

**Back To Chiropractic Continuing Education Seminars**  
**Ethics & Law – Board Rules Review Notes – 2 Hours**  
**Presented by Steven C Eggleston, DC, Esq**

Welcome to Back To Chiropractic Online CE exams:

This course counts toward your California Board of Chiropractic Examiners CE.

(also accepted in other states, check our website or with your Chiropractic State Board)

The California Board requires that you complete all of your CE hours BEFORE the end of your Birthday month. We recommend that you send your chiropractic license renewal form and fee in early to avoid any issues.

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6. Follow the Exam instructions.
7. Upon passing the exam you'll be able to immediately download your certificate, and it'll also be emailed to you. If you don't pass, you can repeat the exam at no charge.

Please retain the certificate for 4 years.

If you get audited and lose your records, I'll have a copy.

I'm always a phone call away... 707.972.0047 or email: [marcusstrutzdc@gmail.com](mailto:marcusstrutzdc@gmail.com)

Marcus Strutz, DC

Back To Chiropractic CE Seminars

**Ethics & Law – Board Rules Review Notes – 2 Hours CEUs**  
**Online Course Materials**  
**Presented by Steven C Eggleston, DC, Esq.**

Hour 1 – Chiropractic Scope of Practice

**302(a) Scope of Practice.**

**302(a)(1) A duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereto.**

This first section of the Chiropractic Act may appear at first to state things that Chiropractors may lawfully do in California. Beware of legal documents such as this where there is a specific prohibition of an activity without actually saying, “Don’t do this…” In this case, the words, “…and, in the course of…” means that a California Chiropractor may NOT run a massage clinic where the doctor never adjusts any of the patients. You may do massage-type therapies but at some point in the treatment plan, the Chiropractor MUST adjust the patient by some approved Chiropractic method.

On the same subject, I practice personal injury law and keep my Chiropractic license active. I hear from my law clients *frequently* that, “The adjustments hurt.” Keep in mind that these people have been hit by cars and probably have some torn ligaments in their spine (that is how DJD develops later) and that pounding on their neck with the same force as a regular adjustment is a really bad idea. It is well within the Chiropractic scope of practice if you make a treatment plan of 24 visits and do not plan to adjust the patient until the 13<sup>th</sup> or the 18<sup>th</sup> visit. I recommend writing in your notes, “Patient is too injured to tolerate even the most gentle adjustment because he/she has torn neck ligaments and will not be adjusted until the 13<sup>th</sup> treatment.” That way, if the patient drops out of care *before* you perform your first adjustment, you have written documentation that you were planning to comply with Section 302(a)(1) which requires that you adjust each patient in the course of your treatment plan.

**302 (a)(2) As part of a course of chiropractic treatment, a duly licensed chiropractor may 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.**

One interesting thing in Section 302(a)(1) is that Chiropractors may use “Physical Therapy Techniques.” You will see later in the course is that the prohibition of using the words, “Physical Therapy” applies only to *advertising* and not to saying the words in your own office. This came out of a compromise with the Physical Therapy Association in which our Board agreed to not allow Chiropractors to *advertise* that we do “Physical Therapy” but it does not mean that you cannot say to a patient, “Go down to room 3 and we’ll do some physical therapy on you.”

**302(a)(3) Other than as explicitly set forth in section 10(b) of the Act, a duly licensed chiropractor may treat any condition, disease, or injury in any patient, including a pregnant woman, and may diagnose, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques and so long as such methods and treatment do not constitute the practice of medicine by exceeding the legal scope of chiropractic practice as set forth in this section.**

One interesting aspect of 302(a)(3) is that comes up from time to time is that Medical Payments claim adjusters will deny payment for CPT codes 90791 and 96118 which are psychological codes that can be used by Chiropractors when performing neuropsychological screening tests such as the Rivermead Post-Concussion Symptoms Questionnaire (90791), the Epworth Sleepiness Scale (90791) and the Folstein Mini-Mental Status Examination (MMSE) (96118). When I starting doing these screening exams on my own patients in about 2007, Med-Pay adjusters sent me letters that they refused to pay me because these tests were not in my scope of practice. I would send them a copy of 302(a)(3) with the parts underlined that "...a duly licensed chiropractor may treat any condition, disease, or injury in any patient..." They paid the bills after that.

The reason that Chiropractors can (and should) perform these neuropsychological screening examinations is that almost half of the Chiropractic patients that will walk in your door after a car accident have a brain concussion. Since you will learn later when we study Section 317 that failure to diagnose a condition or injury in your patient is "Unprofessional Conduct" that could get your license revoked, Chiropractors in California should (must, if you ask me) routinely perform these screening exams on every patient that has been in a car accident, had any kind of head injury or a sports injury such as a football player that had his bell rung.

