

Back To Chiropractic CE Seminars

Ethics & Law ~ 2 Hours


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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Exam Process: Read all instructions before starting!

- 1. You must register/pay first. If you haven't, please return to: backtochiropractic.net**
- 2. Open a new window or a new internet tab & drag it so it's side-by-side next to this page.**
- 3. On the new window or new tab you just opened, go to: backtochiropractic.net website.**
- 4. Go directly to the Online section. DON'T register again.**
- 5. Click on the Exam for the course you want to take. No passwords needed.**
- 6. Follow the Exam instructions.**
- 7. Upon passing exam (70%), you'll be able to immediately download your certificate, and it'll also be emailed to you. If you don't pass, you must repeat the exam.**

**Please retain the certificate for 5 years. DON'T send it to the state board.
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

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California Ethics and Law

MICHELLE MASSA, DC, CEES

Introduction

- ▶ Education & Background
 - ▶ Psychology, Lifestyle, Nutrition & Wellness
 - ▶ Neuropsychology & Behavioral Psychology
 - ▶ Health Education – Adult Weight Management
 - ▶ HIPAA, Ethics and Law, History, Exam, Diagnosis & Documentation
 - ▶ Compliance Officer – Life West Health Center
 - ▶ Certified Ergonomist
 - ▶ Ergonomic Evaluations
 - ▶ Ergonomic & Workplace Safety Trainings
- ▶ www.MichelleJMassa.com

Goals & Objectives

- ❑ Review California Chiropractic Ethics and Laws
- ❑ Have an adequate understanding of Doctor's Duties & Ethical Considerations
- ❑ Have an adequate understanding of how to maintain an ethical and compliant chiropractic office

Overview

- ❑ Ethics Issues according to California State Board Rules and Regulations
 - ❑ Doctor's duties
 - ❑ Ethical conduct
- ❑ HIPAA according to Federal Regulations
- ❑ How to maintain a HIPAA compliant chiropractic practice in the state of California



Ethics Issues

DUTIES AND CONDUCT

Doctor's Duties

1. A licensed chiropractor may:

- manipulate and adjust the spine, adjust the spinal column and other joints of the human body
- manipulate the muscle and connective tissue

Doctor's Duties

2. As part of a course of chiropractic treatment, a licensed chiropractor may:

-use all necessary mechanical, hygienic, and sanitary measures incident including, but not limited to air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water, and physical therapy techniques

Doctor's Duties

3. A licensed chiropractor may:

- treat any condition, disease, or injury in any patient, including pregnant women
- diagnose, as long as such treatment or diagnosis is done in a manner consistent with chiropractic methods
- techniques, as long as methods and treatment do not constitute the practice of medicine by exceeding the legal scope of chiropractic practice

Doctor's Duties

4. A 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, as long as such substances are not included in materia medica as defined in section 13 of the Business and Professions Code

-make use of X-ray and thermography equipment for the purposes of diagnosis but not for the purposes of treatment

-make use of diagnostic ultrasound equipment for the purposes of neuromuscular skeletal diagnosis

Doctor's Duties

5. A licensed chiropractor may only practice or attempt to practice or hold himself or herself out as practicing a system of chiropractic; may 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

Doctor's Duties

6. **A licensed 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

Doctor's Duties

7. A Chiropractic license issued in the State of CALIFORNIA **does not** authorize the holder thereof:

- to practice surgery or to sever or penetrate tissues of human beings, including, but not limited to severing the umbilical cord
- to deliver a human child or practice obstetrics
- to practice dentistry
- to practice optometry
- to use any drug or medicine included in materia medica
- to use a lithotripter
- to use ultrasound on a fetus (either diagnostic or treatment purposes)
- to use a mammography

Stay Compliant

- Initial intake form. Review the form make sure it has all the necessary information including date & signature.
- Informed consent. Make sure you have it, that it is signed and dated by each patient and your malpractice company approves the form.
- HIPAA compliant. Make sure you have the adequate forms, that they are signed and dated by each patient and your malpractice company approves the form.
- SOAP notes. Make sure you have them for each patient and that they are complete and decipherable by you in a court of law, (if it comes to that).
- Proper documentation. Notes: history & exam that support your course of action and billing. Again must be decipherable by you in a court of law.
- Advertising. Read through all your ads (website too). Be sure DC is after your name,(not physician) and that no one can interpret your ad as saying you will cure anything.
- Malpractice & general liability insurance up to date.
- DC License. Current & valid, complete CE by the end of your birthday month.

