Back To Chiropractic Continuing Education Seminars
Ethics & Law: Rules ~ 2 Hours

Welcome:
This course is approved for 2 Hours of CE for Nutrition for the Chiropractic Board of Examiners for the state of California.

There is no time element to this course, take it at your leisure. If you read slow or fast or if you read it all at once or a little at a time it does not matter.

How it works:

1. **Helpful Hint: Print exam only and read through notes on computer screen and answer as you read.**
2. **Printing notes will use a ton of printer ink, so not advised.**
3. **Read thru course materials.**
4. **Take exam; e-mail letter answers in a NUMBERED vertical column to marcusstrutzdc@gmail.com.**
5. **If you pass exam (70%), I will email you a certificate, within 24 hrs, if you do not pass, you must repeat the exam. If you do not pass the second time then you must retake and pay again.**
6. **If you are taking the course for DC license renewal you must complete the course by the end of your birthday month for it to count towards renewing your license. I strongly advise to take it well before the end of your birthday month so you can send in your renewal form early.**
7. **Upon passing, your Certificate will be e-mailed to you for your records.**
8. **DO NOT send the state board this certificate.**
9. **I will retain a record of all your CE courses. If you get audited and lost your records, I have a copy.**

The Board of Chiropractic Examiners requires that you complete all of your required CE hours BEFORE you submit your chiropractic license renewal form and fee.

NOTE: It is solely your responsibility to complete the course by then, no refunds will be given for lack of completion.

Enjoy,
Marcus Strutz DC
CE Provider
Back To Chiropractic CE Seminars

Ethics &Law (2hrs) ~ David Hofheimer, D.C., Esq. ~ Back to Chiropractic CE Seminars

Chiropractic Law - Complying with Current State Board Rules and the Initiative Act -

Complying with the State of California Chiropractic Act and its associated Rules and Regulations generally speaking is not hard to do. More often than not, compliance involves thinking before doing, and having enough common sense to know when to read the Act, Rules, and Regulations when being suspicious that a given course of action might be at issue. Fortunately, most chiropractors are blessed with a high degree of common sense.

The State of California Rules and Regulations are contained in Title 16 of the California Code of Regulations, Division 4, beginning with section 301. These are posted on the State of California Board of Chiropractic Examiner's ("Board") website, and are periodically updated. It is best to periodically browse these rules and regulations to make sure you are compliant in your professional life with them.

The Scope of Practice of Chiropractic - §302 -

What are we allowed to do as professional doctors of chiropractic in California? A chiropractor may adjust the spinal column and other joints of the human body as well as manipulate muscle and other connective tissue. Chiropractors are also allowed to use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body including but not limited to air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water, and physical therapy techniques in the course of chiropractic manipulations and/or adjustments. Also authorized is the use of vitamins, food supplements, and foods for dietary use, and the use of x-rays and thermography for diagnostic (not for treatment) purposes only.

Chiropractors may generally diagnose and treat any condition, disease, or injury other than that defined in §10(b) of the Chiropractic Act (generally, sexual diseases and conditions) in any patient, including pregnant women, and may diagnose and treat provided it is done consistent with chiropractic methods and techniques and so long as what is done does not constitute medicine by exceeding the scope of chiropractic.

A number of specific types of non-chiropractic care are expressly stated and prohibited, including surgery, delivery of human children, obstetrics, dentistry, optometry, use of any drug or medicine, ultrasound use on a fetus, and mammography.

Examples of permissible care within the scope of chiropractic in California include adjusting both spinal and extraspinal subluxations (including adjusting any bone where there is no evidence of a current, non-healed fracture), testing and recommendation of nutritional supplements, the taking of radiographs, and the use of physical therapy.

Examples of non-permissible care that are outside the scope of chiropractic include the adjustment of any bone where there is radiographical evidence of a current non-healed fracture and the reduction of any dislocated bone.

Address Changes - §303 -

Every person holding a California license to practice chiropractic must file their current and proper practice address of their principal as well as all satellite (sub-office) offices with the Board. Any and all changes of practice addresses must be made in writing to the Board within 30 days of change, and must include a list of all previous practices and all new/unchanged addresses.

For example, a chiropractor has their principal office location at 123 Main St., Sacramento and a satellite office at 456 Any St., Sacramento, with both properly listed with Board. Later, they close their satellite office. Within 30 days, they must notify the Board in writing of the close of their satellite office, listing both the previous addresses of both the principal and satellite office, and expressly state that the principal office remains open in the same location, and that the previous satellite office is now closed.

Discipline by Another State - §304 -

The revocation, suspension, or other discipline by another state of a license or certificate to practice chiropractic, or any other health care profession for which a license or certificate is required, shall constitute grounds for disciplinary action against a chiropractic licensee or grounds for the denial of chiropractic licensure of an applicant in this state.

This means that any discipline against a doctor as a doctor in any state or jurisdiction is grounds for discipline here in California by the Board. For example, if a doctor is disciplined for insurance fraud in Ohio and they hold a valid chiropractic license here in California, they are subject to discipline for insurance fraud here in California by the Board. The purpose of this is to prevent rogue doctors from escaping discipline in this state so as to protect the public.