I believe that Chiropractors should absolutely not work for free and, therefore, they must bill these two codes when they perform these exams. Typically, the 90791 code is billed for about 15 minutes of the doctor's normal hourly rate and the 96118 is a timed code for "Up to 1 Hour" of the doctor's time so it can be billed for an amount equivalent to 15 to 30 minutes of the Chiropractor's regular hourly rate.

**(4) A chiropractic license issued in the State of California does not authorize the holder thereof:**

**(A) to practice surgery or to sever or penetrate tissues of human beings, including, but not limited to severing the umbilical cord;**

**(B) to deliver a human child or practice obstetrics;**

**(C) to practice dentistry;**

**(D) to practice optometry;**

**(E) to use any drug or medicine included in materia medica;**

**(F) to use a lithotripter;**

**(G) to use ultrasound on a fetus for either diagnostic or treatment purposes; or**

**(H) to perform a mammography.**

This list tells California Chiropractors those activities absolutely prohibited in our scope. For your information, Lithotripsy is a medical procedure that uses shock waves to break up stones in the kidney, bladder, or ureter (tube that carries urine from your kidneys to your bladder). After the procedure, the tiny pieces of stones pass out of your body in your urine. Here are 2 examples of Lithotripters that I found for sale on eBay. Since Medical Doctors now use lasers to break up these stones, the Lithotripter is an outdated technology so there is no need to feel badly that you cannot do it.



**(5) A duly licensed chiropractor may employ the use of vitamins, food supplements, foods for special dietary use, or proprietary medicines, if the above substances are also included in section 4057 of the Business and Professions Code, so long as such substances are not included in materia medica as defined in section 13 of the Business and Professions Code. The use of such substances by a licensed chiropractor in the treatment of illness or injury must be within the scope of the practice of chiropractic as defined in section 7 of the Act.**

**302(a)(6) Except as specifically provided in section 302(a)(4), a duly licensed chiropractor may make use of X-ray and thermography equipment for the purposes of diagnosis but not for the purposes of treatment. A duly licensed chiropractor may make use of diagnostic ultrasound equipment for the purposes of neuromuscular skeletal diagnosis.**

You may use your x-ray machine basically for everything except mammograms and cancer radiation therapy according to this section (after you follow its cross-reference back to 302(a)(4).

**(7) A duly licensed chiropractor may only practice or attempt to practice or hold himself or herself out as practicing a system of chiropractic. A duly licensed chiropractor may also advertise the use of the modalities authorized by this section as a part of a course of chiropractic treatment, but is not required to use all of the diagnostic and treatment modalities set forth in this section. A chiropractor may not hold himself or herself out as being licensed as anything other than a chiropractor or as holding any other healing arts license or as practicing physical therapy or use the term "physical therapy" in advertising unless he or she holds another such license.**

Here is the prohibition from using the term “physical therapy.” Note that it specifically states that you cannot use that term “in advertising.” You can use it with patients, among your office staff and you can even talk in your sleep and say “physical therapy.” Just do not advertise that you do it and you are OK. Note that your web site is a form of advertising so make sure your website never uses the term “physical therapy” to describe what you do in your practice.

### **Section 311. Advertisements.**

**Constructive educational publicity is encouraged, but the use by any licensee of advertising which contains misstatements, falsehoods, misrepresentations, distorted, sensational 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 disciplinary penalties:**

- (a) Suspension of said licensee's right to practice in this State for a period not exceeding one (1) year.**
- (b) Placing said licensee upon probation.**
- (c) Taking such other action, excepting the revocation of said licensee's license, in relation to disciplining said licensee as the board in its discretion may deem proper.**

Section 311 violations are some of the most common reasons that California Chiropractors get into trouble with the State Board. I underlined the words, “sensational or fabulous statements” because the Chiropractic profession seems to make a lot of unproven claims and advertising statements that cannot be proven is a directly violation of the Chiropractic Act. This does not mean you cannot counsel patients and explain to them all of their various treatment options to allow them to make an informed decision about which path of treatment to choose. Do not go to a weekend seminar and then put on your web site any “sensational” claims that are not taught in Chiropractic colleges. From a lawyer’s point of view, your best defense if you were ever accused of a sensational or fabulous statement is to say, “That is what they teach at Palmer (or Life or National or SCUHS or any of the other accredited Chiropractic colleges).” Spreading rumors from some crackpot teaching a weekend seminar in California is one way of getting your license suspended or revoked very quickly.