Chiropractic Adjustment

- ▶ *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
- ▶ -allow the body to self-heal by allowing full expression of the nervous system

Display of License

- A current active license shall display in a conspicuous place in the licensee's principal office or primary place of practice
- No person shall engage in the practice of chiropractic without holding a license (Section 302), which is an active status, issued by the Board
- Any person who advertise, engage in the practice of chiropractic, and hold himself or herself out as a doctor of chiropractic without having, at the time of so doing, a valid, unrevoked, or unsurrendered license, is in violation of the Chiropractic Initiative Act

Ownership of A Practice

-No unlicensed individual may own a chiropractic practice regardless of the form in which the practice is established (individual ownership, partnership, corporation, etc).

This differs depending on the state you are practicing in.

-This does not preclude a layperson from owning the facilities in which the practice is conducted, and the equipment provided. It does prohibit a layperson from being in a position of making and/or influencing decisions relating to diagnosis, or treatment of patients which are matters requiring chiropractic licensure.

Dual Relationships between Doctor, Patient and Staff

- ▶ (a) Every licensee is responsible for the conduct of employees or other persons subject to his supervision in his place of practice, and shall insure that all such conduct in his place of practice conforms to the law and to the regulations herein.

Dual Relationships between Doctor, Patient and Staff

- ▶ (b) Where a chiropractic license is used in connection with any premises, structure or facility, no sexual acts or erotic behavior involving patients, patrons or customers, including, but not necessarily limited to, sexual stimulation, masturbation or prostitution, shall be permitted on said premises, structure or facility.
- ▶ (c) This section shall not apply to sexual contact between a licensed chiropractor and his or her spouse or person in an equivalent domestic relationship when that chiropractor provides professional treatment.

Free or Discounted Services (Section 319)

- ▶ -Licensees may advertise that they will perform certain designated routine professional services free or at a discount if such advertising claims are truthful.
- ▶ -No charge shall be made for any other professional services rendered or commodities provided to a patient during any office visit in which free or discounted services are offered or provided unless, prior to the accrual of any charges, the patient shall have been informed of the cost of such additional services and/or commodities and shall have agreed to pay for them.

Illegal Examples of Patient Referrals

As a small business, we rely on customer referrals. Please share this offer with a friend. Refer a Friend & Enter a Raffle to Receive \$400!

- ▶ *Redemption Code: abc-123*
- ▶ *Expires 4/30/16*
- ▶ *1 Referral equals 1 Ticket in the raffle. As this voucher is offered free of charge, it is not valid for cash value or other redemption value. Other restrictions may apply: call for details.*



Prepay is Legal if:

- Escrow account only necessary if DC can not refund out of pocket.
- Have signed contract contingency plan if patient wants to stop care. Prorate care; all possibilities are okay as long as it is in the contract.
- Patient becomes a WC/PI case contract stops, and then resumes one the WC/PI case ends.

Legal or Illegal to Waive Co-pays?

- You **CAN** waive co-pays.
- You **CAN NOT** advertise it unless you contact and inform insurance companies.
- Advertisement includes your website.



Patient Records and Documentation (Section 318)

- ▶ -Each licensed chiropractor is required to maintain all active and inactive chiropractic patient records for five years from the date of the doctor's last treatment of the patient unless state or federal laws require a longer period of retention.
- ▶ -Active chiropractic records are all chiropractic records of patients treated within the last 12 months. Chiropractic patient records shall be classified as inactive when there has elapsed a period of more than 12 months since the date of the last patient treatment.
- ▶ -**X-Rays**: Must keep for **7 yrs** from discharge date
- ▶ -**Written records**- Must be kept for **5 yrs** following the last date of treatment
- ▶ -Statute of limitations for malpractice against DC's is 1 years

Patient Records and Documentation (Section 318)

-Active & inactive patient records must include all of the following:

- ▶ Pt's full name, date of birth, and social security number (if available);
- ▶ Patient gender, height and weight. An estimated height and weight is acceptable where the physical condition of the patient prevents actual measurement
- ▶ 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 said doctor;
- ▶ Signature of patient;
- ▶ All chiropractic X-rays, or evidence of the transfer of X-rays
- ▶ Signed written informed consent as specified in Section 319.1.

