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State Board for Landscape Architecture Meeting
1411 Broadway (between 39th and 40th Streets) – 10th Floor – Regent's Room-Manhattan

Wednesday, April 19, 2023
10:00 am start time

Public Session

1. Election Chair / Vice Chair
2. Introduction – New Board Member
3. Old Business
 - OPD Conversation
4. Approval of Minutes
5. Board Chair Report
6. Board Office Report
7. Old Business
 - 2022 CLARB Annual Meeting Summary
 - Continuing Education Update
 - Board Member Search
8. New Business
 - LARE Transition
 - CLARB/ASLA Licensure Summit Summary – March 2023
 - 2023 CLARB Annual Meeting
 - CLARB Regional Meeting – Today at 3:00 PM

Executive Session

9. Disciplinary Cases
10. Adjournment

Next Meeting
August 16, 2023 – New York, NY

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

**OLD BUSINESS -
OPD
CONVERSATION**

To: Landscape Architecture Board Members

Date: April 4, 2023

From:

Robert Lopez **R.L.**

Subject: OPD Conversation

In reply to:

It has been many years since the State Board has had a conversation with the Department's Office of Professional Discipline (OPD). Dennis Spillane, the Executive Director of OPD, will attend the Board's April meeting to discuss enforcement in the landscape architectural profession.

The intent of the conversation is to assist seasoned Board members and those just beginning their term on the State Board when reviewing enforcement cases.

Topics that Dennis will touch upon during this conversation are as follows:

- Overview of NYS Education Law Sections 6509-6511 and Regents Rules Part 29.1 and 29.3
- Consistency in how upstate and downstate handle enforcement cases
- Items Board members may need to help them during the enforcement process (i.e. drawings, specifications, contracts, letter agreements, scopes of work)
- Additional details about the Board's involvement during the enforcement process
- How can Board members effectively help during the enforcement process?
- How can OPD help Board members to be more effective during the enforcement process?
- Importance of flagging public safety issues during the process
- Balance of penalties assessed at the end of the enforcement process
- When should a Board member recuse from reviewing a case?

Immediately following this email are the relevant sections of the Education Law and Regents Rules. Please review these sections of the Law and Rules prior to the meeting with OPD.



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Office of the Professions

Education Law

Article 130 General Provisions Subarticle 3, Professional Misconduct

Effective October 1, 2010

**OLD BUSINESS -
OPD
CONVERSATION -
EDUCATION LAW**

[§6509 Definitions of professional misconduct.](#) | [§6509-a Additional definition of professional misconduct; limited application.](#) | [§6509-b Additional definition of professional misconduct; arrears in payment of support; limited application.](#) | [§6509-c Additional definition of professional misconduct; failure to comply in paternity or child support proceedings; limited application.](#) | [§6509-d. Limited exemption from professional misconduct.](#) | [§6510 Proceedings in cases of professional misconduct.](#) | [§6510-b Temporary surrender of licenses during treatment for drug or alcohol abuse.](#) | [§6510-c Nurse peer assistance programs.](#) | [§6510-d Voluntary non-disciplinary surrender of a license.](#) | [§6511 Penalties for professional misconduct.](#)

§6509 Definitions of professional misconduct.

Each of the following is professional misconduct, and any licensee found guilty of such misconduct under the procedures prescribed in section sixty-five hundred ten shall be subject to the penalties prescribed in section sixty-five hundred eleven:

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.
 - d. Having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state.
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 wilfully failing to register or notify the department of any change of name or mailing address, or, if a professional service corporation wilfully failing to comply with sections fifteen hundred three and fifteen hundred fourteen of the business corporation law or, if a university faculty practice corporation wilfully failing to comply with paragraphs (b), (c) and (d) of section fifteen hundred three and section fifteen hundred fourteen of the business corporation law,
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,

10. A violation of section twenty-eight hundred three-d or twentyeight hundred five-k of the public health law.
11. A violation of section six thousand five hundred five-b of this chapter by a professional other than a professional subject to the provisions of paragraph (f) of subdivision one of section twenty-eight hundred five-k of the public health law.
12. In the event that the department of environmental conservation has reported to the department alleged misconduct by an architect or professional engineer in making a certification under section nineteen of the tax law (relating to the green building tax credit) the board of regents, upon a hearing and a finding of willful misconduct, may revoke the license of such professional or prescribe such other penalty as it determines to be appropriate.
13. In the event that any agency designated pursuant to title four-B of article four of the real property tax law (relating to the green roof tax abatement) has reported to the department alleged misconduct by an architect or engineer in making a certification under such title, the board of regents, upon a hearing and a finding of willful misconduct, may revoke the license of such professional or prescribe such other penalty as it determines to be appropriate.
14. In the event that any agency designated pursuant to title four-C of article four of the real property tax law (relating to the solar electric generating system tax abatement) has reported to the department alleged misconduct by an architect or engineer in making a certification under such title, the board of regents, upon a hearing and a finding of willful misconduct, may revoke the license of such professional or prescribe such other penalty as it determines to be appropriate.

§6509-a Additional definition of professional misconduct; limited application.

Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license or registration of a person subject to the provisions of articles one hundred thirty-two, one hundred thirty-three, one hundred thirty-six, one hundred thirty-seven, one hundred thirty-nine, one hundred forty-one, one hundred forty-three, one hundred forty-four, one hundred fifty-six, one hundred fifty-nine and one hundred sixty-four of this chapter may be revoked, suspended or annulled or such person may be subject to any other penalty provided in section sixty-five hundred eleven of this article in accordance with the provisions and procedure of this article for the following:

That any person subject to the above enumerated articles, has directly or indirectly requested, received or participated in the division, transference, assignment, rebate, splitting or refunding of a fee for, or has directly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of professional care, or service, including x-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory services or supplies, x-ray laboratory services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies or any other goods, services or supplies prescribed for medical diagnosis, care or treatment under this chapter, except payment, not to exceed thirty-three and one-third per centum of any fee received for x-ray examination, diagnosis or treatment, to any hospital furnishing facilities for such examination, diagnosis or treatment. Nothing contained in this section shall prohibit such persons from practicing as partners, in groups or as a professional corporation or as a university faculty practice corporation nor from pooling fees and moneys received, either by the partnerships, professional corporations, university faculty practice corporations or groups by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnerships, corporations or groups be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement; provided that no such practice as partners, corporations or in groups or pooling of fees or moneys received or shared, division or apportionment of fees shall be permitted with respect to care and treatment under the workers' compensation law except as expressly authorized by the workers' compensation law. Nothing contained in this chapter shall prohibit a medical or dental expense indemnity corporation pursuant to its contract with the subscriber from prorating a medical or dental expense indemnity allowance among two or more professionals in proportion to the services rendered by each such professional at the request of the subscriber, provided that prior to payment thereof such professionals shall submit both to the medical or dental expense indemnity corporation and to the subscriber statements itemizing the services rendered by each such professional and the charges therefor.

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

1. 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

pursuant to the requirements of section two hundred forty-four-c of the domestic relations law or pursuant to section four hundred fifty-eight-b of the family court act.

2. Upon receipt of an order from the court pursuant to one of the foregoing provisions of law, the board of regents, if it finds such person to be so licensed or registered, shall within thirty days of receipt of such order from the court, provide notice to the licensee or registrant of, and cause the regents review committee to initiate, a hearing which shall be held at least twenty days and no more than thirty days after the sending of such notice to the licensee or registrant. The hearing shall be held solely for the purpose of determining whether there exists as of the date of the hearing proof that full payment of all arrears of support established by the order of the court to be due from the licensee or registrant have been paid. Proof of such payment shall be a certified check showing full payment of established arrears or a notice issued by the court or by the support collection unit where the order is payable to the support collection unit designated by the appropriate social services district. Such notice shall state that full payment of all arrears of support established by the order of the court to be due have been paid. The licensee or registrant shall be given full opportunity to present such proof of payment at the hearing in person or by counsel. The only issue to be determined by the regents review committee as a result of the hearing is whether the arrears have been paid. No evidence with respect to the appropriateness of the court order or ability of the respondent party in arrears to comply with such order shall be received or considered by the committee.
3. Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license or registration of a person subject to the provisions of this title and/or subject to the provisions of title two-A of article two of the public health law shall be suspended if, at the hearing provided for by subdivision two of this section, the licensee or registrant fails to present proof of payment as required by such subdivision. Such suspension shall not be lifted unless the court or the support collection unit, where the court order is payable to the support collection unit designated by the appropriate social services district, issues notice to the regents review committee that full payment of all arrears of support established by the order of the court to be due have been paid.
4. The board of regents shall inform the court of all actions taken hereunder as required by law.
5. This section applies to support obligations paid pursuant to any order of child support or child and spousal support issued under provisions of article three-A or section two hundred thirty-six or two hundred forty of the domestic relations law, or article four, five or five-A of the family court act.
6. Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the provisions of this section shall apply to the exclusion of any other requirements of this article and to the exclusion of any other requirement of law to the contrary.

§6509-c Additional definition of professional misconduct; failure to comply in paternity or child support proceedings; limited application.

1. The provisions of this section shall apply in all cases of licensee or registrant failure after receiving appropriate notice, to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding referred to the board of regents by a court pursuant to the requirements of section two hundred forty-four-c of the domestic relations law or pursuant to section four hundred fifty-eight-b or five hundred forty-eight-b of the family court act.
2. Upon receipt of an order from the court pursuant to one of the foregoing provisions of law, the board of regents, if it finds such person to be so licensed or registered, shall within thirty days of receipt of such order from the court, provide notice to the licensee or registrant that his or her license or registration shall be suspended in sixty days unless the conditions as set forth in subdivision three of this section are met.
3. Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license or registration of a person subject to the provisions of this title and/or subject to the provisions of title two-A of article two of the public health law shall be suspended unless the court terminates its order to commence suspension proceedings. Such suspension shall not be lifted unless the court issues an order to the board of regents terminating its order to commence suspension proceedings.
4. The board of regents shall inform the court of all actions taken hereunder as required by law.
5. This section applies to paternity or child support proceedings commenced under, and support obligations paid pursuant to any order of child support or child and spousal support issued under provisions of section two hundred thirty-six or two hundred forty of the domestic relations law, or article four, five, five-A or five-B of the family court act.
6. Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the provisions of this section shall apply to the exclusion of any other requirements of this article and to the exclusion of any other requirement of law to the contrary.

*§6509-d Limited exemption from professional misconduct.

Notwithstanding any other provision of law to the contrary, it shall not be considered professional misconduct pursuant to this sub-article for any person who is licensed under title eight of this chapter and who would otherwise be prohibited from prescribing or administering drugs pursuant to the article that licenses such individual, to administer an opioid antagonist in the event of an emergency.

*NB: Effective June 22, 2016

§6510 Proceedings in cases of professional misconduct.

In cases of professional misconduct the proceedings shall be as follows:

1. Preliminary procedures.
 - a. Complaint. A complaint of a licensee's professional misconduct may be made by any person to the education department.
 - b. Investigation. The department shall investigate each complaint which alleges conduct constituting professional misconduct. The results of the investigation shall be referred to the professional conduct officer designated by the board of regents pursuant to section sixty-five hundred six of this article. If such officer decides that there is not substantial evidence of professional misconduct or that further proceedings are not warranted, no further action shall be taken. If such officer, after consultation with a professional member of the applicable state board for the profession, determines that there is substantial evidence of professional misconduct, and that further proceedings are warranted, such proceedings shall be conducted pursuant to this section. If the complaint involves a question of professional expertise, then such officer may seek, and if so shall obtain, the concurrence of at least two members of a panel of three members of the applicable board. The department shall cause a preliminary review of every report made to the department pursuant to section twenty-eight hundred three-e as added by chapter eight hundred sixty-six of the laws of nineteen hundred eighty and sections forty-four hundred five-b of the public health law and three hundred fifteen of the insurance law, to determine if such report reasonably appears to reflect conduct warranting further investigation pursuant to this subdivision.
 - c. Charges. In all disciplinary proceedings other than those terminated by an administrative warning pursuant to paragraph a of subdivision two of this section, the department shall prepare the charges. The charges shall state the alleged professional misconduct and shall state concisely the material facts but not the evidence by which the charges are to be proved.
 - d. Records and reports as public information. In all disciplinary proceedings brought pursuant to this section or in any voluntary settlement of a complaint between the licensee and the department, the department shall notify the licensee in writing that the record and reports of such disciplinary proceeding or of such voluntary settlement shall be considered matters of public information unless specifically excepted in this article, or in any other law or applicable rule or regulation.
 - e. Service of charges and notice of hearing. In order to commence disciplinary proceedings under this title, service of a copy of the charges and notice of hearing must be completed twenty days before the date of the hearing if by personal delivery, and must be completed twenty-five days before the date of the hearing if by any other method.
 - f. Service of charges and of notice of hearing upon a natural person. Personal service of the charges and notice of any hearing pursuant to subdivision two or three of this section upon a natural person shall be made by any of the following methods:
 1. by delivery within the state to the person to be served; or
 2. by delivery within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and either:
 - (i) by mailing by certified mail, return receipt requested, to the person to be served at his or her last known residence, or
 - (ii) by mailing by certified mail, return receipt requested, to the person to be served at his or her last address on file with the division of licensing services of the department in an envelope bearing the legend "personal and confidential," provided that, in either case: such delivery and mailing shall be effected within twenty days of each other; service pursuant to this subparagraph shall be complete ten days after either the delivery, or the mailing, whichever is later; and proof of service shall, among other things, identify such person of suitable age and discretion and state the date, time and place of such service; or
 3. where service under subparagraphs one and two of this paragraph cannot be made with due diligence, a copy of the charges and the notice of hearing shall be served by certified mail, return receipt requested, to the person's last known address on file with the division of licensing services of the department or by affixing the charges and the notice of hearing to the door of either the actual place of business, dwelling place or usual place of

abode of the person to be served; provided that: service pursuant to this subparagraph shall be complete ten days after such mailing, and proof of service shall set forth the department's efforts of due diligence.