Investigator's Authority - §306.3 -

The Board or its designee (agent) may inspect the physical premises of any chiropractic office during the chiropractor's regular business hours. The Board or its designees (agents) have the right to do so upon presentation of apparently genuine identification as a member of the Board or with the Board's authorization. The inspection can occur with no advance warning at the chiropractic office of any chiropractor during the chiropractor's (not the Board or its agents) regular business hours. For example, if a chiropractor operated their chiropractic office from 4:30 a.m. - 2:00 p.m Monday through Friday, the Board or its agents could inspect that chiropractic office at 4:47 a.m. on a Monday, totally unannounced upon showing apparently authentic identification as a member of the Board or as an agent of the Board.

The same holds true for the Department of Public Health, Radiologic Health Branch. Any of its members or their agents may inspect anything related to radiology in a chiropractor's office during regular business hours upon showing apparently valid identification.

Display of License - § 308 -

Every chiropractor must display an active, valid license to practice chiropractic in their primary office as well as every satellite office, and must do so in a conspicuous place in each office. Each of these licenses must be renewed annually. No licensed doctor of chiropractic shall display any chiropractic license, certificate, or registration which is not currently active and valid.

For example, a chiropractor friend of mine one time received her annual license renewal which stated "inactive." I promptly informed her of this mistake, and she promptly wrote the board requesting her valid, active license to practice chiropractic. However, prior to receiving her active, valid license she could not display the inactive license nor her expired previous year's license in her place of business.

Name Changes - §310 -

Any licensee who legally changes their name shall reregister their name with the Executive Officer of the Board by submitting to the Board a written statement of their name change and evidence of legal documentation, and this must be done within 10 days of the legal name change. It would be wise to clearly state both the old and new names. This commonly happens with marriages and divorces.

For example, if Joan Smith, D.C. upon her divorce has her name changed back to her maiden name of Joan Jones (and hence Joan Jones, D.C.), within 10 days of receiving her court endorsed divorce decree she must send the Executive Officer of the Board a signed, written statement informing them of her previous name, her new legal name, and documentation of the legal name change. With divorce decrees, it is sufficient to send the Board a copy of just the first, last (with all parties signatures), and the pertinent page where the name change is listed.

Replacement Licenses - §310.1 -

Any licensee shall be entitled to a replacement license if their original license is lost, stolen, or mangled, or upon written request and legal documentation of name change. Each request for a replacement license must be accompanied by a non-refundable fee of $25.00, and a signed written statement as to the circumstances of loss of the said license, or return to the board office the mangled license.

As a further example of a name change upon a divorce, the same written explanation is pertinent here, but a non-refundable fee of $25.00 is also required to obtain the replacement license.

D.C. Title - §310.2 -

Only those persons who hold valid, active licenses issued by the Board to practice chiropractic in California may engage in the practice of chiropractic in this state. Any person who does not hold a valid, active, Board-issued chiropractic license who holds themselves out of a doctor of chiropractic, who advertises or promotes in any manner (oral or written) the words "doctor" or "chiropractor" or the letters, prefixes, or suffixes "Dr." or "D.C." or any other word, title, or letters indicating or implying that he or she is engaged in the practice of chiropractic, or who represents or holds themselves out as a doctor of chiropractic is in violation of the Chiropractic Initiative Act.

For example, it is illegal and in violation of the Chiropractic Initiative Act for someone who has graduated from chiropractic college but not yet obtained a valid, active license to practice chiropractic issued from the Board to call themselves doctor or chiropractor, or to use the letters, prefix, or suffix of "Dr." or "D.C." As will be explained later, any unlicensed chiropractor who does so will be prevented from applying in this state to be a chiropractor. It would be wise to first obtain a valid, active licensed to practice chiropractic before calling oneself a doctor or chiropractor to the public.

Advertisements - §311 -

Although constructive educational publicity is encouraged, the use by any licensee of advertising which contains misstatements, falsehoods, misrepresentations, distorted, sensation, or fabulous statements, or which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, constitutes grounds for the imposition of any of the following discipline: suspension of up to one year, probation, or any discipline other than revocation as the Board deems proper.

It must be remembered that protection of the public is the ultimate purpose of the Board, and advertising (especially written advertising) is obviously a much more serious concern than many other matters as shown by the potential discipline for violation of this section.

It used to be illegal for licensed professionals to advertise, period. A 1976 United States Supreme Court case opened the door for 1st Amendment freedom of speech rights in relation to commercial advertising by licensed professionals. The Supreme Court held that licensed professionals could not be prohibited from making truthful, commercial advertising, unless the government shows a substantial interest in prohibiting advertising. This forced the states to generally allow professional advertising provided it was truthful.

Chiropractic Specialties - §311.1 -

For purposes of the Department of Industrial Relations" Qualified Medical Evaluator Eligibility regulations (Division of Workers' Compensation, Title 8, California Code of Regulations, Section 12), the Board recognizes only those specialty boards that are recognized by the American Chiropractic Association (ACA) or the International Chiropractors Association (ICA).

Illegal Practice - §312 -

Unlicensed persons (including students and chiropractic college graduates who do not hold valid, active chiropractic licenses in this state) are not permitted to diagnose, analyze, or perform chiropractic adjustments.

An exemption exists for student doctors participating in board approved preceptorship programs. Those unlicensed persons in these preceptorship programs may take patient histories (but not consultations), only those neurological, orthopedic, physical, and chiropractic examinations not requiring diagnostic or analytical interpretation, perform physical therapy, and mark radiographs (but not make any diagnostic conclusions or chiropractic analytical listings), provided they are under the immediate and direct supervision of the approved doctor of chiropractic. For example, an unlicensed person may not conduct heart and lung auscultation (as these involve diagnosis and interpretation).