Here is an example of what I mean. In 2006, the State Board went after a California Chiropractor for what she had on her web site. Here are some of the statements that appeared on her web site back then.

“The best way to help children who have an ear infection is to boost their immune system through the use of homeopathic remedies.”

The problem with this statement is the use of the words, “The best way...” How can you prove that it is the best way? You can’t. So stop making these sensational or fabulous claims that have absolutely no proof whatsoever. Here is what was on her website after she was disciplined. “So, one way to help a child who has an ear infection is to boost their immune defenses. This may be done by eliminating all refined sugar and dairy products, and reduce high fat foods. Make sure they get lots of fiber in the form of fruits, vegetables, and grains. A vitamin/mineral

supplement may be considered to get adequate vitamins A, C, E, and B complex ,as well as, zinc and chromium. Essential fatty acids, such as flax oil, help to enhance immunity. Golden seal is a natural antibiotic; use it with Echinacea, an herbal immune system booster. Chiropractic adjustments allow for proper alignment of the cranium and the vertebrae in the neck, reduce accompanying muscle spasms, allow lymph drainage, and restore the proper nerve supply needed for optimum functioning of the structures in the head and neck, including the ear canal. Subluxations, or misalignments of the spine, may reduce the healing capacity of the body. “

Here is another claim on her web site before being disciplined. “Children vaccinated against childhood diseases are more likely to contract those diseases as an adult.”

I have been licensed in California since 1989 and I have never heard this before. Someone told me that there was a Chiropractor going around the state a number of years ago teaching this as gospel. Common sense tells you it cannot possibly be true. If this statement was true, we would be having epidemics of polio and rubella and mumps all over the world right now among the adult population. Since we are not, this statement could not possibly be true. It is worse than sensational or fabulous. I would call it “falsehood” and advise you strongly to not advertise to the public this kind of nonsense. These are the kind of statements that get the entire profession labeled as “quacks.” The Chiropractic story is good enough without having to resort to making these ridiculous claims.

Here is yet another statement on her web site that got her into trouble. “Chiropractic adjustments help the immune system function at 100% capacity.”

The problem with all these statements is that they are sensational but cannot be proven. There is no evidence that anybody’s immune system functions at 100% capacity after a chiropractic adjustment. There is no evidence that any human’s immune system has ever functioned at 100% capacity every in the history of the earth. Here is the statement from her web site *after* she paid her fine to the State Board.

“Chiropractic adjustments may allow the body to self-heal by allowing full expression of the nervous system, which controls many of the bodily functions.”

Notice the use of the word “may” that is used in the non-sensational statement. Since “may not” is also implied, there is nothing that need be proved by making this statement and it is still educational to the public about what we do.

The legal complaint from the State Board (shown below) also challenged her use of homeopathic remedies, flower remedies, homeopathic consulting, fertility/infertility counseling, allergy testing, bioenergetics testing, hair analysis, functional nutrition, and other services that fall outside the scope of Chiropractic practice.

WHEREFORE, Complainant (Exec. Director of the BCE) requests that a hearing be held on the matters herein alleged and that, following the hearing, the Board of Chiropractic Examiners issue a decision:

1. Revoking or suspending Chiropractor License No. DC-XXXXX issued to YYYYYYYY, D. C.
2. Ordering YYYYYYYYYY, D. C. to pay the Board of Chiropractic Examiners the reasonable costs of the investigation and enforcement of this case pursuant to Title 16, California Code of Regulations, section 317.5;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/26/06

CATHERINE A. HAYES  
Executive Director

Board of Chiropractic Examiners  
State of California  
Complainant

January 28, 2009, the board issued the following disciplinary actions and posted it on the State Board's web site for all of this Chiropractor's patients to read:

Citation issued for violation of 302(a)	Exceed Scope of Practice
Citation issued for violation of 311	Advertisements
Citation issued for violation of 317(p)	Violation of 17500 Business & Professions Code
Citation issued for violation of 317(q)	Participation in Fraud/Misrepresentation

On June 2, 2009, the Board posted on its website that all of these fines were paid in full.

Notice that the State Board's web site states that this Chiropractor was accused in January of 4 violations and that she paid the fine a little over 5 months later. This is probably the deal that she and her lawyer made with the Board so she would not have her license revoked or suspended (which was asked for in the legal complaint against her.)