- g. Service of charges and notice of hearing outside of the state. A natural person subject to the jurisdiction of the department may be served with a copy of the charges and the notice of hearing outside of the state in the same manner as service is made within the state, by any person authorized to make service within the state of New York or by any person authorized to make service by the laws of the state, territory, possession or country in which service is made or by any duly qualified attorney or equivalent in such jurisdiction.

2. Expedited procedures.

- a. Violations. Violations involving professional misconduct of a minor or technical nature may be resolved by expedited procedures as provided in paragraph b or c of this subdivision. For purposes of this subdivision, violations of a minor or technical nature shall include, but shall not be limited to, isolated instances of violations concerning professional advertising or record keeping, and other isolated violations which do not directly affect or impair the public health, welfare or safety. The board of regents shall make recommendations to the legislature on or before June first, nineteen hundred eighty-one, for the further definition of violations of a minor or technical nature. The initial instance of any violation of a minor or technical nature may be resolved by the issuance of an administrative warning pursuant to paragraph b of this subdivision. Subsequent instances of similar violations of a minor or technical nature within a period of three years may be resolved by the procedure set forth in paragraph c of this subdivision.
- b. Administrative warning. If a professional conduct officer, after consultation with a professional member of the state board, determines that there is substantial evidence of professional misconduct but that it is an initial violation of a minor or technical nature which would not justify the imposition of a more severe disciplinary penalty, the matter may be terminated by the issuance of an administrative warning. Such warnings shall be confidential and shall not constitute an adjudication of guilt or be used as evidence that the licensee is guilty of the alleged misconduct. However, in the event of a further allegation of similar misconduct by the same licensee, the matter may be reopened and further proceedings instituted as provided in this section.
- c. Determination of penalty on uncontested minor violations. If a professional conduct officer, after consultation with a professional member of the state board, determines that there is substantial evidence of a violation of a minor or technical nature, and of a nature justifying a penalty as specified in this paragraph, the department may prepare and serve charges either by personal service or by certified mail, return receipt requested. Such charges shall include a statement that unless an answer is received within twenty days denying the charges, the matter shall be referred to a violations committee consisting of at least three members of the state board for the profession, at least one of whom shall be a public representative for determination. The violations panel shall be appointed by the executive secretary of the state board. The licensee shall be given at least fifteen days notice of the time and place of the meeting of the violations committee and shall have the right to appear in person and by an attorney and to make a statement to the committee in mitigation or explanation of the misconduct. The department may appear and make a statement in support of its position. The violations committee may issue a censure and reprimand, and in addition, or in the alternative, may impose a fine not to exceed five hundred dollars for each specification of minor, or technical misconduct. If the fine is not paid within three months the matter may be reopened and shall be subject to the hearing and regents decision procedures of this section. The determination of the panel shall be final and shall not be subject to the regents decision procedures of this section. If an answer is filed denying the charges, the matter shall be processed as provided in subdivision three of this section.
- d. Convictions of crimes or administrative violations. In cases of professional misconduct based solely upon a violation of subdivision five of section sixty-five hundred nine of this article, the professional conduct officer may prepare and serve the charges and may refer the matter directly to a regents review committee for its review and report of its findings, determination as to guilt, and recommendation as to the measure of discipline to be imposed. In such cases the notice of hearing shall state that the licensee may file a written answer, brief and affidavits; that the licensee may appear personally before the regents review committee, may be represented by counsel and may present evidence or sworn testimony on behalf of the licensee, and the notice may contain such other information as may be considered appropriate by the department. The department may also present evidence or sworn testimony at the hearing. A stenographic record of the hearing shall be made. Such evidence or sworn testimony offered at the meeting of the regents review committee shall be limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. The presiding officer at the

meeting of the regents review committee may, in his or her discretion, reasonably limit the number of witnesses whose testimony will be received and the length of time any witness will be permitted to testify. In lieu of referring the matter to the board of regents, the regents review committee may refer any such matter for further proceedings pursuant to paragraph b or c of this subdivision or subdivision three of this section.

3. Adversary proceedings. Contested disciplinary proceedings and other disciplinary proceedings not resolved pursuant to subdivision two of this section shall be tried before a hearing panel of the appropriate state board as provided in this subdivision.
 - a. Notice of hearing. The department shall set the time and place of the hearing and shall prepare the notice of hearing. The notice of hearing shall state (1) the time and place of the hearing, (2) that the licensee may file a written answer to the charges prior to the hearing, (3) that the licensee may appear personally at the hearing and may be represented by counsel, (4) that the licensee shall have the right to produce witnesses and evidence in his behalf, to cross-examine witnesses and examine evidence produced against him, and to issue subpoenas in accordance with the provisions of the civil practice law and rules, (5) that a stenographic record of the hearing will be made, and (6) such other information as may be considered appropriate by the department.
 - b. Hearing panel. The hearing shall be conducted by a panel of three or more members, at least two of whom shall be members of the applicable state board for the profession, and at least one of whom shall be a public representative who is a member of the applicable state board or of the state board for another profession licensed pursuant to this title. The executive secretary for the applicable state board shall appoint the panel and shall designate its chairperson. After the commencement of a hearing, no panel member shall be replaced. A determination by the administrative officer of a need to disqualify or remove any panel member will result in the disqualification or removal of the panel and cause a new panel to be appointed. In addition to said panel members, the department shall designate an administrative officer, admitted to practice as an attorney in the state of New York, who shall have the authority to rule on all motions, procedures and other legal objections and shall draft a report for the hearing panel which shall be subject to the approval of and signature by the panel chairperson on behalf of the panel. The administrative officer shall not be entitled to a vote.
 - c. Conduct of hearing. The evidence in support of the charges shall be presented by an attorney for the department. The licensee shall have the rights required to be stated in the notice of hearing. The panel shall not be bound by the rules of evidence, but its determination of guilt shall be based on a preponderance of the evidence. A hearing which has been initiated shall not be discontinued because of the death or incapacity to serve of one member of the hearing panel.
 - d. Results of hearing. The hearing panel shall render a written report which shall include (1) findings of fact, (2) a determination of guilty or not guilty on each charge, and (3) in the event of a determination of guilty, a recommendation of the penalty to be imposed. For the panel to make a determination of guilty, a minimum of two of the voting members of the panel must vote for such a determination. A copy of the report of the hearing panel shall be transmitted to the licensee.
4. Regents decision procedures.
 - a. Regents review committee. The transcript and report of the hearing panel shall be reviewed at a meeting by a regents review committee appointed by the board of regents. The regents review committee shall consist of three members, at least one of whom shall be a regent.
 - b. Regents review committee meetings. The review shall be based on the transcript and the report of the hearing panel. The licensee may appear at the meeting, and the regents review committee may require the licensee to appear. The licensee may be represented by counsel. The department shall notify the licensee at least seven days before the meeting (1) of the time and place of the meeting, (2) of his right to appear, (3) of his right to be represented by counsel, (4) whether or not he is required to appear, and (5) of such other information as may be considered appropriate. After the meeting, the regents review committee shall transmit a written report of its review to the board of regents. In cases referred directly to the regents review committee pursuant to paragraph d of subdivision two of this section, the review shall be based upon the charges, the documentary evidence submitted by the department, any answer, affidavits or brief the licensee may wish to submit, and any evidence or sworn testimony presented by the licensee or the department at the hearing, pursuant to the procedures described by paragraph d of subdivision two of this section.
 - c. Regents decision and order. The board of regents (1) shall consider the transcript, the report of the hearing panel, and the report of the regents review committee, (2) shall decide whether the licensee is guilty or not guilty on each charge, (3) shall decide what penalties, if any, to impose as prescribed in section sixty-five hundred eleven of this article, and (4) shall issue an order to carry out its decisions. Such decisions shall require the affirmative vote of a majority of the members of the board of regents. If the board of regents disagrees with the hearing panel's

- determination of not guilty, it shall remand the matter to the original panel for reconsideration or to a new panel for a new hearing. The panel's determination of not guilty on reconsideration or a new hearing shall be final. The order shall be served upon the licensee personally or by certified mail to the licensee's last known address and such service shall be effective as of the date of the personal service or five days after mailing by certified mail. The licensee shall deliver to the department the license and registration certificate which has been revoked, annulled, suspended, or surrendered within five days after the effective date of the service of the order. If the license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, the licensee shall submit an affidavit to that effect, and shall deliver such license or certificate to the department when located.
5. Court review procedures. The decisions of the board of regents may be reviewed pursuant to the proceedings under article seventy-eight of the civil practice law and rules. Such proceedings shall be returnable before the appellate division of the third judicial department, and such decisions shall not be stayed or enjoined except upon application to such appellate division after notice to the department and to the attorney general and upon a showing that the petitioner has a substantial likelihood of success.
 6. The provisions of subdivisions one through four of this section shall not be applicable to proceedings in cases of professional misconduct involving the medical profession, except as provided in paragraph m of subdivision ten of section two hundred thirty of the public health law.
 7. Notwithstanding any other provision of law, persons who assist the department as consultants or expert witnesses in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, or criminal prosecutions for unauthorized practice, shall not be liable for damages in any civil action or proceeding as a result of such assistance, except upon proof of actual malice. The attorney general shall defend such persons in any such action or proceeding, in accordance with section seventeen of the public officers law.
 8. The files of the department relating to the investigation of possible instances of professional misconduct, or the unlawful practice of any profession licensed by the board of regents, or the unlawful use of a professional title or the moral fitness of an applicant for a professional license or permit, shall be confidential and not subject to disclosure at the request of any person, except upon the order of a court in a pending action or proceeding. The provisions of this subdivision shall not apply to documents introduced in evidence at a hearing held pursuant to this chapter and shall not prevent the department from sharing information concerning investigations with other duly authorized public agencies responsible for professional regulation or criminal prosecution.
 9. A disciplinary proceeding under subdivision three or four of this section shall be treated in the same manner as an action or proceeding in supreme court for the purpose of any claim by counsel of actual engagement.

§6510-b Temporary surrender of licenses during treatment for drug or alcohol abuse.

1. The license and registration of a licensee who may be temporarily incapacitated for the active practice of a profession licensed pursuant to title eight of this chapter, except professionals licensed pursuant to article one hundred thirty-one or article one hundred thirty-one-b thereof, and whose alleged incapacity is the result of a problem of drug or alcohol abuse which has not resulted in harm to a patient or client, may be voluntarily surrendered to the department, which may accept and hold such license during the period of such alleged incapacity or the department may accept the surrender of such license after agreement to conditions to be met prior to the restoration of the license. The department shall give written notification of such surrender to the licensing authorities of any other state or country in which the licensee is authorized to practice. In addition to the foregoing, the department shall also give written notification of such surrender, for professionals licensed pursuant to articles one hundred thirty-two, one hundred thirty-three, one hundred thirty-five, one hundred thirty-seven, one hundred thirty-nine and one hundred forty-one of this chapter to the commissioner of health or his designee, and where appropriate to each hospital at which the professional has privileges, is affiliated, or is employed. The licensee whose license is so surrendered shall notify all persons who request professional services that he or she has temporarily withdrawn from the practice of the profession. The department may provide for similar notification of patients or clients and of other interested parties, as appropriate under the circumstances of the professional practice and responsibilities of the licensee. The licensure status of such licensee shall be "inactive" and he or she shall not be authorized to practice the profession and shall refrain from practice in this state or in any other state or country. The voluntary surrender shall not be deemed to be an admission of disability or of professional misconduct, and shall not be used as evidence of a violation of subdivision three or four of section sixty-five hundred nine of this chapter, unless the licensee practices while the license is "inactive"; and any such practice shall constitute a violation of subdivision eight of said section. The surrender of a license under this subdivision shall not bar any disciplinary action except action based solely upon the provisions of subdivision three or four of section sixty-five hundred nine of this chapter, and only if no harm to a

patient has resulted; and shall not bar any civil or criminal action or proceeding which might be brought without regard to such surrender. A surrendered license shall be restored upon a showing to the satisfaction of the department that the licensee is not incapacitated for the active practice of the profession, provided that the department may, by order of the commissioner, impose reasonable conditions on the licensee, if it determines that because of the nature and extent of the licensee's former incapacity, such conditions are necessary to protect the health, safety and welfare of the public. Prompt written notification of such restoration shall be given to all licensing bodies which were notified of the temporary surrender of the license.