Informed Consent for Treatment Procedures

▶ -Many patients are unfamiliar with chiropractic exams and adjustments, be sure to explain:

1. *What you're about to do*
2. *Why you're doing it*
3. *What you're looking for*
4. *What you found*
5. *What it means*
6. *What you're going to do about it*
7. *What are your expectations*

Informed Consent (Section 319.1)

- A licensed DC shall verbally and in writing inform each patient of the material risks of proposed care.
- “Material” shall be defined as a procedure inherently involving known risk of serious bodily harm. The chiropractor shall obtain the patient's written informed consent prior to initiating clinical care. The signed written consent shall become part of the patient's record.
- A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

Informed Consent (Section 319.1)

Must include the following:

- ▶ -Explanation of procedures used in office (chiropractic, x-ray, physio therapy) & benefits
- ▶ -Consequences of NOT getting this care
- ▶ -Alternatives to chiropractic
- ▶ -Risks of procedures used in office

Abuse Reporting

- ▶ **DC's Mandatory Report:** for any of physical abuse, abandonment, abduction, isolation, financial abuse, neglect, or other treatment resulting in physical harm or mental suffering
 - ❖ Must be reported in writing within 2 days to either police/sheriff or adult protective services/county welfare
 - ❖ No liability for good faith reporting

Abuse Reporting

▶ DC's Mandatory Report:

□ *Child abuse & Neglect* (Calif. Penal Code 11165-11174.3)

- Suspected child abuse must be reported within 36 hours to either the police, sheriff, or child protective services

□ *Elder and dependent adult abuse* (Calif. Welfare & Institutions Code 15600)

- Elder = age 65 or older
- Dependent adult = age 18-64

Abuse Reporting

- *Child abuse & Neglect includes:*

- 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

Abuse Reporting

□ *Child abuse & Neglect includes:*

■ Sexual Exploitation

- Preparing, selling or distributing pornographic materials involving children
- Performances involving obscene sexual conduct
- Child Prostitution

Abuse Reporting

- *Child abuse & Neglect includes: “other than accidental”*

- Bruises:

- “Defensive” Bruises (forearms)

- Backside or buttocks

- Injury in the neck, back, arm

- ▶ **Does the story add up?**

- ▶ Multiple/different stories about how child is hurt

- ▶ You suspect injury “not accidental”

- ▶ X-ray room is a good place to ask child “how it happened” (very casually, please...)

Abuse Reporting

□ *Elder and dependent adult abuse* (Calif. Welfare & Institutions Code 15600)

Failure to report Elder Abuse:

- ▶ Is a misdemeanor
- ▶ Up to 6 months in jail
- ▶ Up to \$1,000 fine (or both jail and fine)

Do not have to report...

- ▶ If you are TOLD by an elder if:
 - ▶ No “independent” evidence that corroborates story
 - ▶ Elder has been diagnosed with dementia or a mental illness, or is under court ordered conservatorship

How To Report Abuse

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)
- County Probation Department
- County Welfare Department

How To Report Abuse

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
- ❑ a misdemeanor on your record
- ❑ Could the BCE discipline you or remove your license?

Unprofessional & Unethical Conduct (Section 317)

- Gross Negligence
- Repeated Negligent Acts
- Incompetence
- “Clearly Excessive” treatments or diagnostic tests
- Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any drug or alcoholic beverage
- The unauthorized disclosure of any information about a patient

Unprofessional & Unethical Conduct (Section 317)

- **Gift Cards** are considered "Unprofessional Conduct" (section 317 T) , subject to license revocation: 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
- It is a grey area to give a gift card **AFTER** somebody refers someone to you.
- It is definitely wrong to tell anyone **IN ADVANCE** that you send a thank you gift card when someone refers a patient.

If, in the course of normal business, a small, nominal gift is given (Christmas, for example) as a thank you to customers that year is permissible.

Unprofessional & Unethical Conduct (Section 317)

- 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 instance

Unprofessional & Unethical Conduct (Section 317)

- 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...
- The offer, advertisement or substitution of a spinal manipulation for vaccination

Negligence and/or Incompetent Practice

- ▶ -Physical harm to patient
- ▶ -Failure to exercise appropriate standard of care

“Competent” Exams & Re-Exams

- ▶ Perform a Consultation
- ▶ Examine EVERY Symptom
- ▶ Diagnose every Symptom & Exam Result
- ▶ Make a Treatment Plan for EVERY Diagnosis

Patient Abandonment

- ▶ **Patient abandonment** is a form of medical malpractice that occurs when a physician terminates the doctor-patient relationship without reasonable notice or a reasonable excuse, and fails to provide the patient with an opportunity to find a qualified replacement care provider at a time when continuing care is still needed.
- ▶ Provide the patient with 2-3 referrals for a similar practitioner (gender, technique, area, etc.)