Before we leave this case, the complaint also requested that she be ordered to pay the entire cost for lawyers and investigators and court costs that the State Board spent while it was investigating and prosecuting her. The take-home lesson here is that if you get a letter from the State Board, do not answer it yourself. You will almost certainly make your predicament worse if you answer them without consulting a lawyer first. Doctors have this belief that they are so smart that they can talk their way out of anything. I learned quickly as a lawyer that doctors are their own worst enemies when they try to do that in a legal situation. Doctors do NOT understand the subtle legal meaning of even some very small words. Doctors also make the mistake of believing that truth and justice are what the legal system is all about. If you get any letter from the State Board that a complaint has been filed against you, your FIRST telephone call is to your malpractice carrier to see if you have coverage for Board hearings and your SECOND call is to your lawyer.

Whatever you do, DO NOT ANSWER THE STATE BOARD'S LETTER WITHOUT THE HELP OF AN ATTORNEY. I am not kidding. I frequently have Chiropractors calling me and asking for legal help after they thought they could talk their way out of something and made the situation ten times worse. A couple of hours of a lawyer's time to help you answer the board can save you \$5,000 to \$25,000 in legal fees after you have made the case against you much stronger by answering the State Board's letter.

In general, my advice to you is to follow the advice you have learned in this course and conduct yourself and your practice in ways that will not cause the State Board to go after you in the first place.

## When Grandma Goes To Court

**Lawyers should never ask a Mississippi grandma a question if they aren't prepared for the answer.**

In a trial, a Southern small-town prosecuting attorney called his first witness, a grandmotherly, elderly woman to the stand. He approached her and asked, 'Mrs. Jones, do you know me?' She responded, 'Why, yes, I do know you, Mr. Williams. I've known you since you were a boy, and frankly, you've been a big disappointment to me. You lie, you cheat on your wife, and you manipulate people and talk about them behind their backs. You think you're a big shot when you haven't the brains to realize you'll never amount to anything more than a two-bit paper pusher. Yes, I know you.'



The lawyer was stunned. Not knowing what else to do, he pointed across the room and asked, 'Mrs. Jones, do you know the defense attorney?'

She again replied, 'Why yes, I do. I've known Mr. Bradley since he was a youngster, too. He's lazy, bigoted, and he has a drinking problem. He can't build a normal relationship with anyone, and his law practice is one of the worst in the entire state. Not to mention he cheated on his wife with three different women. One of them was your wife. Yes, I know him.'

The defense attorney nearly died.

The judge asked both counselors to approach the bench and, in a very quiet voice, said,

'If either of you idiots asks her if she knows me, I'll send you both to the electric chair.'

Hour 2 – Board Investigations, Malpractice & Crimes

Most Chiropractors do not know (but will learn here) that the State Board already has a booklet of “Sample Penalties” and instructions about how to go after you. Here is a sample from the Table of Contents of that booklet.

- **The Board of Chiropractic Examiners (hereinafter “the Board”) is a consumer protection agency with the primary mission of protecting consumers of chiropractic services from potentially harmful licensees. In keeping with its mandate to protect the affected population of consumers, the Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Chiropractic Act and/or California Code of Regulations.**

### **Disciplinary Guidelines and Model Disciplinary Orders (Table of Contents)**

- **Introduction . . . . . 1**
- **Factors to be Considered in Determining Penalties . . . . . 2**
- **Terms of Probation . . . . . 3**
- **Standard Conditions . . . . . 3**
- **Optional Conditions . . . . . 4**
- **Categories of Violation and Recommended Penalties**
- **Category I - Penalty . . . . . 5**
- **Chiropractic Initiative Act . . . . . 5**
- **California Code of Regulations . . . . . 6**
- **Business and Professions Code . . . . . 6**
- **Health and Safety Code . . . . . 6**
- **Category II - Penalty . . . . . 7**
- **Chiropractic Initiative Act . . . . . 7**
- **California Code of Regulations . . . . . 7**
- **Business and Professions Code . . . . . 8**
- **Category III - Penalty . . . . . 8**
- **Chiropractic Initiative Act . . . . . 9**

- California Code of Regulations ..... 9
- Business and Professions Code ..... 10
- Category IV - Penalty ..... 10
- California Code of Regulations ..... 10
- Business and Professions Code ..... 10
- Model Disciplinary Language ..... 11
- Optional Conditions of Probation ..... 15
- Standard Conditions of Probation ..... 24

- The Board recognizes that these conditions are merely guidelines and the mitigating or aggravating circumstances in a particular case may necessitate variations. In such cases, the mitigating circumstances shall be detailed in any proposed decision or any transmittal memorandum accompanying a stipulation.
- The Board has found that accusations are rarely filed except in serious cases. In general, the position of the Board is that revocation should always be an option whenever grounds for discipline are found to exist. Board policy is that revocation is always an appropriate order where a respondent is in default, such as when he or she fails to file a notice of defense or fails to appear at a disciplinary hearing.
- The Board seeks recovery of all investigative and prosecution costs up to the hearing in all disciplinary cases, including all charges of the Office of the Attorney General including, but not limited to legal services and opinions of expert consultants, because the burden for paying for disciplinary cases should fall on those whose conduct requires investigation and enforcement, not upon the profession as a whole.