2. There shall be appointed within the department, by the board of regents, a committee on drug and alcohol abuse, which shall advise the board of regents on matters relating to practice by professional licensees with drug or alcohol abuse problems, and which shall administer the provisions of this section. The board of regents shall determine the size, composition, and terms of office of such committee, a majority of the members of which shall be persons with expertise in problems of drug or alcohol abuse. The committee shall recommend to the board of regents such rules as are necessary to carry out the purposes of this section, including but not limited to procedures for the submission of applications for the surrender of a license and for the referral of cases for investigation or prosecution pursuant to section sixty-five hundred ten of this article if a licensee fails to comply with the conditions of an approved program of treatment. There shall be an executive secretary appointed by the board of regents to assist the committee. The executive secretary shall employ, or otherwise retain, the services of a registered professional nurse with appropriate qualifications in substance abuse and addiction to assist in the implementation of the program authorized by section six thousand five hundred ten-c of this article. Determinations by the committee relating to licensees shall be made by panels of at least three members of the committee designated by the executive secretary, who shall also designate a member of the state board for the licensee's profession as the ex-officio non voting member of each panel. In the case of a determination relating to a licensed nurse, at least one panel member must be a registered professional nurse licensed by the state.
3. Application for the surrender of a license pursuant to this section shall be submitted to the committee, and shall identify a proposed treatment or rehabilitation program, and shall include a consent to the release of all information concerning the licensee's treatment to the committee. All information concerning an application, other than the fact of the surrender of the license and the participation in the program and the successful completion or failure of or withdrawal from the program, shall be strictly confidential, and may not be released by the committee to any person or body without the consent of the licensee. The immunity from disciplinary action conferred by this section shall be conditioned upon the approval of the treatment or rehabilitation program by the committee and its successful completion by the applicant and the elimination of the incapacity to practice. Approval of a treatment or rehabilitation program by the committee shall not constitute a representation as to the probability of success of the program or any assumption of financial responsibility for its costs.
4. The immunity from disciplinary action conferred by this section may be revoked by the committee upon a finding that the licensee has failed to successfully complete the program or that the incapacity to practice has not been eliminated. Such revocation shall be made only after notice and an opportunity to be heard, but no adjudicatory hearing shall be required. The matter shall be referred for appropriate proceedings pursuant to section sixty-five hundred ten of this chapter. The license must be returned unless charges are served pursuant to section sixty-five hundred ten within thirty days after the revocation of the approval of the special treatment afforded by this section.
5. The commissioner is authorized to adopt regulations to carry out the purposes of this section, including but not limited to the notice of temporary inactive status to be required in different professions and practice situations and the measures required upon temporary withdrawal from practice.
6. No individual who serves as a member of a committee whose purpose is to confront and refer either to treatment or to the department licensees who are thought to be suffering from alcoholism or drug abuse shall be liable for damages to any person for any action taken by such individual provided such action was taken without malice and within the scope of such individual's function as a member of such committee, and provided further that such committee has been established by and functions under the auspices of an association or society of professionals authorized to practice under this title.
7. In addition to the provisions of section two thousand eight hundred three-e of the public health law, any entity licensed pursuant to articles thirty-six, forty and forty-four of the public health law, and any mental hygiene facilities, and correctional, occupational, school and college health services shall provide a report to the office of professional discipline when there is a suspension, restriction, termination, curtailment or resignation of employment or privileges in any way related to a licensed nurse that is impaired when the impairment is alleged to have been caused by a drug-related problem. Any person, facility, or corporation which makes a report pursuant to this section in good faith shall have immunity from any liability, civil or criminal, for having made such a report except where the conduct constitutes negligence, gross negligence or intentional misconduct. For the purpose of any proceeding, civil or criminal, the good faith of any person, facility or corporation required to make a report shall be presumed. Such presumption may be rebutted by any competent evidence.

8. Notwithstanding any other provision of law, the license and registration of a licensed dentist or pharmacist who may be temporarily incapacitated for the active practice of their profession licensed pursuant to articles one hundred thirty-three and one hundred thirty-seven of this title and whose alleged incapacity is the result of a problem of drug or alcohol abuse which has not resulted in harm to a patient or client, may be voluntarily surrendered to, or voluntarily offered for any alternative disposition with the department, which may accept and hold such license or make any other disposition regarding such license deemed appropriate under the circumstances, if the department determines the health and safety of the public will be adequately protected thereby, during the period of such alleged incapacity. The department may accept the surrender of such license after agreement to conditions to be met prior to the restoration of the license or the department may treat the license as not surrendered and may impose conditions to allow the licensee to retain the license. All other provisions of this section shall be applied to the professions of dentistry and pharmacy in conformity with this subdivision.

~~§6510-c Nurse peer assistance programs.~~

1. As used in this section:
 - a. "Drug-related problem" means a problem or problems that are related to the use, misuse or addiction to drugs or alcohol.
 - b. "Participant" means an individual licensed pursuant to article one hundred thirty-nine of this title who has or may have a drug-related problem.
 - c. "Approved nurse peer assistance program" means a program operated by the New York State Nurses Association or a statewide professional association of nurses which has experience in providing peer assistance services to nurses who have drug-related problems which are designed to help a participant or a licensee's employer and has been approved by the department in accordance with criteria established in regulations of the commissioner.
 - d. "Peer assistance services" includes assessing the needs of a participant, including early identification of drug-related problems, and providing information, support, and advice as requested by a participant.
2.
 - a. The department shall provide funds, including but not limited to a portion of the funds made available pursuant to the provisions of this section, for services provided by an approved nurse peer assistance program. Funds used to provide services shall not be used for the treatment of participants. Funded services shall include, but not be limited to:
 1. providing peer assistance services for nurses with drug-related problems;
 2. maintaining a toll-free telephone information line for anonymous nurses, their employers, and others to provide assistance in the identification of services and information for nurses dealing with drug-related problems;
 3. training monitors for the professional assistance program;
 4. arranging for mental health consultants to assess nurses for the professional assistance program, as needed; and
 5. preparing written assessments of nurses who have been referred from the professional assistance program.
 - b. An additional fee of fifteen dollars shall be paid at the time of application for licensure and first registration and every registration by those licensed pursuant to article one hundred thirty-nine of this title for the purpose of implementing this program. The funds made available under this provision shall be deposited in the office of professions special revenue account for its purposes in implementing this section. The department may use a portion of this amount for its administrative expenses incurred in implementing this program including, but not limited to, employment of personnel, the costs of approving and contracting with a peer assistance program as required by this section and outreach activities to promote this program.
3. No approved nurse peer assistance program or individual who serves in an approved nurse peer assistance program shall be liable in damages to any person for any action taken or not taken or recommendations made unless, based on the facts disclosed by a participant, the conduct of the program or person with respect to the person asserting liability constituted negligence, gross negligence, or intentional misconduct.
4. All information concerning a participant gathered by the approved nurse peer assistance program shall be strictly confidential and may not be released to any person or body without the consent of the participant, except upon the order of a court in a pending action or proceeding. Aggregate data may be released to the committee on drug and alcohol abuse.

~~§6510-d Voluntary non-disciplinary surrender of a license.~~

~~A professional who is licensed pursuant to article one hundred thirty-nine of this title may voluntarily surrender a license to the committee on drug and alcohol abuse when such licensee requests to be monitored and/or receive peer support services in relation to the use, misuse or addiction to drugs. The committee shall accept such voluntary non-disciplinary surrender of a license and provide for expedited reinstatement of the license if the licensee meets criteria set by the committee. Such criteria will include, but not be limited to, confidence that the licensee's use of drugs and/or alcohol has not resulted in harm to a patient or client and the licensee is not incapacitated, unfit for practice or a threat to the health, safety and welfare of the public. Such voluntary surrender, if accepted by the committee, shall result in an immediate reinstatement of the license and shall provide immunity from a violation of subdivision three or four of section six thousand five hundred nine of this article and cannot be deemed an admission or used as evidence in professional misconduct. Acceptance by the committee shall not require a report to the department of health or to any employer or licensing authority of another jurisdiction, nor require any disclosure to patients or to the public that such license has been temporarily surrendered, except if it is subsequently determined by the department that a participant being monitored by the department is found to have used drugs and/or alcohol which has resulted in harm to a patient or client.~~

§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 (under the definitions and proceedings prescribed in sections sixty-five hundred nine and sixty-five hundred ten of this article) 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, provided, in the case of licensees subject to section two hundred thirty of the public health law, notice that the board is considering such restoration is given to the office of professional medical conduct at least thirty days before the date on which such restoration shall be considered. Upon the recommendation of the office of professional medical conduct, the board of regents may deny such restoration. Any fine imposed pursuant to this section or pursuant to subdivision two of section sixty-five hundred ten of this article may be sued for and recovered in the name of the people of the state of New York in an action brought by the attorney general. In such action the findings and determination of the board of regents or of the violations committee shall be admissible evidence and shall be conclusive proof of the violation and the penalty assessed.



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Rules of the Board of Regents

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Part 29, Unprofessional Conduct

Effective October 5, 2011

[§ 29.1 - General provisions.](#) | [§ 29.2 - General provisions for health professions.](#) | [§ 29.3 - General provisions for design professions.](#) | [§ 29.4 - Special provisions for the profession of medicine.](#) | [§ 29.5 - Special provisions for the professions of dentistry and dental hygiene.](#) | [§ 29.6 - Special provisions for the profession of veterinary medicine.](#) | [§ 29.7 - Special provisions for the profession of pharmacy.](#) | [§ 29.8 - Special provisions for the profession of optometry.](#) | [§ 29.9 - Special provisions for the profession of ophthalmic dispensing.](#) | [§ 29.10 - Special provisions for the profession of public accountancy.](#) | [§ 29.11 - Special provisions for the profession of certified shorthand reporting.](#) | [§ 29.12 - Special provisions for the profession of psychology.](#) | [§ 29.13 - Special provisions for the profession of massage therapy.](#) | [§ 29.14 - Special provisions for the profession of nursing.](#) | [§ 29.15 - Special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis.](#) | [§ 29.16 - Special provisions for the social work professions.](#) | [§ 29.17. Special provisions for the profession of physical therapy.](#) | [§ 29.18. Unprofessional conduct in waived entities.](#) | [§ 29.19. Special provisions for the profession of midwifery.](#)

§ 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, except for cases involving those professions licensed, certified or registered pursuant to the provisions of Article 131 or 131-B of such law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991, 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 patient or client, including the promotion of the sale of services, goods, appliances or drugs in such manner as to exploit the patient or 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 patient or 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, except as otherwise provided by law with respect to a facility licensed pursuant to Article 28 of the Public Health Law or Article 13 of the Mental Hygiene Law;

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 patient or 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 patient or client;
8. revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or 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, except in an emergency situation where a person's life or health is in danger;
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 patient or 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 patient or 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 patient or 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. The period of 30 days shall commence on the date when such communication was delivered personally to the licensee. If the communication is sent from either department by registered or certified mail, with return receipt requested, to the address appearing in the last registration, the period of 30 days shall commence on the date of delivery to the licensee, as indicated by the return receipt;

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.

§ 29.2 General provisions for health professions.

a. Unprofessional conduct shall also include, in the professions of: acupuncture, athletic training, audiology, certified behavior analyst assistant, registered dental assisting, chiropractic, creative arts therapy, dental hygiene, dentistry, dietetics/nutrition, licensed behavior analyst, licensed pathologists' assistants, licensed perfusionist, licensed practical nursing, marriage and family therapy, massage therapy, medicine, mental health counseling, midwifery, occupational therapy, occupational therapy assistant, ophthalmic dispensing, optometry, pharmacy, physical therapist assistant, physical therapy, physician assistant, podiatry, psychoanalysis, psychology, registered pharmacy technicians, registered professional nursing, respiratory therapy, respiratory therapy technician, social work, specialist assistant, speech-language pathology (except for cases involving those professions licensed, certified or registered pursuant to the provisions of article 131 or 131-B of the Education Law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of chapter 606 of the Laws of 1991):

1. abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care, or abandoning a professional employment by a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients;
2. willfully harassing, abusing or intimidating a patient either physically or verbally;
3. failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of 21 years;
4. using the word "Doctor" in offering to perform professional services without also indicating the profession in which the licensee holds a doctorate;
5. failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed professional;
6. guaranteeing that satisfaction or a cure will result from the performance of professional services;
7. ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient;