The preceptor must be under immediate and direct supervision by the licensed doctor of chiropractic, who must at all times be on the chiropractic premises where the preceptor is working. The licensed doctor is responsible for verification of recorded findings and all conclusions, and for that matter is responsible for everything that occurs on the chiropractic premises in all situations.

For example, it would be illegal for an approved licensed doctor of chiropractic to leave their preceptorship student practicing on the chiropractic premises by stepping outside the chiropractic premises for even a moment, and for any reason. It would be much better to sent the preceptorship student to go get lunch, than for the supervising doctor to do that.

Ownership of a D.C. practice - §312.1 -

Only licensed doctors of chiropractic may own a chiropractic practice, and may do so in any form recognized by the Internal Revenue Service (e.g. sole practitioner, partnership, corporation, limited liability partnership, etc.). Those who are not doctors of chiropractic may own the facilities and/or equipment from which a chiropractic business is operated (such as having a real estate investment where the premises is rented to a chiropractor).

This brings up several issues. Only licensed doctors of chiropractic may own chiropractic business. Conversely, 100% of a chiropractic business must be owned only by active, valid, California licensed doctors of chiropractic.

Some chiropractors have been wrongly advised to co-own a health care business along with non-chiropractors, such as with medical doctors (D.C./M.D.) or with physical therapists (D.C./P.T.). Such action is absolutely prohibited by this section of the Chiropractic Rules and Regulations. I had one D.C. tell me that they paid $18,000 to a corporate attorney who set up a D.C./M.D. co-owned practice in which the M.D. owned 51% and the D.C. owned 49% of the business. The corporate attorney had told the chiropractor that because the chiropractic ownership was less than 50%, this was supposedly okay. Of course, the D.C. who paid $18,000 wanted to think that they were correctly advised, but they were not. §312.1 of the Chiropractic Rules and Regulations does not create any exception for a less than 50% ownership interest in a partial chiropractic business. The Rules and Regulations are straightforward - there can be no ownership of any chiropractic business unless the chiropractic business is entirely owned by licensed doctors of chiropractic.

Ownership of Practice upon the Death or Incapacity of a Licensee - §312.2 -

In the event of death of a chiropractor or the legal declaration of a chiropractor as being mentally incompetent, the unlicensed heirs or trustees of the chiropractor must dispose of the practice within six months of the death or declaration of mental incompetency of the chiropractor. At all times during that period, the practice must be supervised by a licensed chiropractor.

Inducing a Student in Illegal Practice - §313 -

No licensed doctor of chiropractic shall cause a student or prospective student of a chiropractic college to believe that they can practice chiropractic prior to receiving a license from the Board. Also, no student may rely or act upon any such statement, except as a student at a chiropractic college as properly supervised through the school's chiropractic clinic run by a licensed doctor of chiropractic. This section also does not apply to preceptorship students and their supervising doctors of chiropractic.

Responsibility for Conduct on Premises - §316 -

Every licensee is responsible for the conduct of employees or other persons subject to their supervision in their place of business, and shall insure that all such conduct in their place of practice conforms to the law and the regulations.

No sexual acts or erotic behavior involving patients, patrons, or customers shall be permitted on the chiropractic premises, structure, or facility.

The commission of any act of sexual abuse, sexual misconduct, or sexual relations by a licensee with a patient, client, customer, or employee is unprofessional conduct and cause for disciplinary action. This conduct is substantially related to the qualifications, functions, and duties of a chiropractic licensee.

This section does not apply to sexual contact between a licensed chiropractor and his or her spouse or person in an equivalent registered (with the California Secretary of State) domestic relationship when that chiropractor provides professional treatment.

Anytime the Rules and Regulations state that a chiropractor is subject to discipline, they are emphasizing that the given section (such as here) is of more importance that most other sections, as the public needs to be more strongly protected with these given emphasized sections. It would be wise not to make a mistake in any emphasized sections (such as here). It would also be wise to be preventative of anything being misinterpreted, such as any comments pertaining to a patient's looks. For example, when performing a side posture L5 adjustment, it is a good idea to reach for the patient's shoulder coming from the head area, so that the patient doesn't misinterpret any movement by the chiropractor.

Unprofessional Conduct - §317 -

The Board shall take action against any licensee who is guilty of unprofessional conduct which has been brought to the attention of the Board, or whose license has been procured by fraud, misrepresentation, or issued by mistake. Unprofessional conduct is a broad category, and includes but is not limited to the following:

- gross negligence
- repeated negligence
- incompetence
- clearly excessive diagnosis and treatment
- conduct endangering the health, safety, and welfare of the public
- the use of any controlled substance, dangerous drug, or alcohol to the extent or in a manner as to be dangerous or injurious to oneself or others
- conviction of crimes -
  - any crime substantially related to the qualifications, functions, or duties of a chiropractor
  - felonies or misdemeanors involving moral turpitude, dishonesty, physical violence, corruption
- dispensing/administering narcotics, dangerous drugs, or controlled substances
- conviction of two or more drug/alcohol crimes
- violation of any law pertaining to the dispensing or administration of narcotics, dangerous drugs, or controlled substances

commission of any act involving moral turpitude, dishonesty, or corruption, whether related to activities as a chiropractor or not
knowingly making or signing any certificate or other document relating to the practice of chiropractic which falsely represents the existence or non-existence of a state of facts
violating, attempting to violate, or assisting another to violate, or conspiring to violate the Chiropractic Act or regulations adopted by the Board
making or giving any false statement or information in connection with the application of a chiropractic license
impersonating an applicant or acting as a proxy for an applicant in any examination required by the Board for licensure
any act of fraud or misrepresentation
employment of cappers/steerers to obtain business
unauthorized disclosure of a patient's confidential information
the giving or receiving anything of value in exchange for inducing or getting patients
waiver of insurance deductibles and co-pays in whole or part when used as an advertising and/or marketing procedure, unless the insurer is properly notified in writing of each instance
failure to appropriately refer a patient for a different type of health care where appropriate, unless the patient is already receiving care from that type of given health care provider
the offer, advertisement, or substitution of a spinal manipulation for vaccination