**Factors to be used in determining penalties against a licensee**

- Section 10(b) of the Chiropractic Initiative Act provides that the Board may discipline the holder of, or suspend or revoke, any license issued by the Board. In determining whether the minimum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:
  - 1. Actual or potential harm to the public.
  - 2. Actual or potential harm to any consumer.
  - 3. Prior disciplinary record, including level of compliance with disciplinary orders.
  - 4. Prior warnings of record.
  - 5. Number and/or variety of current violations.
  - 6. Nature and severity of the act(s), offense(s) or crime(s) under consideration.
  - 7. Mitigating evidence.
  - 8. Rehabilitation evidence.
  - 9. Compliance with terms of any criminal sentence.
  - 10. Overall criminal record.
  - 11. Time passed since the act(s) or offense(s).
  - 12. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.
  - 13. The financial benefit to the respondent from the misconduct.

**CATEGORY I Offenses & Penalties**

- Minimum: Revocation stayed; 1-2 years probation
- Maximum: Revocation
- Recommended for the following violations which are relatively minor, but are potentially harmful, or for repeated violations of a relatively minor nature:

#### **Chiropractic Initiative Act Violations**

- Practicing without a valid license
- 10(b) Improper use of fictitious names
- *California Code of Regulations*
- 303 Practicing without notifying Board of business address
- 308 Practicing without properly posting license; failure to obtain and post satellite office certificate
- 310 Change of name
- 310.2 Use of the title “Chiropractor” by unlicensed persons
- 312 Unlicensed practice (*for use in less egregious cases or for applicants*)
- 317(v) Waiving co-payments or deductibles
- 317(x) Substitution of a spinal manipulation for vaccination
- 367.5 Application for chiropractic corporation
- 367.7 Name of corporation
- 367.9 Shares: ownership and transfer

#### **Business and Professions Code Violations**

- 1051 Application for registration as a chiropractic corporation
- *Health and Safety Code*
- 123110 Failure to provide treatment records

#### **CATEGORY II Offenses & Penalties**

- Minimum: Revocation stayed, 3 years probation
- Maximum: Revocation

#### **Chiropractic Initiative Act Violations**

- 10(b) Advertising treatment of sexual disorders
- 15 Misleading use of title

#### **California Code of Regulations Violations**

- 306.1(c) Failure to appear for hearing
- 311 Advertising
- 312 Unlicensed practice (*for use in more egregious cases*)
- 317(l) Making or signing false documents
- 317(n) Making false statement on the license application
- 317(p) False, misleading, or deceptive advertising
- 317(r) Unauthorized disclosure of patient information; failure to maintain confidentiality
- 317.1 Failure to register referral service
- 318(a) Chiropractic patient records
- 318(b) Accountable billings
- 319 Inappropriate billing for services advertised as free or discounted
- 355 Renewal and Restoration

#### **Business and Professions Code Violations**

- 650.3 Group advertising and referral services
- 651 False, misleading, or deceptive advertising

I have listed here in these notes the Category I and Category II offenses (the least damaging to your career.) There are also Category III and Category IV offenses and I direct your attention to the State Board website for further reading on these more serious offenses.

Let's take a look at Section 317 of the Chiropractic Act. This section is titled, "Unprofessional Conduct" and lists many reasons that you can have your license revoked, suspended or fined.

Unprofessional conduct includes, but is not limited to, the following:

- (a) Gross negligence;
- (b) Repeated negligent acts;
- (c) Incompetence;
- (d) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;
- (e) Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public;
- (f) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license;
- (g) Conviction of a crime which is substantially related to the qualifications, functions or duties of a chiropractor;
- (h) Conviction of any offense, whether felony or misdemeanor, involving moral turpitude, dishonesty, physical violence or corruption. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if such conviction was of an offense involving moral turpitude, dishonesty, physical violence or corruption. A plea or verdict of guilty, or a plea of nolo contendere is deemed to be a conviction within the meaning of the board's disciplinary provisions, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. The board may order a license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgement in a criminal matter.
- (i) **The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage**, or any combination of those substances.
- (j) The violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substances;
- (k) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise;
- (l) Knowingly making or signing any certificate or other document relating to the practice of chiropractic which falsely represents the existence or nonexistence of a state of facts;
- (m) Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision or term of the Act or the regulations adopted by the board thereunder;
- (n) Making or giving any false statement or information in connection with the application for issuance of a license;

