

POLICY NUMBER 7: SUMMARY OF LEGAL AUTHORITIES FOR PURPOSE OF CLARIFYING GROUNDS FOR RPF/CERTIFIED SPECIALIST DISCIPLINARY ACTION UNDER RESOURCES CODE, SECTION 778

Causes for professional discipline of an RPF or Certified Specialist (CRM) identified in PRC 778 include felony convictions substantially related qualifications, functions, or duties of a registered professional forester; deceit, misrepresentation, fraud, material misstatement of fact, incompetence, or gross negligence in professional practice; and fraud or deceit in obtaining the professional registration or certification.

The Board deems it unnecessary to adopt regulations to define the terms deceit, misrepresentation, fraud, material misstatement of fact, incompetence, or gross negligence because these are commonly understood terms that are well-established in the common law, case law, or statute, and for which ascertainable standards may be articulated through the common knowledge and understanding of members of the RPF/Certified Specialist (CRM) profession, when necessary. (*Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 763-766; *Rand v. Board of Psychology* (2012) 206 Cal.App.4th 565,582.) Nonetheless, the following representative definitions are offered for illustrative, informational purposes as general reference and guidance.

Deceit

Is a fraudulent and cheating misrepresentation, artifice, or device, used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. (Black's Law Dictionary.) Deceit can include any of the following:

- (A) The suggestion, as a fact, of that which is not true, by one who does not believe it be true; or,
- (B) The assertion, as a fact, of that which is not true, by one who has no reasonable grounds for believing it to be true; or,
- (C) The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want to communication of that fact; or,
- (D) A promise made without any intention of performing it.

(Civil Code, Section 1710); *Vogelsang v. Wolpert* (1964) 227 Cal.App.2d 102, 108-109.)

Fraud

Is an intentional perversion of the truth for the purpose of inducing another person in reliance upon it to part with some valuable thing belonging to the person or to surrender a legal right. (Black's Law Dictionary.) "Fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth. In its general or generic sense, it comprises all acts, omissions, and concealments involving a breach of legal or equitable duty and resulting in damage to another, or the taking of undue or unconscientious advantage of another; . . . Fraud has also been defined as any cunning, deception, or artifice used to circumvent, cheat, or deceive another." (*Vogelsang v. Wolpert* (1964) 227 Cal.App.2d 102, 108-109.)

Incompetence

Is lacking ability, legal qualification, or fitness to discharge a required duty. (Black's Law Dictionary.) The technical term "incompetency" is a relative one generally used in a variety of factual contexts to indicate an absence of qualification, ability, or fitness to perform a prescribed duty or function. ... It is commonly defined to mean a general lack of present ability to perform a given duty as distinguished from inability to perform such duty as a result of mere neglect or omission. (*Pollack v. Kinder* (1978) 85 Cal.App.3d 833, 837-838.) "Professionals are expected to have the ability to recognize conduct evincing unfitness to practice their profession. ... "[S]tandards of due care and competence are commonly established by the generally accepted practices and procedures within the professional community." (*Rand v. Board of Psychology* (2012) 206 Cal.App.4th 565, 582.)

Material Misstatement of Fact

[A]n omission or misstatement of fact is material if there is a substantial likelihood that a reasonable person would consider it important in "evaluating" the information disclosed against the purpose for which disclosure was required. (*People v. Hedgecock* (1990) 51 Cal.3d 395, 406-407.) A 'misrepresentation' is 'material' if it would be likely to affect the conduct of a reasonable man with reference to the transaction in question." (*Costello v. Roer* (1946) 77 Cal.App.2d 174.)

Misrepresentation

Is any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accord with the facts. (Black's Law Dictionary.) The Restatement (Second) of Torts defines negligent misrepresentation as follows: One who, in the course of his business, profession or employment, or in any other transaction in which he [or she] has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he [or she] fails to exercise reasonable care or competence in obtaining or communicating the information. (Restatement (Second) of Torts §552 (1981).)

Gross Negligence

The case law has defined gross negligence as "the want of even scant care or an extreme departure from the ordinary standard of conduct." (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1185–1186.) "Ordinary negligence"—an unintentional tort—consists of a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm. 'Gross negligence' long has been defined in California and other jurisdictions as either a 'want of even scant care' or 'an extreme departure from the ordinary standard of conduct.'" (*Jimenez v. 24 Hour Fitness USA, Inc.* (2015) 237 Cal.App.4th 546, 555.) "Professionals are expected to have the ability to recognize conduct evincing unfitness to practice their profession. ... "[S]tandards of due care and competence are commonly established by the generally accepted practices and procedures within the professional community." (*Rand v. Board of Psychology* (2012) 206 Cal.App.4th 565, 582.)

The Board has adopted a regulation (14 CCR § 1613) to identify felonies that are substantially related qualifications, functions, or duties of a registered professional

forester for purposes of PRC 778(a). That regulation states:

“[A] felony shall be considered to be substantially related to the qualifications, functions, or duties of an RPF or Certified Specialist, if, to a substantial degree, it evidences present or potential unfitness to perform the functions authorized by Article 3 [commencing with Section 750)] of the Public Resources Code.

Such felonies may include, but not be limited to; felony convictions which demonstrate dishonesty or breach of fiduciary responsibility or which involve any of the following:

(a) violations of PRC 778, or felony sections of the Business and Professions Code, Health and Safety Code, and Public Contracts Code;

(b) damage to natural resources including, but not limited to, arson;

(c) violations related to:

(1) Division 1, Chapter 2.5, Article 3 of the Public Resources Code, or

(2) Division 4, Part 2, Public Resources Code, or

(3) Division 1.5, Title 14, California Code of Regulations.”

For purposes of this regulation, the term fiduciary* is also a commonly understood term that is well-established in the law and does not require a regulation to define it, and the following representative definition is offered for illustrative, informational purposes as general reference and guidance.

** Fiduciary means a person holding the character of a trustee, or a character analogous to a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor it requires. A person acts in a fiduciary capacity when the business transacted is not the fiduciary's own or for his or her own benefit, but for the benefit of another person. (Black's Law Dictionary.)*