8. claiming or using any secret or special method of treatment which the licensee refuses to divulge to the State Board for the profession;
9. failing to wear an identifying badge, which shall be conspicuously displayed and legible, indicating the practitioner's name and professional title authorized pursuant to the Education Law, while practicing as an employee or operator of a hospital, clinic, group practice or multiprofessional facility, registered pharmacy, or at a commercial establishment offering health services to the public;
10. entering into an arrangement or agreement with a pharmacy for the compounding and/ or dispensing of coded or specially marked prescriptions;
11. with respect to all professional practices conducted under an assumed name, other than facilities licensed pursuant to article 28 of the Public Health Law or article 13 of the Mental Hygiene Law, failing to post conspicuously at the site of such practice the names and the licensure field of all of the principal professional licensees engaged in practice at that site (*i.e.*, principal partners, officers or principal shareholders);
12. issuing prescriptions for drugs and devices which do not contain the following information: the date written, the prescriber's name, address, telephone number, profession and registration number, the patient's name, address and age, the name, strength and quantity of the prescribed drug or device, as well as the directions for use by the patient. In addition, all prescriptions for controlled substances shall meet the requirements of article 33 of the Public Health Law;
13. failing to use scientifically accepted infection prevention techniques appropriate to each profession for the cleaning and sterilization or disinfection of instruments, devices, materials and work surfaces, utilization of protective garb, use of covers for contamination- prone equipment and the handling of sharp instruments. Such techniques shall include but not be limited to:
 - i. wearing of appropriate protective gloves at all times when touching blood, saliva, other body fluids or secretions, mucous membranes, nonintact skin, blood-soiled items or bodily fluid-soiled items, contaminated surfaces, and sterile body areas, and during instrument cleaning and decontamination procedures;
 - ii. discarding gloves used following treatment of a patient and changing to new gloves if torn or damaged during treatment of a patient; washing hands and donning new gloves prior to performing services for another patient; and washing hands and other skin surfaces immediately if contaminated with blood or other body fluids;
 - iii. wearing of appropriate masks, gowns or aprons, and protective eyewear or chin- length plastic face shields whenever splashing or spattering of blood or other body fluids is likely to occur;
 - iv. sterilizing equipment and devices that enter the patient's vascular system or other normally sterile areas of the body;
 - v. sterilizing equipment and devices that touch intact mucous membranes but do not penetrate the patient's body or using high-level disinfection for equipment and devices which cannot be sterilized prior to use for a patient;
 - vi. using appropriate agents, including but not limited to detergents for cleaning all equipment and devices prior a sterilization or disinfection;
 - vii. cleaning, by the use of appropriate agents, including but not limited to detergents, equipment and devices which do not touch the patient or that only touch the intact skin of the patient;
 - viii. maintaining equipment and devices used for sterilization according to the manufacturer's instructions;
 - ix. adequately monitoring the performance of all personnel, licensed or unlicensed, for whom the licensee is responsible regarding infection control techniques;
 - x. placing disposable used syringes, needles, scalpel blades, and other sharp instruments in appropriate puncture-resistant containers for disposal; and placing reusable needles, scalpel blades, and other sharp instruments in appropriate puncture-resistant containers until appropriately cleaned and sterilized;
 - xi. maintaining appropriate ventilation devices to minimize the need for emergency mouth-to-mouth resuscitation;
 - xii. refraining from all direct patient care and handling of patient care equipment when the health care professional has exudative lesions or weeping dermatitis and the condition has not been medically evaluated and determined to be safe or capable of being safely

protected against in providing direct patient care or in handling patient care equipment; and

xiii. placing all specimens of blood and body fluids in well-constructed containers with secure lids to prevent leaking; and cleaning any spill of blood or other body fluid with an appropriate detergent and appropriate chemical germicide; and

14. failing to adhere to applicable practice guidelines, as determined by the commissioner, for the compounding of sterile drugs and products.

b. Unprofessional conduct shall also include, in those professions specified in section 18 of the Public Health Law and in the professions of acupuncture, certified behavior analyst assistant, creative arts therapy, marriage and family therapy, massage therapy, mental health counseling, and psychoanalysis, failing to provide access by qualified persons to patient information in accordance with the standards set forth in section 18 of the Public Health Law. In the professions of acupuncture, certified behavior analyst assistant, creative arts therapy, licensed behavior analyst, marriage and family therapy, massage therapy, mental health counseling, and psychoanalysis, qualified persons may appeal the denial of access to patient information in the manner set forth in section 18 of the Public Health Law to a record access committee appointed by the executive secretary of the appropriate State Board. Such record access review committees shall consist of not less than three, nor more than five members of the appropriate State Board.

§ 29.3* General provisions for design professions.

a. Unprofessional conduct shall also include, in the professions of architecture and landscape architecture, engineering, land surveying and geology:

1. being associated in a professional capacity with any project or practice known to the licensee to be fraudulent or dishonest in character, or not reporting knowledge of such fraudulence or dishonesty to the Education Department;
2. failing to report in writing to the owner or to the owner's designated agent any unauthorized or improperly authorized substantial disregard by any contractor of plans or specifications for construction or fabrication, when professional observation or supervision of the work is provided for in the agreement between the owner and the design professional or when supervision of the work is under the control of the design professional;
3. certifying by affixing the licensee's signature and seal to documents for which the professional services have not been performed by, or thoroughly reviewed by, the licensee; or failing to prepare and retain a written evaluation of the professional services represented by such documents in accordance with the following requirements:
 - i. a licensee who signs and seals documents not prepared by the licensee or by an employee under the licensee's direct supervision shall prepare, and retain for a period of not less than six years, a thorough written evaluation of the professional services represented by the documents, including but not limited to drawings, specifications, reports, design calculations and references to applicable codes and standards. Such written evaluation shall clearly identify the project and the documents to which it relates, the source of the documents and the name of the person or organization for which the written evaluation was conducted, and the date of the evaluation, and the seal and signature of the licensee shall also be affixed thereto; and
 - ii. nothing in this paragraph shall be construed as authorizing the practice of a design profession in this State by persons other than those authorized to practice pursuant to the provisions of Article 145, 147 or 148 of the Education Law;
4. failure by a licensee to maintain for at least six years all preliminary and final plans, documents, computations, records and professional evaluations prepared by the licensee, or the licensee's employees, relating to work to which the licensee has affixed his seal and signature;
5. having a substantial financial interest, without the knowledge and approval of the client or employer, in any products or in the bids or earnings of any contractor, manufacturer or supplier on work for which the professional has responsibility;
6. permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, subcontractor or consultant. 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. This provision shall apply in lieu of Section 29.1(b)(4) of this Part;

7. accepting any form of compensation from more than one party for services on the same project without fully disclosing the circumstances and receiving approval from all interested parties;
8. participating as a member, advisor or employee or a government body in those actions or deliberations which pertain to services provided by the practitioner or his or her organization for such government body; or
9. in the profession of land surveying, the revision, alteration, or update of any existing boundary survey without adequate confirmation of relevant boundary lines and monuments. To be adequate, such confirmation shall include a reasonable field verification and shall be sufficiently extensive to reasonably ensure the accuracy of the revision, alteration, or update, as appropriate to the circumstances of the revision, alteration, or update.

b. Unprofessional conduct shall not be construed to include:

1. the employment, with the knowledge of the client, of qualified consultants to perform work in which the consultant has special expertise. This provision shall apply in conjunction with Section 29.1(b)(9) of this Part; and
2. participation as a delegator, or delegatee in delegating or accepting delegation, through an intermediate entity not authorized to provide professional design services, of specifically defined work involving the performance of a design function requiring a professional license, under the following terms, conditions and limitations:
 - i. such specifically defined design work shall be limited to project components ancillary to the main components of the project;
 - ii. the delegator shall specify in writing to the delegatee all parameters which the design must satisfy;
 - iii. the design function shall be required to be performed in accordance with performance specifications established by the delegator;
 - iv. the delegatee shall be required to be licensed or otherwise legally authorized to perform the design work involved and shall be required to sign and certify any design prepared;
 - v. the delegator shall be required to review and approve the design submitted by the delegatee for conformance with the established specifications and parameters and such determination shall be in writing; and
 - vi. the delegator shall be required to determine that the design prepared by the delegatee conforms to the overall project design and can be integrated into such design and such determination shall be in writing.
3. As used in paragraph (2) of this subdivision:
 - i. Delegator means a primary design team or team of design professionals which may be composed of professional engineers, land surveyors, professional geologists, architects and landscape architects acting either alone or in combination, licensed and registered in accordance with Articles 145, 147 or 148 of the Education Law, and authorized to provide the services being delegated.
 - ii. Intermediate entity means a person or entity, typically a contractor or subcontractor, responsible for performing the work under the contract for construction.
 - iii. Delegatee means a design professional, licensed and registered in accordance with Articles 145, 147 or 148 of the Education Law, who is employed or retained by the intermediate entity to produce design work in compliance with the performance requirements and parameters specified by a delegator.
 - iv. Certify means a written statement by a licensee confirming responsibility for the work and attesting that the work prepared meets the specifications (as well as conforming to governing codes applicable at the time the work was prepared), and conforms to prevailing standards of practice.

*NB Effective November 21, 2016

§ 29.4 Special provisions for the profession of medicine.

a. Unprofessional conduct in the practice of medicine shall include all conduct prohibited by Sections 29.1 and 29.2 of this Part except as provided in this section, and shall also include the following:

1. knowingly or willfully performing a complete or partial autopsy on a deceased person without lawful authority;
2. failing to comply with a signed agreement to practice medicine in New York State in an area designated by the Commissioner of Education as having a shortage of physicians or refusing to repay medical education costs in lieu of such required service, or failing to comply with any provision of a written agreement with the State or any municipality within which the licensee has agreed to provide medical service, or refusing to repay funds in lieu of such service as consideration of awards made by the State or any municipality thereof for his or her professional education in medicine, or failing to comply with any agreement entered into to aid his or her medical education;
3. a physician who prescribes or dispenses lenses or frames for the correction of vision shall be subject to the provisions of Sections 29.8 and 29.9 of this Part relating to unprofessional conduct in optometry and/or ophthalmic dispensing;
4. in the conduct of psychological research, failing to undertake reasonable efforts to remove the possible harmful aftereffects of emotional stress as soon as the design of the research permits, or failing to inform prospective research subjects or their authorized representatives fully of the danger of serious aftereffects, if such danger exists, before they are utilized as research subjects;
5. in the interpretation of the provisions of Section 29.1(b)(5) of this Part and in the treatment of sexual dysfunction as well as in other areas of the practice of psychiatry:
 - i. immoral conduct shall include any physical contact of a sexual nature between physician and patient; but immoral conduct shall not include the use of films and/or other audiovisual aids with individuals or groups in the development of appropriate responses to overcome sexual dysfunction;
 - ii. in therapy groups, immoral conduct shall include activities which promote explicit physical sexual contact between group members during sessions.

§ 29.5 Special provisions for the professions of dentistry and dental hygiene.

Unprofessional conduct in the practice of dentistry and dental hygiene shall include all conduct prohibited by Sections 29.1 and 29.2 of this Part except as provided in this section, and shall also include the following:

- a. Failing to comply with a signed agreement to practice dentistry in New York State in an area designated by the Commissioner of Education as having a shortage of dentists or refusing to repay dental education costs in lieu of such required service, or failing to comply with any provision of a written agreement with the State or any municipality within which the licensee has agreed to provide dental service, or refusing to repay funds in lieu of such service as consideration of awards made by the State or any municipality thereof for his or her professional education in dentistry, or failing to comply with any agreement entered into to aid his or her dental education.
- b. Claiming professional superiority or special professional abilities, attainments, methods or resources, except that a practitioner who has completed a program of specialty training approved by the Board of Regents in a specialty recognized as such by the Board of Regents, or who can demonstrate to the satisfaction of the department the completion of the substantial equivalent of such a program, may advertise or otherwise indicate the specialty. A practitioner who has completed all of the requirements for specialty qualification except an examination may advertise or otherwise indicate the additional training which has been acquired. The phrase practice limited to shall be deemed a claim of special professional abilities, and may be used only by dentists who have completed specialty training satisfactory to the department or dentists who have restricted their practice to a dental specialty prior to January 1, 1979. This subdivision shall apply in addition to Section 29.1(b)(12)(i)(f) of this Part.

§ 29.6 Special provisions for the profession of veterinary medicine.

- a. Unprofessional conduct in the practice of veterinary medicine shall include all conduct prohibited by Section 29.1 of this Part except as provided in this section, and shall also include the following:

Landscape Architecture Summaries of Regents Actions on Professional Misconduct and Discipline

1994-2023

prepared 4/5/23

Name	Infraction	Fine \$	Regents Action	Regents Action Date	Summary
Perkins, William C.	Plan Stamping	\$500	Probation - 1 year	12/16/1994	Licensee admitted to charges of placing his seal on a landscape plan which he did not prepare and retaining a written evaluation of the professional services represented by the plan.
Mittelstaedt, Jr, Arthur H.	Violation of Federal Law; filing false tax returns	\$0	1 year suspension, execution of last 6 months of suspension stayed, probation 2 years.	3/13/1996	Licensee admitted to charges of a conviction of three counts of violating Federal Law for filing false tax returns.
Rumph, Timothy Araiys	Negligence on more than one occasion	\$1,000	Censure and Reprimand	2/10/1998	Licensee does not contest charge of negligence on more than one occasion by preparing two preliminary landscape plans with errors.
Pearson, Allen Conrad	DWI multiple offenses	\$1,000	Application for consent order granted; Penalty agreed upon: 6 month suspension, following the aforesaid suspension, probation 2 years	7/20/2001	Licensee admitted to charge of having been convicted of Driving While Intoxicated, an Unclassified Misdemeanor, and Driving While Intoxicated on two occasions, Class E Felonies.
Damico, Mark	Convicted of Endangering the Welfare of a Child		Application for consent order granted Penalty agreed upon 2 year suspension, probation 2 years to commence upon return to practice.	7/19/2002	Licensee admitted to charge of having been convicted of Endangering the Welfare of a Child
Bonura, Michael	Preparing drawings for building permit submissions outside of scope of practice	\$1,000	Application for consent order granted; Penalty agreed upon: 2 year suspension, execution of suspension stayed, probation 2 years	12/13/2002	Licensee admitted to charge of preparing drawings for submissions on building permits that he was not entitled to do.
Winig, Guy	DWI	\$0	Application for consent order granted; Penalty agreed upon: 1 year stayed suspension, 1 year probation to commence upon return to practice	2/11/2013	Respondent admitted to the charge of having been convicted of Driving While Intoxicated.