- (o) 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;
- (p) The use of advertising relating to chiropractic which violates section 17500 of the Business and Professions Code;
- (q) The participation in any act of fraud or misrepresentation;
- (r) Except as may be required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment;
- (s) The employment or use of persons known as cappers or steerers to obtain business;
- (t) The offering, delivering, receiving or accepting of any rebate, refund, commission, preference, patronage, dividend, discount or other consideration as compensation or inducement for referring patients to any person;
- (u) Participation in information or referral bureaus which do not comply with section 317.1 of the regulations;
- (v) Entering into an agreement to waive, abrogate, or rebate the deductible and/or co-payment amounts of any insurance policy by forgiving any or all of any patient's obligation for payment thereunder, when used as an advertising and/or marketing procedure, unless the insurer is notified in writing of the fact of such waiver, abrogation, rebate, or forgiveness in each such instance.

In all insurance billings where a waiver of a deductible or a co-payment is intended as an advertising and/or marketing procedure, the chiropractor's statement and insurance billing shall contain the following statement:

\_\_\_\_\_ I/WE  
 WAIVE CO-PAYMENT AND/OR DEDUCTIBLES. IT IS MY/OUR INTENTION TO DO THE  
 FOLLOWING: (Indicate one choice below)

BILL THE PATIENT \$\_\_\_\_\_ AFTER RECEIPT FROM YOU OF \$\_\_\_\_\_ .

WAIVE ANY FURTHER PAYMENT FROM THE PATIENT AFTER RECEIPT  
 FROM YOU OF \$\_\_\_\_\_ .

IN CASES WHERE PREDETERMINATION OF INSURANCE BENEFITS IS NOT  
 POSSIBLE, I/WE PROVIDE THE FOLLOWING WRITTEN EXPLANATION OF MY/OUR  
 BILLING INTENTIONS: \_\_\_\_\_

**(w) Not referring a patient to a physician and surgeon or other licensed health care provider who can provide the appropriate management of a patient's physical or mental condition, disease or injury within his or her scope of practice, if in the course of a diagnostic evaluation a chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, disease, or injury that is not subject to appropriate management by chiropractic methods and techniques.** This subsection shall not apply where the patient states that he or she is already under the care of such other physician and surgeon or other licensed health care provider who is providing the appropriate management for that physical or mental condition, disease, or injury within his or her scope of practice.

(x) The offer, advertisement, or substitution of a spinal manipulation for vaccination.

Take good notice of this section from the State Board's rules that govern your conduct both as a Chiropractor and in your private life. Section (i) that I highlighted in bold states that if you get

just one felony Driving While Intoxicated conviction, you can have your Chiropractic license revoked and, with it, your livelihood could be gone in an instant. Do not be dumb enough to drink and drive. You could injure or kill yourself, injure or kill innocent people and you could have your Chiropractic license revoked (likely for the rest of your life.) Think about how the Board would answer this question, "Why did you let Dr. XXXXX maintain a position of public trust after he was convicted of drunk driving?" There is no good answer for that and, with the scrutiny that all state licensing boards are under, they do not want to act in a way that fails to protect the public from you.

Notice also that you would also have your license revoked for just two (2) misdemeanor convictions of drunk driving. So, you're in your car coming home from dinner and you hit one of those DWI checkpoints. You breathe into the breathalyzer and, BAM, one misdemeanor or felony conviction for you and GOODBYE Chiropractic practice.

Notice also Section (w) which states that if you do not refer your patient to another doctor when that patient has some condition that you do not treat, you could lose your license. Here's a very common situation. A P.I. patient comes into your clinic. You never ask the patient if he/she is having any difficulty concentrating, sleep problems, flashbacks, nightmares, short term memory loss. You never look into their eyes to test their pupil reflex for a concussion. Since you never asked, you never knew that the patient had a brain concussion and you cannot possibly know enough to refer that patient to a neuropsychologist for a full diagnostic workup and the proper treatment for the concussion. Can you lose your license? Absolutely. I see it all the time and typically call the doctor to help him/her rather than report him/her to the Board.

I have had 2 clients die of cancer before I could settle the P.I. case. In both cases, the cancer was visible on the Chiropractor's initial x-ray films. In both cases, the x-ray films were NOT read by a radiologist (who would probably have saved these 2 lives that the treating Chiropractors let die because of failure to use a radiologist (Section w) and incompetence (Section c) and probably Gross Negligence (Section a).

