

# **CHIROPRACTIC PRACTICE GUIDE** (Revised 5/1/2009)

## **PREFACE**

The following booklet is a publication of the Maryland Board of Chiropractic & Massage Therapy Examiners. It is a summary of the laws, regulations, policies, rules and procedures related to the practice of chiropractic in the State of Maryland. This publication is the result of many hours of research and editing to craft a simple, easy-to-read guide for Maryland licensees. Please note that the governing statutes and implementing regulations frequently are amended. It is categorically important for all licensees to check on the status of the law and regulations in place at the time that a decision is made.

While this booklet is a handy guide, it is not intended to substitute for professional business or legal advice. In any matter affecting a licensee's status, livelihood, practice rights or constitutional rights, the licensee should consider seeking the professional advice of an attorney, business manager, accountant, consultant, or planner.

**J. J. Vallone, J.D.**

**Board Executive Director**

**May 1, 2009**

## TABLE OF CONTENTS

<b>General DHMH and Board Information</b>	<b>Page 3</b>
<b>Maryland Scope of Practice &amp; permitted modalities</b>	<b>Page 5</b>
<b>Board Discipline &amp; Compliance Program</b>	<b>Page 9</b>
<b>Investigations</b>	<b>Page 11</b>
<b>Hearing Administrative Procedures</b>	<b>Page 14</b>
<b>Chiropractor ‘Target Issues of Importance’</b>	<b>Page 15</b>
• Trade Names	Page 15
• Advertising	Page 15
• P.T. Privileges – advertising nuances	Page 16
• Approved/Non-approved modalities & devices	Page 16
• Referral for Compensation & Licensee Bonuses	Page 17
• Using non-qualified personnel	Page 18
• Record-keeping	Page 19
• Billing & Insurance Fraud	Page 19
• Boundary Issues & Patient Dignity & Autonomy	Page 20
• Extended and/or ‘Adhesion’ Contracts	Page 22
• Acting to resolve patient requests and complaints	Page 23
• HIPPA Requirements	Page 24
• CA and Supervising Chiropractor Programs	Page 27

## **STATE REGULATION OF CHIROPRACTIC PRACTICE**

### **General:**

Chiropractic in the State of Maryland is regulated by the Maryland State Board of Chiropractic Examiners. This Board is comprised of six doctors of chiropractic and two consumer members and three licensed massage therapists. The Board is statutorily established and controlled by Maryland Code: MD Code Annotated, Health Occupations Article Sections 3-301 through 3-602. All Board members are chosen by the Governor for 4-year terms and are eligible to serve two consecutive terms. All appointments to these positions are approved by the General Assembly Senate. The Board Officers consist of a President, Vice President and Treasurer/Secretary. These Officer positions are selected annually by the Board. The Board is responsible for developing all regulations, rules and procedures to carry out the oversight and compliance programs. This includes investigating and prosecuting any complaints filed against a chiropractor. In addition to chiropractors, the Board regulates and oversees all Registered Chiropractic Assistants and all Certified Massage Therapists and Registered Massage Practitioners in Maryland. Applicable laws, regulations and policies may be accessed through the Board web site at [www.mdchiro.org](http://www.mdchiro.org) or [www.mdmassage.org](http://www.mdmassage.org).

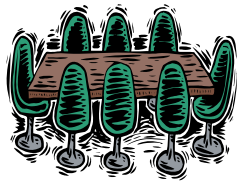
The Board is administered by a full time staff supervised by an Executive Director. A Deputy Director manages the Massage Program and serves in the absence of the Executive Director. The Board staff also includes two investigators, a license coordinator, an office manager, an education coordinator, a secretary and a contract admin specialist.

Generally, the Board issues active and inactive licenses. Licensure may be with or without physical therapy privileges. To achieve these privileges, applicants must take and pass the NBCE physiotherapy examination with a minimum score of 438. The Board administers a Maryland jurisprudence examination to applicants; however, it relies on the NBCE Examination for all substantive professional qualifications.

#### **Important Board information:**

- Address: 4201 Patterson Ave., Baltimore, MD 21215-2299
- Phone: 410.764-4726; FAX: 410.358-1879; web: [www.mdchiro.org](http://www.mdchiro.org)
- Board General Sessions held: 2<sup>nd</sup> Thursday of every month, 10 a.m.

To petition the Board or to request to address the Board, licensees or consumers must submit a written request at least two (2) weeks prior to the Board session in issue.



#### **PROFESSIONAL ORGANIZATIONS:**

The main professional advocacy organization for Maryland chiropractic is the Maryland Chiropractic Association (MCA) located at 720 Light Street, Baltimore, Maryland, 21230, Phone: 410.625-1155. The MCA is a private trade association composed of dues-paying members. It is open to any practicing or inactive chiropractor upon approval of the MCA. The MCA lobbies the General Assembly regarding bills affecting chiropractic and generally promotes the advancement of chiropractic in Maryland.

The MCA is comprised of a Board of Director and annually elected officers. More information on the MCA and membership can be obtained by calling its business office. Other professional organizations serving the chiropractic community include the American Chiropractic Association and the

International Chiropractic Association. The Board frequently works with the MCA in reviewing issues such as CEU programs, procedures, proposed regulations and legislation affecting the chiropractic community.