Name	Infraction	Fine \$	Regents Action	Regents Action Date	Summary
Schwartz, Martha	failure to complete mandatory continuing education in another jurisdiction; false certification on another jurisdiction's registration renewal form	\$1,000 in 3 months	Application for consent order granted; Penalty agreed upon: 1 year stayed suspension, 1 year probation to commence upon return to practice in the State of New York	6/14/2016	Licensee admitted to the charge of willfully failing to comply with the mandatory continuing education requirements of the State of Texas to be registered to practice as a landscape architect and with falsely certifying on her Texas registration renewal form that she had completed her continuing education requirements.
Johnson, William W.	failure to complete mandatory continuing education	\$0	Application to surrender license granted.	5/8/2018	Licensee did not contest the charge of failing to comply with the mandatory continuing education requirements to be registered to practice as a landscape architect.
Ersboll, Paul E.	failure to complete mandatory continuing education	\$2,500	Application for consent order granted; Penalty agreed upon: 2 years actual suspension with leave to apply for early termination upon submission of continuing education credits, 2 years probation	12/11/2018	Licensee admitted to the charge of willfully failing to complete continuing education requirements for the registration period November 1, 2011 to October 31, 2014.
Copeland, Gregory	failure to complete mandatory continuing education	\$1,500	Application for consent order granted; Penalty agreed upon: 2 years stayed suspension, 2 years probation to commence upon return to practice in the State of New York	2/11/2019	Licensee admitted to the charge of failing to comply with the mandatory continuing education requirements to be registered to practice as a landscape architect.
Harten, Thomas	failure to complete mandatory continuing education	\$1,500	Application for consent order granted; Penalty agreed upon: 2 years stayed suspension, 2 years probation	12/14/2020	Licensee did not contest the charge of willfully failing to comply with the mandatory continuing education requirements to be registered to practice as a landscape architect.
Michaels, Kimberly Anne	failure to complete mandatory continuing education	\$2,500	Application for consent order granted; Penalty agreed upon: 2 years stayed suspension, 2 years probation	4/12/2021	Licensee admitted to the charge of willfully failing to comply with the mandatory continuing education requirements to be registered to practice as a landscape architect.
Webb, Richard F.	failure to complete mandatory continuing education	\$0	Application to surrender license granted.	5/10/2021	Licensee did not contest the charge of willfully failing to comply with the mandatory continuing education requirements to be registered to practice as a landscape architect.

Name	Infraction	Fine \$	Regents Action	Regents Action Date	Summary
Akroyd, Robert T.	failure to complete mandatory continuing education	\$2,500	Application for consent order granted; Penalty agreed upon: 2 years stayed suspension, 2 years probation	9/14/2021	Licensee admitted to the charge of willfully failing to comply with the mandatory continuing education requirements to be registered to practice as a landscape architect.
Pierides, Kyriacos N.	failure to complete mandatory continuing education	\$0	Application to surrender license granted.	1/10/2023	Licensee did not contest the charge of willful failure to comply with the mandatory continuing education requirements.

**Minutes of the Meeting
State Board for Landscape Architecture**
1411 Broadway; Regents' Room
New York, NY 10018

Present: Andrew Lavallee, Chair
Stacy Paetzel, Vice Chair
Valerie Aymer (PT)
Christine Colley
Nathaniel Harris
Mark Johns
Kimberly Lorenz
Adrienne Weremchuk

Staff: Robert Lopez, Executive Secretary
Marci McKenna, Assistant in Professional
Education

August 17, 2022

OPEN SESSION

1. **Motion:** Colley/Weremchuk: That the Board enter Executive Session. PASSED UNANIMOUSLY.
2. **Motion:** Harris/Johns: That the minutes of the April 20, 2022 State Board meeting be approved as written. PASSED UNANIMOUSLY.

3. **Board Chair Report:** Chair Lavallee mentioned that he had referred a potential Board member to the Executive Secretary and knows others who are interested.

4. **Board Office Report:** The Executive Secretary gave the Board Office report. He thanked Member Johns for his 10 years of service on the State Board.

5. **Old Business:**

Continuing Education Update: NYSCLA is working on legislative language and is hoping to send the language to the Legislature early next year to modernize the CE requirement for landscape architects.

Board Member Search: The Executive Secretary held an interview yesterday for a prospective Board member to eventually replace Member Colley, whose term will be up in June 2024. The public member position is also open and Board members were asked for potential candidates.

6. **New Business:**

ASLA Annual Meeting CE Review: The Executive Secretary thanked Member Colley for her help in reviewing the continuing education to be offered the 2022 ASLA Conference. After discussion of the offerings brought before the full State Board, the following recommendations were made:

- FRI-B08 – OK, no HSW
- FRI-D09 – no credit
- SAT-A05 – OK for HSW
- SAT-B03 – no credit
- SAT-C06 – no credit
- SUN-B02 – OK for HSW
- SUN-C06 – no credit
- FRI-A03 – OK for HSW
- FRI-C03 – OK for HSW

FRI-C10 – OK for HSW
MON-A01 – OK for HSW
MON-DD-001 – OK for HSW
MON-DD-002 – OK for HSW

Future OPD Meeting: The Executive Director of OPD (Office of Professional Discipline), Dennis Spillane, has been asked to attend the November meeting and the Executive Secretary included a list of suggested topics the Board may wish to discuss at that meeting in the Board package. Board members suggested additional areas such as grounds for recusal from review and logical parameters for assigning cases. The Executive Secretary will compile a spreadsheet of the public disciplinary information on the OP website for the Board’s reference.

CLARB Annual Meeting Preview: The agenda for this meeting was included in the Board package. The Board viewed videos of candidates for the Leadership Advisory Council and made recommendations to the Department for those candidates whom they supported.

Motion: Johns/Weremchuk: Given that no Board Member can attend the 2022 CLARB Annual Meeting, that the Executive Secretary be New York’s delegate. PASSED UNANIMOUSLY.

CLARB/ASLA Licensure Summit: The Executive Secretary discussed the highlights of this meeting with the Board.

2023 Meeting Dates: Dates for 2023 Board meetings were agreed to as follows; all being held in NYC:

Wednesday, April 19
Wednesday, August 16
Wednesday, November 29

7. **Motion:** Colley/Johns moved to adjourn. PASSED UNANIMOUSLY.

Next meeting Wednesday, November 30, 2022; in NYC

Respectfully submitted,

Robert Lopez, RA
Executive Secretary

Minutes of the Meeting
State Board for Landscape Architecture
1411 Broadway; Regents' Room
New York, NY 10018

Present: Andrew Lavallee, Chair
Stacy Paetzel, Vice Chair
Valerie Aymer (PT)
Christine Colley
Nathaniel Harris
Mark Johns
Kimberly Lorenz
Adrienne Weremchuk

Staff: Robert Lopez, Executive Secretary
Marci McKenna, Assistant in Professional
Education

August 17, 2022

EXECUTIVE SESSION

1. Motion: Harris/Johns: That the minutes of the April 20, 2022 State Board meeting be approved as written. PASSED UNANIMOUSLY.
2. Motion: Colley/Paetzel: That the Board resume the Open Session.

Respectfully submitted,

Robert Lopez, RA
Executive Secretary

**NEW YORK STATE BOARD
FOR
LANDSCAPE ARCHITECTURE**

BOARD REPORT

Registrants

Current Resident Registrants:	911
Current Non-Resident Registrants:	600
Total Number of Registrants as of January 1, 2023	1,511

Licenses Issued

2022 – 74; 2021 – 76; 2020 – 61; 2019 – 86; 2018 – 82; 2017 – 72; 2016 – 75

Licenses Issued between August 2, 2022 – April 3, 2023:

<u>CLARB</u>	<u>ENDORSEMENT</u>	<u>via Education, Experience, Exam</u>
-	4	44

NYSED/OP/Staff Activities

The Landscape Architecture website for the Office of the Professions has been redesigned, and Board Members are welcome to visit it at <https://www.op.nysed.gov/landscape-architecture> .

As part of the website update, Board members were sent an email from SharePoint and must create an account to view the Board Members’ Only website. This will allow Board members to access important documents and Board packages.

Legislative / Regulatory Activity

The NYS Legislature is in a new two-year session that will run from January 2023 through December 2024. Many of the former bills noted below have yet to be introduced by the Legislature.

Legislation of interest follows:

A1891-D / S5261-B – Expanded ownership in design professional corporations by employee stock ownership plans and non-licensed employees

Provides for expanded ownership in design professional corporations by employee stock ownership plans and non-licensed employees

Bill was signed as Chapter 439 of the Laws of 2022; effective date is 7/21/24.

S5614 / A4202 – Relates to building permits

Authorizes a city, town or village to establish a program whereby a building permit may be issued based upon certification by a registered architect or professional engineer.

Bill is referred to Local Government in the Senate and Local Governments in the Assembly.

S / A– Establishes a program where a municipal department of buildings may accept certain construction documents for code compliance

Establishes a program where a municipal department of buildings may accept construction documents required to be filed in relation to code compliance prior to issuance of a certificate of occupancy with less than a full examination by such municipal department of buildings based on a professional certification of an applicant who is an architect or professional engineer; makes related provisions.

Bill is not yet introduced

S / A – Requires certain engineering plans that could pose a material risk to public safety to bear a stamp of approval of a professional engineer

Requires certain engineering plans or specifications for engineering work or services that could pose a material risk to public safety to bear a stamp of approval of a professional engineer and authorizes the public service commission to promulgate rules and regulations relating to such requirement.

Bill is not yet introduced

A3389 / S3295 – Relates to the establishment of the water-based fire protection licensure act

Establishes water-based fire protection licensure act, setting forth licensure requirements for contractors engaged in the business of the layout, installing, repairing, inspecting, testing, or maintaining of water-based fire protection systems and components.

Bill is referred to Economic Development in the Assembly and is referred to Consumer Protection in the Senate.

A / S – Interior Design/State Contracting

Adds interior design services as a type of contract that can be entered into and negotiated by the state

Bill is not yet introduced

A / S - Licensing consequences for serious abuse of self-certification privileges

Relates to licensing consequences for architects or engineers who seriously abuse their self-certification privileges

Bill is not yet introduced

S3312 / No Same As – New York Emergency Responder Act

Enacts the New York emergency responder act limiting the liability of certain emergency responders.

Bill referred to Veterans, Homeland Security and Military Affairs

S5049 – NYC DoB False Documents

Relates to false statements in documents submitted to the department of buildings of the city of New York

Bill is referred to Cities in the Senate.

A4327 / No Same As – Increases to \$50,000 for cost of construction threshold

Increases to \$50,000 the cost of the construction of a building, structure or public work, above which an engineer, land surveyor or architect must be utilized

Bill is referred to Higher Education in the Assembly.

S / No Same As - Requires Public Authorities to negotiate with QBS

Requires public authorities to negotiate with most qualified architectural and engineering professional firms before negotiating with other firms

Bill is not yet introduced

Former Legislation of Interest

No bill number yet – Ag / Markets Defining Farm Conservation

Directs the department of agriculture and markets and the state soil and water conservation committee to review and define farm conservation practices which are within the professions of engineering, land surveying and architecture

No bill number yet – Mandating continuing education for certified interior designers

Relates to mandating continuing education for certified interior designers

No bill number yet - Good Samaritan Act

Enacts the engineers', architects', landscape architects' and land surveyors' good samaritan act

No bill number yet – Land Surveyor Designing Approved Sewage Disposal Systems

Provides that where a nitrogen-reducing sewage disposal system approved by the county department of health is designed by a land surveyor for an individual residential lot or is designed by a person who holds a valid license from the county to design sewage disposal systems for replacement or retrofit on an individual lot, such persons are exempt from the provisions of section 7208 of the education law; relates to qualifications for the design of a nitrogen-reducing sewage disposal system in a county of one million or more which draws its primary source of drinking water for a majority of county residents from a designated sole source aquifer.

No bill number yet – Relates to the Liability of Design Professionals

Relates to the liability of design professionals; prohibits broad indemnification of a state or local agency or political subdivision involving public work for contracts executed on or after January 1, 2020.

No bill number yet - Malpractice Insurance

Requires engineers and architects to maintain malpractice insurance in the amount of \$1,000,000

No bill number yet – Licensure Standards

An act to amend the education law, in relation to the review of licensure standards for architecture and landscape architecture.

No bill number yet – Land Surveying Definition

Relates to the definition of the practice of land surveying.

No bill number yet – Professional Certification for Nassau and Suffolk Counties

Establishes procedures authorizing certain municipalities to grant building permits upon certification by a licensed professional engineer or a registered architect

No bill number yet – Relates to the practice of certified interior design; repealer

Regulates the practice of certified interior design including the use of proper seals and construction documents; adds CE requirement for CID's

No bill number yet - Repeals mandatory continuing education for architects

Repeals a provision of the education law requiring mandatory continuing education for architects.