I have seen hundreds of Chiropractors miss brain concussions, torn spine ligaments and dozens of other injuries and diseases in their patients. We spend a lot of time as a profession fighting against the bias against us but when I see the level of incompetency in many of our profession, I learned that there is reason for those biases. In my opinion, there are about 10% to 30% of our profession that should not have a Chiropractic license because they are a danger to their patients and the public.

PLEASE make sure that YOU are among the 70% to 90% of California Chiropractors that ARE competent, that REFER frequently (at least half the P.I. patients need to see a neuropsychologist for crying out loud) and that you follow the Rules and Regulations of the Chiropractic Act.

Here is a true story that I saw in the news a couple of years ago. I have redacted the Chiropractor's name to protect his privacy even though this was in the newspaper and everybody already knows.



- **HEMET: Chiropractor accused of sexual battery**
- Police arrested a 46-year-old Hemet chiropractor Tuesday, Nov. 20, 2012, following a month-long investigation into allegations that he sexually battered at least two female patients.
- Dr. XXXXXX was booked into the Southwest Detention Center in French Valley on suspicion of sexual battery and penetration with a foreign object. Police say they will also refer the case to the California State Medical Board. His bail was set at \$500,000.
- He was taken into custody at 11 a.m. at his business in the 2000 block of West Florida Avenue.

Hemet Police Lt. Duane Wisehart said the incidents occurred during treatment of two patients more than a month ago. The department is asking any other people who believe they were victims to come forward. Police can be reached at 951-765-2422.

Read that story carefully. The Chiropractor was arrested in the midst of his morning patients, handcuffed and marched out of his office past his employees and patients. That is bad for business.

Note that “battery” is a legal term that can mean “an unwanted touching” so it is not that he beat up a patient. All that he was arrested for was 2 female patients that alleged that he touched them in a sexual way that was unwelcome. That’s sexual battery.

Note also that the news story stated that he would be reported to the California State Medical Board. That shows you that you cannot believe everything you read in the newspaper or see on television news. He was obviously be reported to the state “Chiropractic” board.

His bail was set at \$500,000. Anybody reading this have \$500,000 sitting around so you can post bail and get out of jail? You could purchase a bond by paying \$50,000 (10%) of your own money to have a bail bondsman put up the \$500,000 of money for your bond. If you post your own \$500,000 bond, you get it all back when you show up in court for trial. If a bail bondsman posts your bail, the \$50,000 you paid him is gone forever. Goodbye \$50,000. Is it worth it to become involved with your patients in an inappropriate sexual relationship with a patient? My advice is DON’T!!! This Chiropractor was convicted and sentenced to 2 years in prison.

Finally, let's talk about state law regarding the Reporting of Abuse

- Licensed D.C.s in California MUST Report
  - Child Abuse & Neglect (Calif. Penal Code 11165-11174.3)
  - Elder or Dependent Adult Abuse (Calif. Welfare & Institutions Code 15600)
- Child Abuse Includes:
  - A Physical Injury inflicted by “other than accidental means” on a child
  - Child Sexual Abuse
    - Sexual Assault
      - Sex acts with children
      - Intentional masturbation in the presence of children
      - Child molestation
    - Sexual Exploitation
      - Preparing, selling or distributing pornographic materials involving children
      - Performances involving obscene sexual conduct
      - Child Prostitution
- How Much Do You Need to Know or Believe?
  - “Known” Child Abuse
  - “Reasonably Suspected” Child Abuse
  - “Reasonably Suspected” Child Neglect

Who Do You Report To?

- Any Police or Sheriff Department (except school police or security)
  - Your County Probation Department (not all counties are set up for this)
  - Your County Welfare Department
- 
- How do you report to police?
    - “Immediately” by telephone, and
    - “Within 36 hours” in writing (mail, fax or electronic)
    - Include in your written report any “non-privileged” information/evidence

Can I go to JAIL for NOT reporting?

YES !!! Up to 6 months (misdemeanor) and/or \$1,000 fine

Hmmm... a misdemeanor on your record

Could the BCE discipline you or remove your license because of it? Yes. You get a misdemeanor conviction for failure to protect the children of California by not reporting reasonably suspected child abuse and you are half way to enough misdemeanors to have your license suspended or revoked because of unprofessional conduct (Section 317.)

You, as a California Chiropractor MUST report anything listed in Penal Code section 11165.1 so long as you learn of this in your capacity as a Doctor of Chiropractic. This means that you are not a mandated reporter for something you learned at church or somewhere outside of your duties as a Chiropractor.

