a patient that a manifestly incurable disease, condition, or injury can be permanently cured;

(3) assisting in the care or treatment of a patient without the consent of the patient or the patient's legal representative;

(4) using any letters, words, or terms as an affix on stationery or in advertisements or otherwise indicating that the person is entitled to practice any profession regulated by the board or any other state licensing board or agency for which the person is not licensed;

(5) willful betrayal of confidential information;

(6) advertising professional superiority or the performance of professional services in a superior manner;

(7) advertising to guarantee any professional service or to perform any professional service painlessly;

(8) engaging in conduct related to the practice of acupuncture that is likely to deceive, defraud, or harm the public;

(9) making a false or misleading statement regarding the licensee's skill or the efficacy or value of the treatment or remedy prescribed by the licensee or at the licensee's direction, in the treatment of any disease or other condition of the body or mind;

(10) commission of any act of sexual abuse, misconduct, or other improper sexual contact that exploits the licensee-patient relationship, with a patient or a person responsible for health care decisions concerning the patient;

(11) using any false, fraudulent, or deceptive statement in any document connected with the practice of acupuncture, including the intentional falsifying or fraudulent altering of a patient record;

(12) obtaining any fee by fraud, deceit, or misrepresentation;

(13) failing to transfer a patient's records to another licensee when requested to do so by the patient or by the patient's legally designated representative;

(14) performing unnecessary tests, examinations, or services that have no legitimate purpose;

(15) charging an excessive fee for services rendered;

(16) repeated failure to engage in the practice of acupuncture with that level of care, skill, and treatment that is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;

(17) failure to keep written medical records that accurately describe the services rendered to each patient, including patient histories, pertinent findings, examination results, and test results;

(18) delegating professional responsibilities to a person if the licensee knows or has reason to know that the person is not qualified by training, experience, or licensure to perform those professional responsibilities;

(19) failing to properly supervise, direct, or delegate acts that constitute the practice of acupuncture to persons who perform professional services pursuant to the licensee's direction, supervision, order, referral, delegation, or practice protocols;

(20) committing fraud or misrepresentation in applying for or securing an original, renewal, or reinstated license;

(21) willfully or repeatedly violating the act, any implementing regulations, or any regulations of the secretary of health and environment that govern the practice of acupuncture;

(22) unlawfully practicing any profession regulated by the board in which the licensed acupuncturist is not licensed to practice;

(23) failing to report or reveal the knowledge required to be reported or revealed pursuant to K.S.A. 2016 Supp. 65-7621, and amendments thereto;

(24) failing to furnish the board, or its investigators or representatives, any information legally requested by the board;

(25) incurring any sanction or disciplinary action by a peer review committee, a governmental agency or department, or a professional association or society for conduct that could constitute grounds for disciplinary action under the act or this article of the board's regulations;

(26) failing to maintain a policy of professional liability insurance as required by K.S.A. 2016 Supp. 65-7609, and amendments thereto, and K.A.R. 100-76-5;

(27) knowingly submitting any misleading, deceptive, untrue, or fraudulent representation on a claim form, bill, or statement;

(28) giving a worthless check or stopping payment on a debit or credit card for fees or moneys legally due to the board;

(29) knowingly or negligently abandoning medical records;

(30) engaging in conduct that violates patient trust and exploits the licensee-patient relationship for personal gain; or

(31) obstructing a board investigation, including engaging in one or more of the following acts:

(A) Falsifying or concealing a material fact;

(B) knowingly making or causing to be made any false or misleading statement or writing; or

(C) committing any other acts or engaging in conduct likely to deceive or defraud the board.

(b) “Advertisement” shall mean all representations disseminated in any manner or by any means that are for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of professional services.

(c) “False advertisement” shall mean any advertisement that is false, misleading, or deceptive in a material respect. In determining whether any advertisement is misleading, the following shall be taken into account:

(1) Representations made or suggested by statement, word, design, device, or sound, or any combination of these; and

(2) the extent to which the advertisement fails to reveal facts material in the light of the representations made. (Authorized by K.S.A. 2016 Supp. 65-7615; implementing K.S.A. 2016 Supp. 65-7616; effective, T-100-9-21-17, Sept. 21, 2017.)