TOP ENFORCEMENT VIOLATIONS

1. Insurance Fraud:

- Double billing
- Billing for service not rendered
- Up coding
- Excessive treatment

2. Unlicensed Practice:

- Practicing after license expired
- Failing to promptly renew
- Aiding and abetting unlicensed individuals

TOP ENFORCEMENT VIOLATIONS

3. Sexual Misconduct:

- Erotic behavior
- Inappropriate touching
- Sexual contact or having sexual relations with a patient, client, customer, or employee

4. Excessive Treatment:

- Treatment beyond what is reasonable/necessary or within the standard of care
- Failure to document necessity (conduct a thorough exam, diagnose the condition, implement a treatment plan, and conduct follow-up exams to assess progress)

TOP ENFORCEMENT VIOLATIONS

5. Violation(s) involving Drugs/Alcohol:

- DUI
- Possession or use of any illicit drugs
- Practicing while impaired
- Prescription medication abuse

6. Conviction of a crime(s):

- Theft
- Domestic violence
- DUI
- Vandalism

TOP ENFORCEMENT VIOLATIONS

7. False and/or misleading Advertising:

- Sensational claims
- No “D.C.” after chiropractor’s name
- Fraud/misrepresentation

8. Beyond Scope of Practice:

- Performing surgical procedures
- Furnishing/prescribing controlled substances
- Claiming to treat/cure cancer

9. Negligence/Incompetence:

- Physical harm to patient
- Failure to exercise appropriate standard of care

TOP ENFORCEMENT VIOLATIONS

10. Fail to release patient records within 15 days of request:
 - Includes requests from patient, patient attorney, patient representative, insurance co, or BCE representatives

11. Payment for Referrals:
 - Discounts
 - Cash/gift cards
 - Free services

Misleading or Unethical Advertising

(section 311)

-The California Board of Chiropractic Examiners accused a, DC of using misleading advertising and practicing beyond chiropractic's legal scope.

-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:

Misleading or Unethical Advertising

(section 311)

- (a) Suspension of said licensee's right to practice in this State for a period not exceeding 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.

Misleading or Unethical Advertising

(section 311)

-Groupon and Others as illegal referral fees:

- California Business & Professions Code Section 650 prohibits the offer, or acceptance by a chiropractor, of any commission, discount, or other consideration as compensation or inducement for referring patients, clients, or customers to any person, irrespective of the practitioner's membership, proprietary interest or co-ownership in or with that person.

Misleading or Unethical Advertising

▶ Groupon and Social Media Discounts Examples:

- ❑ *Consultation, exam, digital x-rays, three chiropractic adjustments, and a 30-minute massage for \$99 (\$325 value)*
- ❑ *\$28 for an exam and treatment plus a 60-minute massage or a 2nd treatment (\$175 value)*
- ❑ *\$49 for three chiropractic visits (\$610 value)*

(1) the DC is offering a **significant discount** –92% in the third example, and

(2) the chiropractor is **sharing the income from each certificate sale** – usually around 50% – with the website. While we are **unaware of any state board taking action** against a licensee for a Groupon-style offering, we believe these **programs could create significant civil and criminal liability for California chiropractors.**

Conclusion

Today's Take-aways

- ▶ Doctor's Duties include:
 - ▶ Scope of Practice
 - ▶ Ethical Conduct (Informed Consent, Patient Abandonment, Record Keeping)
 - ▶ Abuse Reporting

Keep in Touch

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I hope you enjoyed the course. Please feel free to provide feedback.**



Check out: Back To Chiropractic Resource Pages

Chiropracticpedia Informational website for chiropractic patients

Free Materials Over 200 files: Posters, newsletters & more

Adjusting & Office Skills Free help from DCs that care

DCs Looking For DCs Looking to hire, or for a job?

Chiropractic Neurologists

Classifieds Looking to buy or sell a Practice

Memorials Tributes to great DCs who have passed

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