Negligence -

Negligence is conduct that falls below the standard of care that an objectively, reasonable person would use so as to prevent harm to others. Said in another way, negligence is breach of a duty that causes harm to others. This is the standard to which doctors of chiropractic are held, and it is based not on a so called average doctor, but on the standard of care that a doctor of chiropractic would use from a national perspective. This means that local doctors do not determine whether negligence has occurred or not. For example, the now outdated belief that a rural doctor is not as sophisticated in their occupation in contrast to an urban doctor is irrelevant to determine whether or not a doctor has actually committed negligence. Modernly, all validly licensed doctors of chiropractic are expected to have minimum standards from a national perspective.

Negligence is based on good faith, but honest mistakes made by either taking action or by not taking action. Negligence is entirely different than intentional acts, as intentional acts are purposely done. Malpractice professional insurance only protects doctors from negligent acts, and not from intentional acts. Failure to make chart notes after seeing a patient would probably be deemed an intentional and not negligent act, because one would have a make a conscious decision not to make records knowing that they have a professional obligation to do so.

Everyone makes mistakes, and no one is expected to be perfect. However, every doctor of chiropractic is expected to adhere to professional standards and perform their duty toward their patients at a minimum of an acceptable level of performance based on a reasonable, objective standard. Remembering that everyone makes mistakes, the breach of a duty alone does not constitute negligence. It is only when the breach of a duty also causes harm to a patient that negligence has occurred.

There is a big difference between gross negligence and ordinary negligence. Gross negligence involves a higher degree of culpability than that of ordinary negligence, and involves either recklessness or the commission of a crime in addition to committing a negligent act. Ordinary negligence can be thought of as making good faith, but honest mistakes in either doing or not doing something. Although there are many different ways to commit gross negligence, prime examples are not making patient records and also committing the same ordinary negligent act numerous times over and over again. Repeated negligent acts as well as committing gross negligence are one of many ways that unprofessional conduct is constituted.

Incompetence -

Competence is having the requisite knowledge, skill, training, and experience sufficient to perform one's professional duties in a manner that an objectively reasonable doctor of chiropractic would do so. Competence can be thought of as being the polar opposite of negligence, because competence is the performance of one's professional duty toward another in an appropriate manner, whereas negligence is one's performance that falls below the standard of duty owed to another (your patient). Incompetence is the lack of competence, and is consistent the first two elements of negligence, which is the breach of a duty. Remember that breach of a duty (and incompetence) rises to the level of negligence when that breach of a duty causes harm to another.

Generally speaking, only use those chiropractic techniques in which you are adequately trained. If you are learning a new technique, it is best to inform your patient and obtain their permission to try aspects of this new technique. Obtain whatever training is necessary to function as a competent doctor of chiropractic.

Clearly Excessive Diagnosis and Treatment -

A complaint in this area would usually only come from an insurance company, because this is generally related to money. There are no two chiropractors alike, and we all legitimately use a variety of different techniques in the course of administering chiropractic care. Whereas one chiropractor may use palpation to determine what bones to adjust, another may use applied kinesiology, another may use prone leg checks, etc., and still another may use a combination of several techniques. It is doubtful that a patient would complain about a chiropractor carefully diagnosing which vertebrae to adjust.

There have been complaints from insurance companies against doctors who routinely use thermography on every new patient to determine subluxations, especially when billed $800+ dollars for the procedure. These doctors have incurred appropriate discipline including revocation of licensure. The key for determining what is unprofessional conduct in this realm is not what is usual and customary, but the intent of the doctor. If what is done is genuinely in the best interest of the patient and there is no consideration of the money involved, there will typically be no problem. However, if the motivation is to be able to bill the insurance for as much money as can be obtained, this would actually be one form of insurance fraud because the intent would be to misrepresent what is needed for the patient in order to get money from the insurance company.

Any Conduct which has or is likely to Endanger the Health, Welfare, or Safety of the Public -

This area is self-evident.

Use of Controlled Substances or Use of any Dangerous Drug including Alcohol in a way Dangerous or Injurious to Oneself or Others -

Although obviously self-evident, some commentary is warranted. Alcohol generally is a legal drug for adults of sufficient age, and there are numerous illegal drugs, all of which can be addictive and have drastically bad effects on one's personality and function as a doctor of chiropractic. It is estimated that approximately 15-25% of American adults are alcoholics, and this starts from a variety of reasons including too much stress in one's life. Conviction of any alcohol or other drug related crime is sufficient grounds to constitute unprofessional conduct, and is so from several different perspectives, including relating to the qualifications, functions, or duties of a chiropractor. Often physical violence occurs only under the influence of alcohol, and this is another ground for unprofessional conduct. More than one misdemeanor conviction or any felony conviction related to alcohol or other drugs is still yet another way to commit unprofessional conduct.

If you have a problem with alcohol or any other drug, get the help needed immediately.

