

7. Charges for unkept appointments: Requiring a patient or a third party payor to pay a full or partial fee for unkept appointments unless the patient has been notified of this policy in writing prior to the initiation of audiology or speech-language pathology services.

8. Charges for unrecorded services: Requiring a patient or a third party payor to pay for any evaluation, testing, treatment or other services not documented in a patient chart.

9. Disclosure of fees: Failure to make available a written fee schedule which describes charges for each service offered to any interested person upon request.

10. Posting of license: Failure to post in a conspicuous place a copy of a licensee's biennial renewal certificate.

11. Advertising: Use or participation in the use of any form of public communication regarding professional services, via print, electronic media or in-person solicitation, which does not comply with the provisions of (b) below or which contains a false, fraudulent, misleading or deceptive statement or claim. A false, fraudulent, misleading or deceptive statement includes, but is not limited to, any statement or claim which:

- i. Contains a misrepresentation of fact;
- ii. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;
- iii. In the case of a testimonial containing an objective, verifiable statement of fact, cannot be verified by the advertiser;
- iv. Is intended or is likely to create a false or unjustified expectation of favorable results, for example, advertising percentages of success;
- v. Implies educational attainments or licensing recognition not supported in fact;
- vi. States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of audiology or speech-language pathology if this is not the case;
- vii. Represents that the professional services can or will be competently performed for a stated fee when this is not the case, or makes a representation with respect to fees for professional services that does not disclose all variables affecting the fees that will in fact be charged;
- viii. Uses techniques of communication which in light of the setting and circumstances appear to intimidate or exert undue influence or undue pressure over a prospective patient;
- ix. Contains offers of discounts for services without stating the advertiser's usual and customary fee on which the discount will be taken, or the availability of a

schedule of the licensee's usual and customary fees, and the period of time during which the offer can be accepted by a prospective patient. If no time limit is specified, such offer shall be deemed to apply for 30 days, or

x. Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to be misled or be deceived.

12. In-person solicitation: Engaging in uninvited in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence. This paragraph shall not prohibit the offering of services by a licensee to any bona fide representative of prospective patients including, but not limited to, employers, labor union representatives or insurance carriers.

13. Excessive fees: Charging a fee to a patient or a third party payor which is excessive when considered in light of the following factors:

- i. The novelty and difficulty of the professional treatment;
- ii. The skill and equipment required to perform the treatment properly;
- iii. Any requirements or conditions imposed by the patient or by the circumstances;
- iv. The nature and length of the professional relationship with the patient;
- v. The experience, reputation and ability of the licensee performing the services; and
- vi. The nature and the circumstances under which the services were provided (for example, emergency; home visit).

14. Charges for unnecessary services: Charging a fee to a patient or a third party payor for audiology or speech-language pathology services which are unwarranted and unnecessary.

15. Failure to electronically calibrate audiometric test equipment at least annually.

(b) The following shall apply in connection with advertising:

- 1. All advertisements shall contain the license number of the licensee or the licensee in charge.
- 2. An advertisement may contain either a lay or an expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial.
- 3. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon.

4. An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the rendering of a bona fide statement or opinion.

5. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and failure to do so, if required by the Advisory Committee, may be deemed professional misconduct.

6. Copies of all printed advertisements and video or audio tapes of every advertisement communicated by electronic media shall be retained by the licensee and made available for review by the Advisory Committee or its designee upon request for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

Correction: Deleted audiological from (a)2.

See: 20 N.J.R. 2069(b).

Amended by R.1993 d.383, effective August 2, 1993.

See: 25 N.J.R. 1668(a), 25 N.J.R. 3504(b).

13:44C-8.2 Professional practices

(a) Licensees shall engage in only those functions recognized in this chapter to be within the scope of practice of audiology or speech-language pathology that are within the scope of their competence considering their level of education, training, and experience.

(b) The following acts or professional practices shall be deemed to be unprofessional conduct:

1. Offering, agreeing to provide or providing any payment or any other form of remuneration to any person or entity authorized to direct the initiation of speech-language pathology or audiology services for a referral of any specific patient or any number of patients.

2. Accepting any payment or other form of remuneration from any person or entity authorized to direct the initiation of audiology or speech-language pathology services for the referral of any specific patient or any number of patients.