## What is included in Penal Code 11165.1?

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

- (1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.
- (2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
- (3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.
- (4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.
- (5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

Notice that under section 11165.1(b)(4) that it is child sexual assault if *you* touch the buttocks of a child over the clothes. Isn't that what Chiropractors do on virtually every patient when they palpate the SI joints?

Fortunately, it also says that **the exemption is when it done for a "...valid medical purpose."** Nevertheless, I strongly urge you to never be in a room with any minor with the door closed unless you have a parent and/or your female assistant in the room with you. I have heard many doctors tell me how they were sued or had a board complaint against them and they had no witnesses. That is a colossal mistake. ALWAYS have a parent and/or a female assistant in the room with you with any child under 18. While we are at it, it is also good advice that male Chiropractors always have a female assistant in the room at all times when you have any female adult patient that is not fully clothed. False accusations occur more often than you would imagine so make sure you have a female assistant who can testify, "I was in the room with the patient and the doctor the entire time and that did not happen."

As a mandated reporter (all California Chiropractors are mandated reporters), you **MUST** report these kinds of activities that you have knowledge of. Be careful and make sure that you have a "reasonable" suspicion (not some ultra-sensitive or wacky suspicion.)

Here is another long list of things you are required to report. Read them and report them if you have a "reasonable" suspicion that a child has been or is being sexually "exploited." I know you don't want to read all this graphic stuff but it is the law and you need to know what the law expects of you.

11165.1 (c) "Sexual exploitation" refers to any of the following: (1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or

distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts). (2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution. (3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

Here is the definition of "Child" in California. Note that under this definition, a person is still a child at 11:59 p.m. on the night before his/her 18<sup>th</sup> birthday. It is a little weird that the person isn't technically 18 full years old at midnight give the fact that he/she was probably not born until later in the day and not at the strike of midnight in most cases. Nevertheless, the child becomes an adult at 12:01 on his/her birthday.

- A "Child" is anyone "Under 18" in California

I believe the law requires that in order to be a mandated reporter, you must come into the knowledge of the child abuse "in your capacity as a Chiropractor." Doctors are special. They help people. They are mandated reporters because they examine and treat children who have been injured. It is an important responsibility that comes along with your license.

Since the law defines child abuse as "other than accidental" why does not simply say, "Injuries inflicted on a child on purpose?" There is a difference between "on purpose" and "other than accidental." When a parent starts to discipline a child with a spanking, for example, but then loses control as he/she gets madder and madder, those injuries were neither "on purpose" nor where they "accidental." The parent is held liable for injuries caused on purpose AND in the heat of anger, too. So "other than accidental" actually is broader and includes MORE parental actions than "on purpose." Yes, it is difficult to write laws and each word is written carefully because each word means something.

Here is a situation that might happen in a Chiropractic office:

- California Chiropractor sees a child with
  - Bruises
    - "Defensive" Bruises (backs of forearms holding them up to defend self)
    - Backside or buttocks

What if a California Chiropractor sees a child with multiple injuries and the story does not "add up?" The story doesn't make sense because the child should not have the injuries found by the Chiropractor based on the story that the parent(s) told him/her.

Be wary of multiple or different stories about how the child was injured. The father brings the child in one day and says, "Bobby fell down the stairs." The mother brings the child in the next visit and says, "Bobby fell off his bike." That should make your child abuse radar start beeping. You are a mandated reporter because the law trust you to protect the children of this state. You are not an "optional" reporter. You could go to jail for up to six months if you do not report something that is as obvious as this situation with multiple and different stories about how the child was injured.

Mandated Reporters must report elderly abuse as well. Here is the law:

- Any Mandated Reporter who
  - In his or her professional capacity
  - Has observed or has knowledge of an incident
  - That reasonably appears to be:
    - Physical abuse
    - Abandonment
    - Abduction
    - Isolation
    - Financial abuse
    - Or neglect

A Chiropractor does NOT have to report elder or dependent adult abuse:

- If you are TOLD by an elder if:
  - There is no “independent” evidence that corroborates story, and
  - The Elder has been diagnosed with dementia or a mental illness, or is under court ordered conservatorship
- Failure to report Elder Abuse
  - Is a misdemeanor
  - Up to 6 months in jail
  - Up to \$1,000 fine (or both jail and fine)

What is the difference between an elderly person and a dependent adult? A dependent adult is a person over 18 but who cannot care for him/herself such as a Downs Syndrome 35 year old. Think of dependent adults as the “rest” of the people that need protection but are neither children nor elderly.

This material has been presented by:

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