Conviction of any act involving Moral Turpitude, Dishonesty, or Corruption -

Moral turpitude means a readiness (having the intention) to do evil, and evil is intentionally doing harm to others. Moral turpitude generally involves taking advantage of others to their detriment, and is typified by insurance fraud.

Insurance fraud is the intentional misrepresentation of at least one material fact, justifiably relied upon by another, so as to obtain the property of another. Most crimes involve a concurrence of a mental state with a physical act. Here, there must be an intent to deceive an insurance company by way of misrepresentation of at least one material fact. Intentionally is essentially synonymous with knowingly, and many of the insurance fraud laws use the word "knowingly." Misrepresentation is deceit, which is misleading by use of a false statement. Material facts are those facts which are significant (as opposed to insignificant). Justifiably relied upon means that the insurance company must have relied upon the material misstatements, which is shown by payment of money that would not have been paid had true statements been used. Property used here refers to money, and "of another" refers to insurance companies.

Insurance fraud is a significant problem for insurance companies, and it is both criminal and civil in nature. Criminal acts are those defined in both federal and state criminal statutes, are prosecuted by the district attorney's office, and subject the criminal to prison sentences, restitution of money, discipline by the Board including revocation of licensure, and loss of voting rights (for felony convictions). Civil wrongs often result in a defendant owing money to the plaintiff.

Under California Insurance Code §1871.4, the following is made illegal: 1) making or causing to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation as defined in Labor Code §3207, 2) presenting or causing to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation as defined in Labor Code §3207, 3) knowingly assisting, abetting, conspiring with, or soliciting any person in an unlawful act under Insurance Code §1871.4, and 4) making or causing to be made any knowingly false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

California Penal Code §550(a) also covers insurance fraud and makes it unlawful to do any of the following: 1) knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss, including payment of a loss under a contract of insurance, 2) knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud, 3) knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim, 4) knowingly present a false or fraudulent claim for the payment of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or the contents of a motor vehicle, and 5) knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or allow it to be presented, in support of a false or fraudulent claim. Cal. Pen. C. 550(a). It is also unlawful to assist, abet, solicit, or conspire with any person to perform any of these acts. Cal. Ins. C. §1841.4(c). Furthermore, if the claim or amount at issue exceeds $400, or if the aggregate amount of claims made in any consecutive 12 month period exceeds $400, the crime is punishable by imprisonment in state prison for two, three, or five years, and/or a fine of up to $50,000, or by imprisonment in the county jail not to exceed one year and/or a fine of up to $1,000. If the value of the fraud exceeds $50,000, the amount of the fine may be up to double the value of the fraud. Cal. Pen. C. §550(c)(2)(a).

Conviction of any felony (including insurance fraud) in any jurisdiction (whether federal and/or state) by a licensed doctor of chiropractic will result in revocation of licensure by the Board.

Proper written documentation and disclosure will prevent many if not most problems for doctors, so that even if there is a difference of opinion there won't be any bad intent able to be proven, and hence no insurance fraud.

There are many different ways to commit insurance fraud. The intention expressed here is to always do everything honestly and ethically. Sometimes doctors feel tempted to waive deductibles and co-pays so as to encourage patients to receive care or more care than they would otherwise receive. Prior to all applicable insurance being billed and

receiving an explanation of benefit (EOB) where there is an expectation of insurance payment, this is outright illegal and constitutes insurance fraud, unless the doctor submits a written statement to the insurance company that they are taking this course of action. Proper written disclosure will prevent many problems, but the consequence is that the insurance company will diminish the amount paid to the doctor. For example, when a patient has a PPO insurance plan that pays 80% of their allowed amount of charges and the deductible has already been met, the insurance company will end up paying only 64% of their allowed amount (80% of 80%, which is .8 x .8 = .64 = 64%). There are two undeniable correct ways in regard to deductibles and co-pays - 1) adhere properly to deductibles and co-pays by properly collecting them from the patient, or 2) notify the insurance company in a signed writing concerning any waiver of deductibles and co-pays.

Another form of insurance fraud is billing for services that never occurred, and a variation on this theme is to bill for more than what was actually done. As amazing as this sounds to the vast majority of us who are honest, sometimes there are a rare few people who actually try this; sooner or later they get caught, are prosecuted by the district attorney's office, become convicted felons, lose their voting rights as American citizens, and become court-ordered to pay restitution to the insurance companies from which they stole money. Obviously, this course of action is not recommended and is strongly discouraged.

Any form of insurance fraud committed will be deemed unprofessional conduct as probably involving all of moral turpitude, dishonesty, and corruption. The result will be revocation of licensure.

Knowingly Making or Signing any Certificate or other Document Relating to the Practice of Chiropractic which Falsely Represents the Existence or Non-existence of a State of Facts -

This is closely related to insurance fraud, and all the comments above also apply here. However, this topic is broader than just insurance fraud. It could include doing a sham, incompetent exam as a Q.M.E. or I.M.E. for the benefit of an insurance company so that the insurance company could wrongly attempt to cut off legitimate insurance benefits to an insurance (whether it be in a personal injury case, workers' compensation case, or group health insurance case). It could include falsely documenting exam findings so as to justify an athlete to be able to play in a game. It could falsely documenting a no work or modified work status with no justification.

Making or Giving any False Statement or Information in Connection with the Application for Issuance of a Chiropractic License or Certificate -

This is self-evident - don't do it.

Impersonating an Applicant or Acting as a Proxy for an Applicant in any Examination required by the Board for the Issuance of a License or Certificate -

This is also self-evidence - don't do it.