3. Receiving from any person, firm, partnership or corporation a fee, commission, salary, rebate, gift or other form of remuneration for the prescribing, recommending, ordering or promotion of the sale of a device, appliance or other item or service, unless such interest is made known in writing to the person for whom the device or appliance is being ordered, prescribed or recommended, except that nothing herein shall preclude a licensed speech-language pathologist or audiologist from accepting a product or commodity which can be used as a sample by patients, provided that the speech-language pathologist or audiologist does not charge patients for items so obtained.

4. Knowingly using audiometric test equipment that is not calibrated or has not been calibrated according to the nationally recognized standards (ANSI, 1969 and all subsequent revisions).

5. Undertaking to render treatment or to conduct testing which in light of the patient's history and findings is unwarranted and unnecessary.

(c) The representation of a speech-language pathologist or audiologist as a physician rendering medical opinion or medical services shall be deemed to be outside the scope of speech-language pathology and audiology and, upon proof that a licensee is engaging in such conduct, he or she may be subject to disciplinary action.

Amended by R.1993 d.383, effective August 2, 1993.

See: 25 N.J.R. 1668(a), 25 N.J.R. 3504(b).

Subsection (b) was codified as 13:44C-8.3, Scope of practice.

Petition for Rulemaking.

See: 30 N.J.R. 2091(b).

Amended by R.1998 d.374, effective July 20, 1998.

See: 30 N.J.R. 1195(a), 30 N.J.R. 2634(a).

Inserted a new (a); and recodified former (a) and (b) as (b) and (c).

SUBCHAPTER 9. UNLICENSED PRACTICE

13:44C-9.1 Acts amounting to unlicensed practice

(a) The following acts or practices shall be deemed to be the unlicensed practice of audiology or speech-language pathology and may warrant the director's initiation of an action in Superior Court for such appropriate injunctive relief as may be authorized by N.J.S.A. 45:3B-15:

1. Offering of any speech-language pathology or audiology services by any person who does not hold the applicable license as a speech-language pathologist or audiologist or is not exempt from licensure as defined in N.J.A.C. 13:44C-7.2;

2. The use of the words speech-language therapy, speech therapy, audiology, speech pathologist, audiologist or such similar words or their related abbreviations in connection with the offering of certain agents and measures which are utilized in the rendition of speech-language pathology and audiology services by any person who does not hold the appropriate license in speech-language pathology or audiology; or

3. Billing any patient or third party payor for "speech-language pathology evaluation" or "speech-language pathology therapy" or "audiologic evaluation" or "audiologic services" or services described by similar words if the individual providing the service does not hold the appropriate license to practice audiology or speech-language pathology or is not a licensed physician.

13:44C-9.2 Aiding and abetting unlicensed practice

It shall be unlawful for a licensee to aid or assist any person in engaging in any of the acts identified in N.J.A.C. 13:44C-9.1.

SUBCHAPTER 10. DISCIPLINARY ACTIONS

13:44C-10.1 Suspension and revocation of license

(a) The license of any person licensed under the provisions of this chapter may be suspended or revoked, or a civil penalty may be assessed or a reprimand may be issued by the director, upon a finding by the director that the licensee:

1. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
2. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
3. Has engaged in gross negligence, gross malpractice or gross incompetence;
4. Has engaged in repeated acts of negligence, malpractice or incompetence;
5. Has engaged in professional or occupational misconduct as may be determined by the director;
6. Has been convicted of any crime involving moral turpitude or any crime relating adversely to the practice of audiology or speech-language pathology. For the purpose of this subsection a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

7. Has had his authority to engage in the practice of audiology or speech-language pathology revoked or suspended by any other state, agency or authority for reasons consistent with this section;

8. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;

9. Has violated or failed to comply with any of the provisions of N.J.S.A. 45:3B-1 et seq. or N.J.A.C. 13:44C-1.1 et seq.

(b) The Notice of Proposed Suspension or Revocation shall inform the licensed individual of the right to request a hearing within 10 days. The hearing shall be pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

Notice of correction: (b) should read "The hearing shall" instead of "The shall".

See: 20 N.J.R. 3140(a).

13:44C-10.2 Reinstatement

The Director, in consultation with the Advisory Committee, may restore a license after one year from the date of its revocation following submission of a new application and a hearing before the Advisory Committee at which the applicant shall demonstrate fitness for reinstatement.