

State of Vermont  
Agency of Natural Resources  
Department of Environmental Conservation

Wastewater Management Division  
The Sewing Building  
103 South Main Street  
Waterbury, Vermont 05671-0405

(802) 241-3822

Environmental Protection Rules

Chapter 1

Wastewater System and Potable Water Supply Rules

Effective September 29, 2007

**§1-706(a) Continuing Education**

submit an affidavit, using the form provided by the Secretary, every other year at the time of license renewal.

**§1-707 Complaints; Disputes**

- (a) The Secretary may review, on a random basis or in response to a complaint, the testing procedures employed by a designer, the systems designed by a designer, the designs approved or recommended for approval by a designer, and any work associated with the performance of these tasks. This review authority shall apply to all types of designers, including professional engineers.
- (b) If there is a dispute between the Secretary and a professional engineer concerning the design prepared by the engineer or the judgment exercised by the engineer, the engineer may request that the disputed issues be reviewed by a professional engineer employed or retained by the Secretary. The Secretary shall grant all such requests for review.

**§1-708 Disciplinary Actions; Enforcement**

- (a) The Secretary, after a hearing conducted in accordance with Chapter 25 of Title 3, may suspend, revoke or impose conditions on a designer's license, except one held by a professional engineer. Notice of that revocation shall be included in the next Environmental Notice Bulletin. This proceeding may be initiated on the Secretary's own motion or upon a written request which contains facts or reasons supporting the request for the imposition of conditions, suspension, or revocation. Conduct specified in 3 V.S.A. §129(a) as constituting unprofessional conduct by a licensee is cause for imposing conditions on a designer's license or for the suspension or revocation of a license. In response to a complaint, or on his or her own motion, the Secretary shall refer deficiencies in design or installation performed by a professional engineer under these Rules to the Board of Professional Engineering for further investigation and potential disciplinary action.
- (b) In addition to licensure actions, the secretary may initiate an enforcement action against a designer as specified in subchapter 4 of these Rules.

# The Vermont Statutes Online

## Title 3: Executive

### Chapter 5: SECRETARY OF STATE

#### 3 V.S.A. § 129a. Unprofessional conduct

##### § 129a. Unprofessional conduct

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items, or any combination of items, whether or not the conduct at issue was committed within or outside the state, shall constitute unprofessional conduct:

- (1) Fraudulent or deceptive procurement or use of a license.
- (2) Advertising that is intended or has a tendency to deceive.
- (3) Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession.
- (4) Failing to comply with an order of the board or violating any term or condition of a license restricted by the board.
- (5) Practicing the profession when medically or psychologically unfit to do so.
- (6) Delegating professional responsibilities to a person whom the licensed professional knows, or has reason to know, is not qualified by training, experience, education or licensing credentials to perform them.
- (7) Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records.
- (8) Failing to make available promptly to a person using professional health care services, that person's representative, succeeding health care professionals or institutions, upon written request and direction of the person using professional health care services, copies of that person's records in the possession or under the control of the licensed practitioner.
- (9) Failing to retain client records for a period of seven years, unless laws specific to the profession allow for a shorter retention period. When other laws or agency rules require retention for a longer period of time, the longer retention period shall apply.
- (10) Conviction of a crime related to the practice of the profession or conviction of a felony,

whether or not related to the practice of the profession.

(11) Failing to report to the office a conviction of any felony or any offense related to the practice of the profession in a Vermont district court, a Vermont superior court, a federal court, or a court outside Vermont within 30 days.

(12) Exercising undue influence on or taking improper advantage of a person using professional services, or promoting the sale of services or goods in a manner which exploits a person for the financial gain of the practitioner or a third party.

(13) Performing treatments or providing services which the licensee is not qualified to perform or which are beyond the scope of the licensee's education, training, capabilities, experience, or scope of practice.

(14) Failing to report to the office within 30 days a change of name or address.

(15) Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.

(b) Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes:

(1) performance of unsafe or unacceptable patient or client care; or

(2) failure to conform to the essential standards of acceptable and prevailing practice.

(c) The burden of proof in a disciplinary action shall be on the state to show by a preponderance of the evidence that the person has engaged in unprofessional conduct.

(d) After hearing, and upon a finding of unprofessional conduct, a board or an administrative law officer may take disciplinary action against a licensee or applicant, including imposing an administrative penalty not to exceed \$1,000.00 for each unprofessional conduct violation. Any money received under this subsection shall be deposited in the professional regulatory fee fund established in section 124 of this title for the purpose of providing education and training for board members and advisor appointees. The director shall detail in the annual report receipts and expenses from money received under this subsection.

(e) In the case where a standard of unprofessional conduct as set forth in this section conflicts with a standard set forth in a specific board's statute or rule, the standard that is most protective of the public shall govern. (Added 1997, No. 40, § 5; amended 2001, No. 151 (Adj. Sess.), § 2, eff. June 27, 2002; 2003, No. 60, § 2; 2005, No. 27, § 5; 2005, No. 148 (Adj. Sess.), § 4; 2009, No. 35, § 2.)