The Participation in any act of Fraud or Misrepresentation -

Although seemingly self-evident, some commentary is deserved here. It is possible to commit fraud/misrepresentation in a variety of contexts. Two examples would be income tax evasion as well as falsifying court-submitted documents, such as with a divorce. A finding of this reported to the Board would result in license revocation even if there was no criminal conviction, provided there was sufficient evidence to satisfy due process requirements of fairness. Don't even think of committing fraud/misrepresentation. It isn't worth it.

Unauthorized Disclosure of Any Information about a Patient -

Confidentiality of protected healthcare information (PHI) is an extremely important duty of doctors of chiropractic. There are both federal (the Health Insurance Portability and Accountability Act of 1996 - HIPAA) and state

confidentiality laws; all doctors of chiropractic are subject to state laws, but only some are also subject to federal HIPAA law.

State confidentiality laws provide for release of a patient's confidential health information in three main ways - 1) appropriate signed consent, 2) judicial branch order or subpoena, and 3) administrative branch apparent authority. Although appropriate signed consent by the patient themselves is the usual manner of consent, consent can also be given by either any person who is an agent, conservator, or guardian for the patient. Always make sure you have proof the authorization to release confidential information, and keep it in the patient's chart.

Advance Health Care Directives (AHCD) are usually drafted by attorneys and allow a person to make health care decisions while they still have legal capacity to do so. One type or subcategory of AHCD is the Durable Power of Attorney for Health Care (DPAH) where a principle (your patient) names their agent to make health care decisions for them. Both of these written documents allow a patient to obtain chiropractic care either in an advance decision made by themselves, or by their agent who knows that your patient wants chiropractic care but is unable to legally make that decision for themselves. As long as the document (AHCD or DPAH) appears to be legitimate, the doctor is protected from any consequences for release of confidential health information, even if the document later turns out not to be valid. California Probate Code §4740 limits civil and criminal liability as well as professional discipline when a health care provider 1) complies with a health care decision of a person that the provider believes in good faith has the authority to make the decision for the patient, including a decision to withhold or withdraw care, 2) declines to comply with a health care decision on the basis of the agent lacking authority to make a decision for the patient, 3) complies with an AHCD assuming it to be valid and presently effective, or 4) declines to comply with a health care decision for reasons of conscience (Prob. C. §4734(a), etc. Prob. C. §4740.

Conservators are court-appointed persons who are legally responsible for an adult person (the conservatee) who is unable to legally make decisions for themselves. Upon showing proper identification as a conservator, the conservator's decisions related to health care of the conservatee must be respected. Similar to a conservator, a guardian is the court-appointed adult person who makes legal decisions for a minor, including health care decisions.

Attorneys as well as judges are all part of the judicial branch of government. Subpoenas from either an attorney or a court order (judge) requesting records of a patient must be honored.

Similarly, requests to inspect records may be made by any pertinent administrative branch of the government. For doctors of chiropractic, the pertinent administrative branches are both the Board and the Dept. of Public Health, Radiologic Health Branch. Any apparently valid form of identification by either of these administrative branches entitles the holder to inspect records on the spot with no advance warning. It would be unwise to refuse a valid request.

HIPAA is the acronym for the Health Insurance Portability and Accountability Act of 1996. This is federal law, and is applicable in addition to state confidentiality laws only if a health care provider, facility, health plan, or billing agency is a "covered entity." Covered entities are those health care providers, facilities, health plans, and billing agencies that transmit health care information electronically, those that use such an electronic transmitter, those contracted to provide private healthcare information electronically, and all doctors who are in states with state laws that mandate HIPAA compliance. Electronically generally means that patient health information is being transmitted by use of computers. This includes accessing websites to verify patient eligibility, sending bills by computer, receiving explanations of benefits, etc. There are two types of fax (facsimile) machines - computer and conventional. Faxing from a conventional telephonic fax machine does not constitute a HIPAA electronic transaction, but doing so via use of a computer does.

If you are subject to HIPAA laws, this is not the place to delve into detail on this subject, and you will have to get this information elsewhere. If you do not care to be subject to HIPAA laws, simply mail your bills by regular United States Postal Service 1st class mail, do not bill electronically, do not use a billing service that bills electronically, do not enter into any contracts requiring you to bill electronically or be HIPAA compliant, do not obtain or transmit any patient healthcare information by computer, and do not practice in a state that requires HIPAA compliance. At this point in time, California does not require HIPAA compliance for doctors of chiropractic.

Employment or Use of Cappers or Steerers -

Cappers are those people who accept money or other things of value in exchange for sending patients to doctors. Steerers are those people who steer (guide) patients to doctors, done in exchange for money or something of value. Payment of money or anything of value to a capper or steerer for gaining patients by a doctor of chiropractic or by the chiropractor's agent is a felony crime and will result in revocation of licensure upon a showing of sufficient evidence. Capping and steering does not occur if the senders of patients do not receive anything of value.

Genuinely satisfied patients often refer other people for care to a doctor, and this is legitimate provided they receive no money or anything tangible in value for their referrals.

When persons are lead to doctors involving insurance (such as auto accident victims), there can easily also be insurance fraud if care is rendered that is not necessary. For example, if an auto accident victim with insurance only needed 23 visits to get well, but the doctor instead rendered care on more visits than was necessary, the doctor would commit insurance fraud. This is a prime example of there often being several different ways unprofessional conduct can occur with a given set circumstances.