No bill number yet – Self-Certification

Grants cities authority to review plans for the construction of structures proposed to be made within its boundaries

Office of Professional Discipline

Kyriacos N. Pierides

To: Landscape Architecture Board Members

Date: November 1, 2022

From: Robert Lopez **R.L.**

Subject: CLARB Annual Meeting

In reply to:

This memo will describe some of the key takeaways from the 2022 CLARB Annual Meeting. Approximately 104 people were in attendance in-person while 75 attended the meeting remotely.

Day One – Wednesday, September 21

CLARB’s Emphasis on DEI Initiatives

In 2019, CLARB’s members amended the CLARB bylaws to allow for increased diversity on the CLARB Board of Directors. This change resulted in 42% of CLARB’s BoD being non-white, 42% female; and a much younger average age at 49.

CLARB’s stronger relationship with ASLA

A professional “Women of Color” program has been started, with CLARB lending financial support and resources to this effort

CLARB’s Strategic View of its Reserves

CLARB has created an R&D Fund that led to the efforts on the Global Job Task Analysis and the Women of Color program

Keynote Address – James Hayter – IFLA (International Federation of Landscape Architects)

There is a need for more formal recognition of landscape architecture worldwide. IFLA looks to partner with other stakeholders within the profession to pool resources. IFLA has 78 global members in 5 regions within 150 countries in the world. It was formed after WWII in 1948. The speaker thinks that the profession of landscape architecture is 10% of the size it could be.

IFLA’s vision is to be “A thought leader reaching out and connecting with the profession of landscape architects globally”. It has identified 5 key issues affecting the landscape architecture profession:

- Climate Action
- Food Security
- Community Participation
- Health + Wellbeing
- First Nations

Mr. Hayter also spoke about 3 key things discussed at the 2022 IFLA World Congress:

- Decarbonizing IFLA in 10 steps
- Reorganizing the City – “Great Design”

- Parks are part of a Community Health System

IFLA recently completed a book entitled “A Landscape Architecture Guide to the 17 Sustainable Development Goals”. This book illustrates the depth and breadth of the practice of landscape architecture.

IFLA understands the importance of mutual recognition across jurisdictions as this is sought due to the shortages of landscape architectural skills in many countries.

Future of Licensure Board Work – Veronica Meadows and Zach Druga

Traditional Work of Licensure Boards – typically relegated to licensure, CE, Codes of Conduct. Boards involved with entry into the LARE, licensure, reciprocal licensure, CE providers and audits. Staff involved with rules, policy, forms, complaints, and discipline.

Pressures Driving Change – Licensure reform movement has increased deregulatory activity. Technology advancements are driving change. Stakeholder demographics are older, more diverse. These pressures are increasing strains on Board resources.

How Board Work is Evolving – Increased partnerships with CLARB – the LARE, applicant verification services, license credentialing, standards development, adoption of uniform licensure standards.

Board Work of the Future – Implications of change is that Boards must think differently. In the future, Boards will still issue a license. Boards may focus on a non-traditional path. Will be important to create consistency in rulings, document complaints, look at preventative vs. reactive measures. Regular review of statutes and regulations will help to reduce bias and increase equity.

Increasing Diversity on Boards – Nicole Crutchfield and Julie Hildebrand

Barriers to Board service can include residency requirements, experience minimums, the need to be licensed, lengthy application processes, burdens of service, and conflict of interest when serving concurrently on ASLA/State Boards. The key is how Boards can influence the appointment process in selecting Board members. Some Boards are looking at evaluating service requirements, reducing barriers, examining the risks and benefits of term limits, and promoting vacancies and recruitment.

Adapting (or Responding?) to New Legislative Landscapes – John Johnson, John Cothron, Zach Druga

Deregulation efforts continue around the US, with those organizations looking to limit government and pushing deregulation stating that a Board’s requirements are a hurdle to licensure. Licensure reform efforts can include regulatory oversight, manage existing licensure schemes, sunset or sunrise legislation, universal licensing efforts, and study commissions. Mississippi described its deregulation issues and suggested it’s important to contact colleagues in other States, reach out to your legislators, and the importance of picking the right battles.

Expanding CLARB’s Practice of Foresight – Jeff De Cagna, Dana Grbac Nikolac, Paul Kissinger, Veronica Meadows

Shifts are occurring in these Turbulent 20’s that are affecting CLARB’s ecosystem. The purpose of the CLARB Foresight Network (CFN) is to give the CLARB BoD foresight in its strategic conversations. It looks at the shifts in society, the regulatory community, within CLARB, and gives the BoD a breadth of diverse perspectives in its work.

Day Two – Thursday, September 22

Uniform CE Standards – all MBEs in attendance led by Leslie Hanska, Ingrid Little, Brian Verard

MBEs met in small groups to discuss the differences in continuing education requirements throughout CLARB jurisdictions, and to see if there was common ground in the requirements. A survey of jurisdictions showed that 43 jurisdictions require continuing education while 13 do not; 10 jurisdictions have an annual renewal, 28 renew biennially, and 5 renew on a triennial basis. The average required amount of CE is 12 hours/year.

Expanding CLARB’s Practice of Foresight – Phil Meyer, Veronica Meadows

ICOR (Interorganizational Council on Regulation), comprised of CLARB, NCARB, CIDQ and NCEES, is looking at practice overlap of the design professions to establish a common understanding and common language. Its focus is on member board support, best practices in regulation, advocacy for licensure, and harmonizing of licensure policies and processes. There are joint priorities of ICOR that include an ICOR joint member orientation, joint CEO events, and Joint Practice Overlap Task Force. A 2020 NCARB Task Force recommended that education/experience/exam should be evaluated in all the professions, develop a position paper recognizing each, and find out if a discipline has a unique qualification.

The formal recommendation of this group has led to a larger effort by ICOR to develop a definition, guidelines, and/or best practices to define the competent overlap of practice more effectively. NCARB and CIDQ have developed a model for how to do such a comparison. Only about 25-35% of jurisdictions talk about incidental practice in their statutes.

Increasing Diversity in the Licensure Pipeline – Ellen White, Leslie Hanska, Clay Gloster, Christine Hilt

The Oklahoma Board has a scholarship program that allows the Board to grant scholarships. To date, \$1.5M has been awarded in scholarships with a range of \$3,000-\$6,500 per scholarship award.

North Carolina State A&T, a land grant institution with 4 colleges, 13,500 students, and more than 80% non-white, is the largest and highest ranked HCBU in the US. They have taken the step of permitting one section of the LARE to be taken while enrolled in the LAAB accredited program.

Uniform Standard Implementation – panel of speakers

Among other items, the panel discussed implementation of the new uniform standard. Some jurisdictions will need to open up their statutes or modify their regulations to implement the new standard. The CLARB Certification requirements will also need to change due to the new uniform standard.

Day Three – Friday, September 23

2022 Job Task Analysis – Adrienne Cadle, Rebecca Moden

CLARB recently completed a “from scratch” JTA. Currently, CLARB has 3,000 questions in its item bank. The response rate from landscape architects in the US and Canada to the JTA was as follows:

- 3,614 individuals responded
- 85.64% of respondents were landscape architects
- 13.13% were not licensed
- 23.03% of respondents did public work
- 66.86% of respondents did private work

Committee members involved in the JTA felt that the former LARE was out of order. The new LARE will be as follows:

- IAPM – 100 items – candidate must pass Section 2 to receive credit for IAPM
- P&D – 95 items – candidate must pass Section 3 to receive credit for P&D
- CD&A – 100 items – candidate must pass Sections 1 AND 4 to receive credit for CD&A
- GDSM – 80 items – candidate must pass Section 4 to receive credit for GDSM

Candidates will have three additional attempts to pass the current Sections 1-4 of the LARE – in December 2022, April 2023, and August 2023. In December 2023, the new LARE blueprint will be used.

General Business Session

President-Elect – Lea Ann Macknally

Leadership Advisory Council – Ryan Collins, Mark Taylor

CLARB 2.0 – CLARB BoD

ASLA created CLARB in 1961. In 1971, CLARB incorporated and begins the UNE. By 2019, CLARB had changed its bylaws to allow “new people in” to leadership roles. With the addition of foresight, it allowed the BoD to have research resources on what the future of landscape architecture might be.

CLARB Vision – The world’s people, places and environment are protected by landscape architects

CLARB Mission – To design and promote landscape architecture standards

CLARB sees its credentials expanding worldwide with more global recognition occurring. For the BoD, CLARB’s global growth must sustain itself and cannot be taken out of other key CLARB areas.

Launching a Global Analysis of Practice – panel presentation

IFLA did a global practice analysis in 2006 and can collect information but didn't have the expertise to analyze it properly at that time. They see a partnership with CLARB as beneficial to doing another global analysis. It is hoped that beginning in 2023 a regional and by-country analysis will be performed. The global analysis can be used by colleges and by associations for professional development opportunities. IFLA guesstimates that there are 120,000 landscape architects around the world.

Building a Defensible Licensing Exam – Adrienne Cadle

PSI is now the vendor for the LARE. Currently, 65% are testing in-person with 35% online. There are four sub-committees for the LARE. At a minimum, 135 questions are written every year. Around 1,200 people take the LARE each administration, with a total of 3,600 taking it each year.

BOARD REPORTS

**MBE= Member Board Executive; MBM= Member Board Member; Staff= Member Board Staff*

<u>Jurisdiction/Representative</u>	<u>Report</u>
Connecticut	
Delaware	
District of Columbia	Currently the Board has one vacancy for an Architect and one vacancy for a Landscape Architect. Stephanie Johnston has also joined the Support Team for the Board.
Maine	No Updates at this time
Maryland	
Massachusetts	
New Hampshire	
New Jersey	No updates at this time. Need appointees and more diversity in the board member recruitment pool. Working with professional societies ASLA, NJ ASLA, AIA to help fill seat.
New York	We have begun conversations with the New York State Council of Landscape Architects (NYSCLA) to modernize the continuing education requirements for landscape architects in New York. Changes will require a change in our legislation. The architects, professional engineers, land surveyors, and professional geologists have been successful in modernizing the CE requirements in their professions within the last couple of years. We hope to have our new website up and running sometime in the Fall, and continue our work on our Office of the Professions (OP) Modernization project for a new computer system for all professions.
Ontario	In October 2022, OALA will launch an updated registry and website system that will merge databases to improve member experience and also ability for office to manage each member in one area for improved regulatory management. OALA Members voted to update the term of Mandatory Continuing Education from 3 years (30 credits) to one year (10 credits). The change will start on January 1st 2024.
Pennsylvania	
Rhode Island	No updates at this time. Board opening and not a priority for the governor at the moment. Seeing some better gender parity, but interested in how DEI could grow their member pool as well.
Virginia	The new administration has tasked all boards with decreasing regulations by 25% by doing a line by line review and determining if each regulation is a state or federal requirement, and if it protects the health, safety and welfare of the public.

BOARD REPORTS

**MBE= Member Board Executive; MBM= Member Board Member; Staff= Member Board Staff*

<u>Jurisdiction/Representative</u>	<u>Report</u>
Illinois	
Indiana	
Iowa	
Kentucky	Proactively reached out to governor about appointments and now have 3 new board members
Manitoba	No update at this time
Michigan	
Minnesota	The Board is in final discussions to go forth with legislative changes in 2023. The Board will complete its deep dive into the administrative rules this year, with changes to be initiated.
Missouri	The only legislative changes that got passed this past session related to the Land Surveying profession. All 40 boards within the Division of Professional Registration have started working with IT staff to move toward a new 16 million dollar licensing system which will take approximately 12-18 months to complete. Is there a need for Corporate Certificates of Authority? The Board believes there is but some legislators think otherwise.
Ohio	Universal reciprocity bills are pending (HB 203, SB 131) that if passed would grant reciprocal licenses for anyone with a license in another state who has been licensed for at least 1 year. Currently we require reciprocal candidates to have “substantial equal” requirements to our own, meaning that they need an accredited degree. The General Assembly will not return until after the November elections, giving the legislature only 6 weeks to get these bills to committee and voted on. Although they have support (especially in the Senate), there simply may not be enough time for them to pass. his past spring, the Ohio Landscape Board introduced a new website solely devoted to the Landscape Architects Board. Prior to this, the Landscape Architect Board shared a website with the Ohio Architects Board, leading to some confusion about the separate natures of the boards. The dedicated website can provide specific guidance to landscape architects and is more user-friendly than the old website. Also, Board Member Chris Fleming was reappointed to the Board for another 5 years, effective 2/9/2022. The Board has received word that it is up for sunset review during the 2023-2024 General Assembly session. This will be the first time the Board has had to defend licensure pursuant to the recently passed sunset bill.
West Virginia	
Wisconsin	