Waiver of Deductibles and Co-pays without Written Notice to the Insurance Company -

Forgiving all or even part of any deductible or co-payment amount on a patient's insurance policy when used as an advertising and/or marketing procedure constitutes unprofessional conduct, and will result in revocation of licensure upon a sufficient showing of evidence. Such evidence can also include the lack of any signed, written notice to the given insurance company of the waiver of deductibles and/or co-payments amounts as required in the Rules and Regulations. The proper language is spelled out in the Chiropractic Rules and Regulations §317(v), which is available on the state of California Board of Chiropractic Examiner's website, which is www.chiro.ca.gov. The only reason a doctor would waive deductibles and/or co-payment amounts would be to encourage a patient to get more care than they would if they had to pay the appropriate amount of money. Therefore, taking this approach would qualify as marketing if not also advertising, and would constitute unprofessional conduct and will result in revocation of licensure upon a showing of sufficient evidence.

Legal waiver of amounts due when there is no reasonable expectation of insurance payment - In contrast to illegal waivers of deductibles and copayments, in California it is LEGAL to waive any part of remaining amounts due when there is no reasonable expectation of any insurance payment. Business and Professional Code §657(b,c,d) is the statutory law providing and allowing a proper way to do this. There must be no reasonable expectation of insurance payment from any applicable insurance company, AND the discount must be made on the basis of prompt payment. There must be reasonable cause to believe that the patient is not eligible for or not entitled to insurance reimbursement. For example, when verifying insurance coverage a given patient may have a $2,000 deductible with nothing yet credited toward that deductible. Your bill of only several hundred dollars will certainly not meet the deductible, and therefore there is reasonable cause to believe there will be no insurance reimbursement (payment). Waiver of amounts due to any degree below your fee schedule is then permissible based on prompt payment by the patient. “Prompt” is subjectively defined by the doctor. The safest way to do this is to only waive remaining amounts due AFTER you have billed the patient’s insurance AND received the insurance company’s (companies’) explanation of benefits pages.

Failure to Refer to an Appropriate Health Care Provider -

As licensed doctors of chiropractic, we have an affirmative duty to refer patients to the appropriate type of health care when necessary. This includes psychologists or psychiatrists when there are mental health issues, dentists when there are dental issues, medical doctors when medical conditions that don't respond to chiropractic care within a reasonable amount of time or when there is no reasonable amount time for a natural approach for a given situation, osteopathic doctors for osteopathic situations, etc. Despite whatever strong feelings one has towards different health care professionals, one must never compromise their professional duty to their patients. Doing so in this realm is another way to commit unprofessional conduct, and will result in revocation of licensure upon a showing of sufficient evidence as well as expose a doctor to malpractice if harm is caused to a patient due to a breach of duty.

The Offer, Advertisement, or Substitution of a Spinal Manipulation for Vaccination -

Although many doctors of chiropractic have strong feelings concerning vaccinations, it is unprofessional conduct to state that an adjustment is a substitute for a vaccination (for which it is not). However, there is no problem in providing patients with truthful information and allowing the patient to decide for themselves whether or not to vaccinate their children. After all, doctor means teacher and specifically teacher in the realm of health care. Without chiropractors, many in the public would not learn of alternative health care information. Just be careful to truthfully state information that is welcomed by a patient, and never misrepresent or state untruths (including a chiropractic adjustment supposedly substituting for a vaccination).

Chiropractic Referral Services - §317.1 -

Referral bureaus shall be made up of at least five doctors, each of whom does not have a fiduciary (trusting) relationship to another, with one participating office representing no more than 20% of the bureau's available practitioners. An application for this must be filed with the Board that properly identifies the service, structure, and members of the referral bureau, have a separate telephone number for this service, along with an application fee of $25.00.

The referral service shall refer callers to the next doctor on the list on a rotating basis unless there is a specific request for a specialist, there are geographical considerations, or there is a request for services in a language other than English.

Records must be kept of referrals including the date of referrals, name and address of each patient, and the name and address of the doctor to whom the patient was referred.

When a 24-hour emergency referral service is offered, a member of the group shall be available.

Chiropractic Patient Records/Accountable Billings - §318 -

Every licensed chiropractor is required to maintain all written patient records for five years from the date of the doctor's last treatment of the given patient, unless a greater amount of time is required (such as records of Medicare beneficiaries, which are required to be maintained for seven years from the last explanation of benefit issued by the Medicare payer). Chiropractic records are classified as active if the patient has been treated within the last 12 months, and inactive if the last date of treatment has been longer 12 months.

All records of Medicare beneficiaries must be kept for seven years following the date of the last explanation of benefit (EOB) page from Medicare's payor.

Radiographs must be maintained for seven years from the date of discharge of the patient as required by the California Department of Public Health, Radiologic Health Branch.

All chiropractic patient records shall be available to any representative of the Board upon presentation of the patient's written consent or a valid legal order. Active chiropractic patient records shall be immediately available to any representative of the Board at the chiropractic office where the patient has been or is being treated. Inactive chiropractic patient records shall be available upon 10 days notice to any representative of the Board. The location of the inactive records shall be reported immediately upon request.

Chiropractic patient records must include the patient full name, date of birth, social security number if available, gender, height, weight, signature of the patient, date of each and every patient visit, all chiropractic radiographs, or evidence of the transfer of the radiographs. Additionally, the patient history, complaint, diagnosis/analysis, and treatment must be signed by the primary treating doctor. Thereafter, any treatment rendered by any other doctor must be signed or initialed by the said doctor.

Every licensed chiropractor is required to insure the accuracy of the billing for their services, regardless of whether they are an employee of any business entity, whether corporate or individual, and whether done individually or by way of a third party billing service. Whenever an overbilling occurs with a subsequent overpayment, the chiropractor must promptly make reimbursement of the overbilling (overpayment) regardless of whether the chiropractor has been compensated by whomever or whatever business entity is responsible for the error. Failure by a chiropractor to make reimbursement within 30 days of discovery or notification of an error of this type constitutes unprofessional conduct.

Free or Discounted Services - §319 -

Chiropractors may advertise that they will perform specified professional services at a free or discounted rate, provided this is done so truthfully. However, no charge can be made for any other professional services performed and/or commodities provided on the same day that free or discounted services occur unless prior to the accrual of the charges for these additional services and/or commodities the patient shall have been informed of the cost for these additional services and/or commodities and they shall have agreed to pay for them.

Furthermore, no separate charge shall be made for the professional evaluation for any diagnostic tests which are provided free or at a discount, regardless of whether such professional evaluation is made at the time of the initial office visit or at any later.

For example, if a doctor advertised free x-rays and a new patient was obtained in response to that advertisement, a doctor could only charge for the physical examination and any other services performed on the same day if they disclosed to the patient the cost of the additional services, obtained the patient's consent to be charged for those additional services, and that consent was obtained prior to performing services other than the x-rays. Additionally, if the doctor interpreted the radiographs for the patient, the doctor cannot charge for the interpretation at any point in time.

False Names - Chiropractic Initiative Act §10(b) -

The Chiropractic Initiative Act §10(b) states that the Board may refuse to grant, or may suspend or revoke, a license to practice chiropractic in this state, or may place the licensee upon probation or issue a reprimand to him for ... the practice of chiropractic under a false or assumed name, or the impersonation of another practitioner or like or different name ... . It is always wise to use one's own name when conducting a professional business.

Sexual Harassment -

Although not a wise idea to commit sexual harassment, some commentary is warranted here in an effort to prevent this from occurring. Sexual harassment can occur in a variety of different settings, such as with employer/employee and with doctor/patient. As reported by Rape, Abuse, and Incest National Network (RAINN), each year there are about 213,000 victims of sexual assault. One out of every six American women are victims of rape or attempted rape. The point here is that doctors typically have no idea who has incurred sexual abuse in their past nor those who have not fully resolved their past bad experiences.

It is wise to treat everyone respectfully and as proper as what should occur in a courtroom filled with people. When a male doctor is adjusting a woman patient, it is best to make sure hands are not only put in proper places, but also done so in a way so that nothing is misinterpreted. For example with a side posture adjustment, it is ideal to put a hand on a woman's shoulder for adjusting purposes when approaching from above the shoulder and not near anything else.

Many people can intuitively determine what is really meant despite what is said. It is one thing to compliment a person as to the outfit they are wearing, but quite another thing to insinuate more. Whoever has had a bad experience in their past is more likely than others to misinterpret innocent gestures and words into something not intended.

It is much better to prevent a problem rather than have to deal with one. Common sense and thinking before doing will prevent most problems.

No Sex with Current Patients or Other Persons (generally) - §316 -

Generally, with only two exceptions, there can be no sex of any kind, anywhere with a current patient and no sex with any non-patient on the chiropractic premises by a chiropractor. Although sex can sometimes be a matter of definition, §316 of the Chiropractic Rules and Regulations explicitly states sexual acts or erotic behavior as including but not limited to sexual stimulation, masturbation, and prostitution.

Furthermore, the commission of any act of sexual abuse, sexual misconduct, or sexual relations by a licensee with a patient, client, customer, or employee is unprofessional conduct and cause for disciplinary action. This conduct is substantially related to the qualifications, functions, and duties of a chiropractor.

Generally, there also can be no sex of any kind between any persons on the chiropractic premises, even if none of the partners are licensed chiropractors. This is because this section 316(a) of the Rules and Regulations also makes every licensed chiropractor responsible for the conduct of employees and other persons (e.g. independent contractors, friends of patients, etc.) subject to their supervision in their place of chiropractic practice. This subsection also places the burden on any licensed chiropractor in their place of chiropractic business to insure that all conduct at that location conforms to the law and to the Chiropractic Rules and Regulations.

There are two notable exceptions that apply to conduct in general and sex specifically on the chiropractic premises. None of this section applies between a licensed chiropractor and their spouse or a person in a registered domestic relationship when that chiropractor provides professional treatment.

About the Author -

Dr. David H. Hofheimer, D.C., Esq. is committed to the empowerment and service to others by actively and enthusiastically practicing personal injury law, continuing to practice chiropractic after more than 25 years of service and practicing as a full time attorney at law since 2010, and teaching continuing education relicensing seminars as an attorney to fellow chiropractors. With his major emphasis as an active personal injury and trial litigator attorney, he is at the present time the only active plaintiff personal injury attorney in all of northern California who is concurrently licensed in the state of California as both an attorney at law and a doctor of chiropractic. Dr. Hofheimer has as his purpose as a practicing lawyer the intention to maximize and protect peoples' legal rights, including that of fellow chiropractors and their patients. He has as his purpose as a practicing chiropractor the intention to have patients be well naturally through chiropractic. He makes himself available to all good chiropractors for anything related to chiropractic and law, as he would much rather have you prevent problems than have to deal with them. Feel free to contact Dr. Hofheimer at (707)-745-9700.