BOARD REPORTS

**MBE= Member Board Executive; MBM= Member Board Member; Staff= Member Board Staff*

<u>Jurisdiction/Representative</u>	<u>Report</u>
Alabama	Successfully managed sunset. Had some legislation passed this session that deleted Certificate of Authorizations, increased the amount for reinstatements, established fee for an inactive status, and provided for injunctive relief.
Arkansas	No updates at this time
Florida	
Georgia	Engineers are now a stand alone board, they are struggling with the application processing.
Louisiana	Legislation on the deregulation of licensure continues to be an issue every year.
Mississippi	<p>The Landscape Architecture Advisory Committee (LAAC) and the State Board of Architecture have developed potential legislation to allow joint firm ownership between architects and landscape architects, which is currently prohibited by statute. The draft legislation is currently being reviewed by the Board of Licensure for Professional Engineers and Surveyors. If all parties can come to agreement on the language, the legislation may be introduced next year.</p> <p>Rule changes took effect in April to allow landscape architects to apply manual, electronic, or digital signatures to documents, to amend the rules to comply with the “Universal Recognition of Occupational Licenses Act” that passed last year, and to make several “housekeeping” changes.</p>
North Carolina	<p>The NC Board of Architecture introduced HB 676, the “New Architect Recruitment Act,” (which did not pass this session), regarding use of Board funds to conduct educational activities for licensed architects and individuals interested in architecture. The NCBLA will be reviewing this law and will most likely include a similar request for authorization for landscape architects and individuals interested in landscape architecture, since the Board anticipates seeking legislation to comport with CLARB’s Universal Licensure Standard.</p> <p>The NC Board has formed a sub-committee made up of practicing and soon-to-be practicing landscape architects from across the state, in all aspects of practice to advise the Board on the next steps relative to the Uniform National Standard.</p> <p>· As part of the on-going LARE Pilot Program, the DEI sub-committee of the NC Board has been charged with evaluating and recommending how to proceed with the program. A meeting of the sub-committee has been scheduled for late August, with the professors from NCSU and NC A&T, to debrief the entire process in an effort to learn how the program can be improved upon for the future. Rebecca Moden has been contacted for information and guidance.</p>

Puerto Rico	
South Carolina	<p>The SC Board of Landscape Architectural Examiners is doing a regularly scheduled regulatory review. The purpose of this review is to reduce redundancy, clarify language, change limits on hours for continuing education to allow more time for “self-directed study,” and to establish a continuing education exemption for age and experience for individuals who are at least 60 years old and have 30 years or more of licensed experience</p> <p>Jean Catalano (public member) was elected to honorary membership in the American Society of Landscape Architects.</p> <p>Andrew Cheatham, PLA, has been appointed as a professional member of the Board.</p> <p>Frank E. Barron III, has been appointed as a public member of the Board.</p>
Tennessee	<p>New Executive Director Glen Kopchak, Each profession regulated by board was more clearly defined and they worked on areas of overlap. Introduced changes that allow for more board authority to make decisions on licensure applicants.</p>
Texas	<p>No legislative session this year. Next session begins January 2023</p>

BOARD REPORTS

**MBE= Member Board Executive; MBM= Member Board Member; Staff= Member Board Staff*

<u>Jurisdiction/Representative</u>	<u>Report</u>
Alberta	
Colorado	
Kansas	<p>2021 HB 2066 created alternative reciprocal path for some who have been licensed for a year in another state and who either reside in Kansas or intend to reside in Kansas. The 2022 legislature enacted legislation requiring review of regulations every five years.</p> <p>Our Board member Carisa McMullen is the CLARB President Elect With the able assistance of Veronica Meadows acting as facilitator our board held a productive strategic planning retreat in March to address changes occurring with licensure.</p>
Nebraska	No updates at this time.
New Mexico	<p>They have had issues with board members being beyond term. They have been working to get this resolved, they had some members who were 10 years past their term limits. Finally got attention of the governor and have appointed 3 new board members.</p> <p>They are trying to get on a regular board meeting schedule.</p> <p>They are having conversations with attorney on how to get in line with the Uniform Standard</p>
North Dakota	
Oklahoma	<p>New Rules go into effect September 15, 2022, allowing individuals with an accredited degree to go straight to CLARB to begin testing and anyone with out an accredited degree must be board approved. 55:10-7-1. Examination required for Candidates</p> <p>(b) Landscape Architect Candidates. All Landscape Architect Candidates are required to take the LARE exam, as developed by CLARB and approved for administration on specific dates. Candidates with an accredited LAAB degree shall apply directly to CLARB to begin testing. Once all sections of the exam have been passed and the 3-year training requirement as stated in section 55:10-5-8 has been satisfied, Candidates shall submit an initial application for licensure with the Board. Candidates applying with equivalent standards are required to apply with this Board for approval prior to testing and must establish a council record with CLARB.</p> <p>We are currently meeting with the interior designers. They want to purpose a new bill next year with changes to our law. As of today, nothing has been decided upon.</p> <p>One of the major impacts to our state in recent years is the medical marijuana industry. Since Oklahomans approved medical marijuana in 2018 the number of licensed cannabis growers has exploded, creating demand for permitting of new buildings, repurposing of existing buildings and land use in general. It is bringing about life safety issues that our board, the engineering board in conjunction with</p>

	<p>the State Fire Marshal are addressing in a joint effort to help tame what is being dubbed the “wild west” industry. Other unintended consequence is the demand for water and electricity to support the grow industry, which is straining some rural utilities, along with environmental issues.</p>
<p>South Dakota</p>	
<p>Wyoming</p>	<ul style="list-style-type: none"> · Wyoming continues to pursue legislative changes for the upcoming 2023 session, which will allow our state to comply with uniform standard. Presently Wyoming only allows the accredited degree. Legislative sponsors for this bill are dependent upon the fall 2022 elections. · The Board’s administrative office is hoping to submit a new request for proposal for a licensing software system by the end of the year. · The Board and its practice associations have worked diligently to apply equity, diversity, and inclusion (EDI) considerations when possible. Effective 5/16/2022, Wyoming celebrated its first all-female board. The public member has served as Board President since May 2021. · The Wyoming Board remains focused on revising regulations to ensure minimum competency standards are in place while ensuring public protection. The Board has reiterated that continued, active involvement with CLARB and NCARB is key to achieve these goals.

BOARD REPORTS

**MBE= Member Board Executive; MBM= Member Board Member; Staff= Member Board Staff*

<u>Jurisdiction/Representative</u>	<u>Report</u>
Alaska	Proposed regulation change for Landscape Architect applicants to sit for the LARE upon graduating with a LAAB accredited degree. The public comment period ended July 8th. The board will be reviewing the comments during its August 16-17th meeting.
Arizona	No updates at this time
British Columbia	
California	<p>CCR 2615 Form of Examinations and 2620 Education and Training Credits, effective June 8, 2022 Amended language allows granting credit for related and non-related degrees while also adding an experience-only pathway.</p> <p>CCR 2611 Abandonment of Application, 2611.5 Retention of Candidate Files, and 2616 Application for Licensure Following Examination, effective April 1, 2022 Amended language provides clear definition of abandoned applications, inactive candidates, and the retention period for candidate files.</p> <p>CCR 2620.5 Requirements for an Approved Extension Certificate Program, effective October 1, 2022 Amended language clarifies requirements for program approval.</p> <p>The Senate Rules Committee re-appointed Jon S. Wreschinsky on June 29, 2022, and his term will expire on June 1, 2026.</p> <p>LATC has commenced work on its Business Modernization project to update its licensing and enforcement processes. Workshops commenced in May and the first release which will include automation of the Eligibility Application, CSE Application, and possible additional applications is on track for release this Fall 2022.</p>
Hawaii	
Idaho	
Montana	
Nevada	
Northern Mariana Islands	

Oregon	<p>No current action/initiatives. Big changes coming in 2023 with a new governor and many new representatives and senators in the Oregon Legislature. Historic governor’s race involving 3 female candidates – Republican, Democrat, and an Independent who is running a competitive race. Unclear if/how these upcoming changes in executive and legislative leadership will impact state licensure boards. The Governor appointed two new public members to OSLAB in July. OSLAB is very glad to see these positions filled. The new public members bring valuable skills and knowledge to their roles. A RLA position needs to be filled also, as one Board member completed a 2nd term as of 6/30/2022. Two consecutive terms is generally the limit for Board member service. OSLAB is waiting for an RLA application to be submitted to the Governor. It has been surprisingly challenging to convince any RLAs to apply, at least compared to in the past.</p>
Utah	<p>No updates at this time</p>
Washington	<p>The Board completed its work on their mission statement and is in the final stages of completing their charter document. They are also restarting their review of the Washington Administrative Code (WAC) for any needed updates, paying special attention to rules that are affected by the recent changes to the CLARB Standards of Eligibility. Board support staff recently went through a functional alignment within our umbrella agency. This alignment allows staff to better serve our licensees and board members by allowing specialized support in the areas of licensing, investigations/compliance, and administrative support. As part of this functional alignment, the board is now supported by its current MBE, an Administrative Assistant, and our newly created position, Program Specialist 5. This new position is held by Sydney Muhle who has extensive experience managing boards and facilitating meetings.</p>



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: Professional Practice Committee

FROM: Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Amendment of Section 69.6 of the Regulations of the Commissioner of Education Relating to the Continuing Education Requirements for the Profession of Architecture

DATE: December 1, 2022

AUTHORIZATION(S): *Don McG* *Bethy Mc*

SUMMARY

Issue for Discussion

Should the Board of Regents amend section 69.6 of the Regulations of the Commissioner of Education relating to the continuing education requirements in the profession of architecture?

Reason for Consideration

Required by State statute (Chapter 578 of the Laws of 2021) and Review of Policy.

Proposed Handling

The proposed rule will be presented to the Professional Practice Committee for discussion at the December 2022 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A).

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on December 28, 2022. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 578 of the Laws of 2021 (Chapter 578), effective May 3, 2023, amends the Education Law to update the mandatory continuing education (CE) requirements for architects by: (1) removing the exemption from the CE requirement for new licensees; (2) allowing the Department to grant a full exemption to the CE requirement for reasons of health certified by an appropriate health care professional, for extended active duty with the armed forces of the United States, or for other good cause acceptable to the Department which may prevent compliance;¹ (3) increasing flexibility for CE activities, including allowing up to six credits to be transferred from one triennial registration period to the next; and (4) allowing architects to take courses in engineering, interior design, land surveying, landscape architecture, and geology, as long as the courses contribute to the practice of architecture and meet the standards prescribed by the Commissioner.

Chapter 578 was welcomed by the field for modernizing the law governing CE for architects, Education Law §7308, which was enacted in 1999 and last updated in 2005. Since that time, factors including the growing availability of online educational opportunities have revolutionized the manner in which CE programs are offered. Chapter 578 provides architects with the flexibility and capability to take full advantage of these opportunities. Additionally, the “up to six credits of CE” carry-over provision from one triennial registration period to the next is consistent with laws in other states and the laws that regulate other design professions in New York.

Proposed Amendments

The proposed amendments amend section 69.6 of the Commissioner’s regulations to conform to the requirements of Chapter 578. The proposed amendment additionally:

- Broadens the health, safety, and welfare CE subject areas that may be considered acceptable, in alignment with the national CE standards in architecture;
- Permits service on a committee or task force that addresses technical and/or regulatory issues pertaining to the professional practice of architecture to count as an acceptable CE educational activity, consistent with recently promulgated regulatory amendments for engineering, land surveying, and geology in New York State;
- Amends the requirements for licensees who return to the practice of architecture after a lapse in practice, which also aligns with recently promulgated regulatory amendments for engineering, land surveying, and geology in New York State;

¹ Education Law §7308(1)(b) already permits the Department to grant an adjustment to the mandatory CE requirement for reasons of health certified by an appropriate health care professional, for extended active duty with the armed forces of the United States, or for other good cause acceptable to the Department which may prevent compliance.

- Permits the approval of continuing education providers that are approved by a licensing authority or agency of another jurisdiction under standards substantially equivalent to those of the Department; and
- Replaces the phrase “self-study programs” with “educational activities.”

Related Regents Items

Not applicable.

Timetable for Implementation

It is anticipated that the proposed rule will be presented for adoption at the April 2023 Regents meeting. If adopted at the April meeting, the proposed amendment will become effective May 3, 2023.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, and 7308 of the Education Law and Chapter 578 of the Laws of 2021

1. Section 69.6 of the Regulations of the Commissioner of Education is amended, to read as follows:

69.6 Continuing education for architects

(a) ...

(b) Applicability of requirement.

(1) ...

(2) Exemptions and adjustments to the requirement.

(i) Exemptions. The following licensees shall be exempt from the continuing education requirements, as prescribed in subdivision (c) of this section:

(a) [licensees for the triennial registration period during which they are first licensed to practice architecture in New York State, except those first licensed to practice architecture in New York State pursuant to an endorsement of a license of another jurisdiction; and

(b)] licensees whose first registration date following January 1, 2000 occurs prior to January 1, 2001, for periods prior to such registration date; and

[(c)] (b) licensees who are not engaged in the practice of architecture as evidenced by not being registered to practice in New York State, except as otherwise provided in subdivision (e) of this section to meet the requirements for the resumption of practice in New York State.

(ii) Adjustments and/or exemptions to the requirement. An adjustment and/or exemption to the mandatory continuing education requirement, as prescribed in subdivision (c) of this section, may be [made] granted by the department[, provided that the licensee documents good cause that prevents compliance, which shall include, but not be limited to, any of the following reasons: poor health certified by a physician; or a specific physical or mental disability certified by an appropriate health care professional; or extended active duty with the Armed Forces of the United States; or other good cause beyond the licensee's control which in the judgment of the department makes it impossible for the licensee to comply with the continuing education requirements in a timely manner] for reasons of health certified by an appropriate health care professional, for extended active duty with the armed forces of the United States, or for other good cause acceptable to the department which may prevent compliance.

(c) Mandatory continuing education requirement.

(1) General Requirement.

(i) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 36 hours of continuing education acceptable to the department, as defined in paragraph (2) of this subdivision[, provided that the number of hours of such continuing education that consists of other educational activities as prescribed in paragraph (2) of this subdivision shall be limited in accordance with the requirements set forth in section 7308(2) of the Education Law]. A minimum of 24 hours of such continuing education shall be in the areas of health, safety and welfare in accordance with the limitations and requirements set forth in section 7308(2) of the Education Law. No more than six continuing

education hours completed during one triennial registration period may be transferred to a subsequent triennial registration period.

(ii) ...

(2) ...

(i) Subjects. Acceptable continuing education shall be in any of the following subject areas that may contribute to professional practice in architecture:

(a) [in] any one or more of the following [curricular] subject areas relating to the health, safety, and welfare of the public: [accessibility; acoustics; building design; code of ethics; codes, acts, laws, and regulations governing the practice of architecture; construction administration, including the administration of construction contracts; construction documents; construction functions of materials, methods, and systems; energy efficiency; environmental issues - including asbestos, lead based paint, toxic emissions; environmental analysis and issues of building materials and systems; building fire loads - flame spread, smoke contribution, explosives; fire safety systems - detection and alarm standards; life safety codes; materials and systems - roofing/waterproofing, wall systems, and other systems; materials and methods, use and function; mechanical, plumbing, and electrical - system concepts, materials and methods; natural hazards - impact of earthquake, hurricane, or flood related to building design; building preservation, renovation, restoration, and adaptive re-use; design of security of buildings; site and soils analysis; site design; specification writing; structural issues; surveying methods and techniques; sustainable design; zoning as it relates to the improvement and/or protection of the health, safety and welfare of the public;] practice management, project management, programming and analysis, project

planning and design, project development and documentation, construction and evaluation; or other [matters] subject areas of practice, law and ethics which may contribute to the health, safety and welfare of the public; and

(b) [in] other subject areas [topics] in architecture, engineering, interior design, land surveying, landscape architecture and geology which may contribute to the professional practice of architecture as such practice is defined in section 7301 of the Education Law.

(ii) ...

(a) ...

(b) Other educational activities. Acceptable continuing education shall be the following other educational activities[, provided that the number of hours of continuing education that consists of other educational activities shall be limited in accordance with the requirements set forth in section 7308(2) of the Education Law]:

(1) ...

(2) ...

(3) ...

(4) ...

(5) completing a self-study program, meaning structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students; [or]

(6) completing an educational tour, meaning a structured tour of an instructional nature provided by a sponsor approved pursuant to subdivision (i) of this section[.]; or

(7) serving on any committee or task force that addresses technical and/or regulatory issues pertaining to the professional practice of architecture, provided that such committee or task force has been established by a governmental entity or other entity determined by the department to be acceptable. To be acceptable for continuing education credit, such service shall be certified in writing by an authorized individual within the committee or task force and approved by the department.

(d) ...

(e) Requirement for lapse in practice.

(1) [The] A licensee who returns to the practice of architecture after a lapse in practice in which the licensee was not registered to practice in New York State [and did not lawfully practice architecture continuously in another jurisdiction throughout the lapse period,] shall be required to complete:

(i) ...

(ii) [at least] one hour of acceptable continuing education for each month of lapsed registration up to a maximum [36] of 12 hours, which shall be completed in the 12 months before the beginning of the new registration period[; and

(iii) at least 12 hours of acceptable continuing education in each succeeding 12-month period, after such registration is reissued, until the next registration date.

(2) The licensee who returns to the practice of architecture after a lapse in practice in which the licensee was not registered to practice in New York State but did lawfully practice architecture continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period; and

(ii) at least one hour of acceptable continuing education for each month of lapsed registration up to a maximum of 36 hours, which shall be completed in the new registration period, or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of the new registration period; and

(iii) the regular continuing education requirement during the new registration period.]

(f) ...

(1) ...

(i) ...

(ii) ...

(iii) ...

(2) ...

(g) ...

(h) Measurement of continuing education study. Continuing education credit shall be granted only for acceptable continuing education as prescribed in subdivision (c) of this section. For continuing education courses, a minimum of 50 minutes of study shall equal one continuing education hour of credit. Courses or educational activities that are less than 50 minutes may be awarded prorated credit. For credit-bearing university or college courses, each semester-hour of credit shall equal 15 continuing education hours of credit, and each quarter-hour of credit shall equal 10 continuing education hours of credit.

(i) Sponsor approval.

(1) To be approved by the department, sponsors of continuing education to licensed architects in the form of courses of learning or [self-study programs] educational activities shall meet the requirements of either paragraph (2) or (3) of this subdivision.

(2) The department shall deem approved as a sponsor of continuing education to licensed architects in the form of courses of learning or [self-study programs] educational activities:

(i) a sponsor of continuing education that is approved by The American Institute of Architects Continuing Education [System] Services (AIA/CES), the International Association for Continuing Education and Training (IACET), the Practicing Institute of Engineering, or an equivalent organization determined by the department with assistance from the State Board for Architecture to have adequate standards for approving sponsors of continuing education for professionals regulated by Title VIII of the Education Law that include but are not limited to standards that are equivalent to the standards prescribed in clauses (3)(ii)(a), (c), and (d) of this subdivision; [or]

(ii) a postsecondary institution that has authority to offer programs that are registered pursuant to Part 52 of this Title or authority to offer equivalent programs that are accredited by an acceptable accrediting agency[.]; or

(iii) a sponsor of continuing education that is approved by a licensing authority or agency of another jurisdiction under standards substantially equivalent to those of the department.

(3) Department review of sponsors.

(i) The department shall conduct a review of sponsors that apply for approval to offer continuing education to licensed architects in the form of courses of learning or

[self-study programs] educational activities that are not deemed approved pursuant to the requirements of paragraph (2) of this subdivision.

(ii) Organizations desiring to offer courses of learning or [self-study programs] educational activities based upon a department review under this paragraph shall submit, with the fee as set forth in subdivision (j) of this section, an application for advance approval as a sponsor at least 90 days prior to the date of the commencement of such continuing education that documents that the organization:

(a) will offer courses of learning or [self-study programs] educational activities in any one or more of the subjects prescribed for acceptable continuing education in subparagraph (c)(2)(i) of this section;

(b) is an organized educational entity, or an entity that has expertise in the professional areas that will be taught, including but not limited to, a school of architecture accredited by an acceptable accrediting agency; or a national, State, or local [architecture] professional design association or organization;

(c) ...

(d) ...

(e) will maintain records for at least six years from the date of completion of course work, which shall include, but shall not be limited to, the name and curriculum vitae of the faculty, a record of attendance of licensed [architects] professionals in the course if a course, a record of participation of licensed [architects] professionals in the [self-study program] educational activity if [a self-study program] an educational activity, an outline of the course or [program] activity, date and location of the course or [program] activity, and the number of hours for completion of the course or [program] activity. In the event an approved sponsor discontinues operation, the governing body of

such sponsor shall notify the department and shall transfer all records as directed by the department.

(iii) ...

(iv) ...

(v) ...

(j) Fees.

(1)

(2)

(3) Organizations desiring to offer continuing education to licensed architects based upon a department review, pursuant to paragraph (i)(3) of this section, shall submit an application fee of \$900 with the application requesting the issuance of a permit from the department to become an approved sponsor of continuing education to licensed architects in the form of courses of learning or [self-study programs] educational activities. Application for a three-year renewal of the permit shall be accompanied by a fee of \$900.

To: Landscape Architecture Board Members

Date: April 3, 2023

From: Robert Lopez **R.L.**

Subject: LARE Transition

In reply to:

The Executive Secretary attended a meeting hosted by CLARB's Rebecca Moden on September 15, 2022, regarding the Landscape Architect Registration Examination (LARE) transition. This memo summarizes the transition in the exam that will occur in late 2023.

JTA – Job Task Analysis

- CLARB does a job task analysis every 5-7 years
- The JTA evaluates current landscape architecture practices with a lean towards the future practice of the profession
- Survey launched in January 2022 and concluded in August 2022

Transition in the LARE

- Content of the exam shifted to align with project flow
- Advanced items type on all sections
- Comparable length of exam
- Comparable price of exam
- Feedback by sub-domain

Transition – old exam to new exam

- Section 2 will transition to Inventory, Analysis and Project Management
- Section 3 will transition to Planning and Design
- Section 1 and 4 will transition to Construction Documentation and Administration
- Section 4 will transition to Grading, Drainage and Stormwater Management

Timeline

- December 2022, April 2023, August 2023 – same blueprint – candidates will have 3 attempts to finish the LARE
- December 2023 – start of the new blueprint for the LARE

Immediately following this memo is the announcement on the new LARE blueprint that was received from CLARB.



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In This Section

Home > Take the Exam > 2023 L.A.R.E. Changes

[New L.A.R.E. Blueprint Coming December 2023!](#)

Please register for and join a CLARB-hosted webinar on September 15 at 2 p.m. ET to review these the updates to the L.A.R.E. blueprint going into effect in December 2023. [Click here to register for this webinar.](#) If you have questions you would like addressed during the webinar, please email info@clarb.org.

Earlier this year, CLARB conducted a Job/Task Analysis (JTA) which is a scientific study of the profession that ensures the content of the Landscape Architect Registration Examination (L.A.R.E) remains legally defensible and relevant. The JTA results are also used to defend the legal scope of landscape architectural practice.

The results of the survey determine the tasks that are performed most often, are most important and subsequently instill the knowledge required at the initial point of licensure; thus, the survey results form the basis of the L.A.R.E. The final report from the 2022 JTA is now available – **[click here to view.](#)**

The findings from this JTA have resulted in changes to the content and structure of the L.A.R.E. **Beginning in**

December 2023, a new L.A.R.E. blueprint will go into effect. The L.A.R.E. will remain unchanged through August 2023.

KEY CHANGES – COMING DECEMBER 2023

- ✓ **All sections utilize advanced item types**
- ✓ **All sections comparable in cost and length**
- ✓ **Feedback by sub-domain**

New section titles, along with aligned content, will be the structure of the L.A.R.E. for all candidates testing as of December 2023.

The new L.A.R.E. blueprint will include the following four sections:

- Inventory, Analysis, and Project Management
- Planning and Design
- Construction Documentation and Administration
- Grading, Drainage, and Stormwater Management

All candidates will still be required to complete the four-section L.A.R.E. as part of their licensure requirements. **The image below displays equivalency for current sections (1, 2, 3, 4) to the new blueprint.**

NOTE: CLARB advises all candidates who have completed Section 1 to also complete Section 4 prior to or during the August 2023 administration, which will be the final administration using the current exam blueprint. It is also recommended that those who have completed Section 4 should complete Section 1 in this same timeframe.

2023 L.A.R.E. Transition Chart

Passed by August 2023

Credit Received

Section 2	=	Inventory, Analysis, and Project Management
Section 3	=	Planning and Design
Sections 1 AND 4	=	Construction Documentation and Administration
Section 4	=	Grading, Drainage, and Stormwater Management

Council of Landscape Architectural Registration Boards - CLARB

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THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

**NEW BUSINESS -
CLARB/ASLA
LICENSURE
SUMMIT - MARCH
2023**

To: Landscape Architecture Board Members
From: Robert Lopez *R.L.*
Subject: CLARB / ASLA Licensure Summit Summary
In reply to:

Date: April 5, 2023

A virtual CLARB/ASLA Licensure Summit was held on March 22, 2023 and was “attended” by 65 people. Elizabeth Hebron and Bradley Rawls of ASLA, along with Zach Druga of CLARB, among others, presented on the below items:

- Threats to Landscape Architecture
 - Extremely busy legislative session – many bills floated related to landscape architecture and licensure
 - Licensure threats averted in South Carolina and Virginia – bill in SC will most likely fail in Committee; bill has failed in VA
 - New Hampshire – Governor – when referring to landscape architects, said “For some reason, we license the person who plants rosebushes in your front yard. Not anymore”
 - NH has 425 legislators – largest legislature in the US; ASLA NH chapter has +- 45 members, so difficult to see all legislators
 - Looking like legislative fight against stopping licensure in NH will be successful, but too early to tell. The process is trending in the right direction.
 - Utah – threat to repeal licensing board postponed however there is still the prospect of merging boards with the architects
 - North Dakota – positive legislation – HB1465 – expand joint board to add a landscape architect and a public member. Currently only has architects on board
 - Illinois – positive legislation – letter in support of CE requirements for licensure
 - Landscape architecture sunset renewal bills occurred in Oklahoma and Maryland
- Legislative update
 - DC – trying to remove tax on LA services
 - Mississippi – trying to permit landscape architects to own joint design firms
- Uniform Standard Updates
 - Slightly more than ½ of the CLARB jurisdictions need either moderate or significant modifications to change their statutes or regulations to align with CLARB Uniform Standards
- Updated CLARB Certification
 - Aligns with Uniform standards
 - CLARB’s recommendation for initial and reciprocal licenses
 - Expanded pathways for certification
 - Over next 12 months, CLARB will review Council Record Holders to see who may meet the new requirements
 - CLARB staff will issue Certification to Record holders who meet the requirements
 - Council Records will be updated