Please remember that there is a substantial difference between the MCA and the Board of Chiropractic Examiners. The MCA and similar trade organizations are private, professional trade groups with their own agenda, officers, budget and personnel. Their duty is to serve the interests of their membership. Significantly, the Board of Chiropractic Examiners is specifically chartered by state law to license and discipline chiropractic licensees, administer state law and regulation, and to protect the general consumer public.



### **MARYLAND SCOPE PRACTICE**

Under existing law, “*practice chiropractic*” includes the diagnosing and locating of misaligned or displaced vertebrae and, through the manual manipulation and adjustment of the spine and other skeletal structures, treating disorders of the human body. Practicing chiropractic in Maryland means to use a drugless system of health care based on the principle that interference with the transmission of nerve impulses may cause disease.

With respect to diagnosis, the position of the Board is that appropriate evaluation procedures must be undertaken by the chiropractor when initiation of patient care commences. There must be a proper and necessary examination of the human body including: taking a full patient history including recording complaints, vital signs, objective findings and neuromusculoskeletal/biomechanical evaluation. In cases where history, symptomatology or physical examination finding indicate possible multiple causative factors, it may be clinically required to conduct laboratory tests, instrumentation studies and reports, x-rays and other procedures as indicated in the prudent determination of the licensee. These are used to differentiate

possible causes of presenting symptoms. The chiropractor's findings must be correlated and a conclusion, diagnosis or clinical impression established. The Board of Examiners approves all diagnostic procedures, instruments or treatment procedures only after determining that the procedures in question have a sound scientific basis and are commonly taught by approved and accredited chiropractic colleges. If you are in doubt, contact the Board for guidance and for a formal determination or answer to your question regarding scope of practice. The practice of chiropractic in Maryland does not include the use of or prescription of drugs or the practice of medicine. All are prohibited under Maryland scope of practice. The following are some special issues that the Board has considered and approved as being in the scope of practice:

**Low Level Laser Therapy** is a physical therapy modality. It is permitted in the scope of practice. C.A.s are not authorized to assist with laser therapy.

**Electrolysis** is considered within the scope of chiropractic practice **only** if used for hygienic, clinical, non-cosmetic purposes.

**Physical Therapy privileges (“PT privileges”)** are authorized by the Board when a licensee has satisfactorily completed the NBCE physiotherapy examination and a minimum of 270 hours of PT in Chiropractic College. The Board reviews the documentation and determines if the licensee qualifies. Qualified licensees will receive an PT privileges endorsement on their chiropractic license. Practicing physical therapy includes administering treatment with therapeutic exercise, therapeutic massage, mechanical devices or therapeutic agents that use the physical, chemical or other properties of water, air, electricity, sound or radiant energy. Use of physical therapy modalities and/or the use of CPT coding such as therapeutic exercise, joint mobilization, massage or myofascial release may only be used by a licensee holding physical therapy privileges.

**Manipulation Under Anesthetic** (“MUA”) is under the scope of practice but the Board must pre-approve the licensee in writing before MUA may be practiced. MUA approval requires completion of an extensive program (approximately 30-40 hours) from a Board approved provider.

**Videofluoroscopy** is an authorized modality. It is permitted in the scope of practice, provided that the licensee **is specifically approved in writing by the Board**. Approval is granted after the licensee satisfactorily completes a Board approved course/program in videofluoroscopy. The licensee must also demonstrate sufficient knowledge, training and education in all nuances of the modality including the equipment and contraindications.

#### **Procedures & Modalities approved by the Board:**

The following diagnostic procedures and modalities have been specifically addressed and approved by the Board as being within the scope of chiropractic practice. In all cases, it is incumbent on the individual licensee to insure that he/she is sufficiently trained, educated and experienced to safely and efficaciously perform the procedure:

- **Biomechanical exams**
- **Blood tests**
- **Bodily fluid extractions & tests**
- **Colonics**
- **Dry needling**
- **General physical exams**
- **Electrical diagnostic tests** such as EMGs & NCVs
- **Electrolysis for non-cosmetic, therapeutic reasons** (see aforementioned requirements)
- **Low level laser therapy**
- **Infratonics**
- **Iontophoresis** (using non-legend topical products and/or prescriptive products prescribed by the patients M.D.)

- **Manipulation under anesthesia** (see aforementioned requirements)
- **Neuromusculoskeletal exams**
- **Physical examinations**
- **Videofluoroscopy**
- **Ultrasound (therapeutic)**...Note - Diagnostic ultrasound is **not** approved
- **Urinalysis testing**

**Procedures & modalities NOT approved by the Board:**

The following are specifically **not approved** in the scope of chiropractic:

- **Acupuncture** (requires a separate Maryland Acupuncture license)
- **Cineradiology**
- **Diagnostic ultrasound**
- **Hyperbaric treatments** with oxygen or any other substances
- **Treatment or adjustment of any non-human subjects** such as dogs, cats, horses, etc.
- **Injections of drugs, supplements or vitamins or any kind**

**School, sports & employment physical examinations:**

Frequently, licensees are asked to conduct school, sports or employment physicals for high school, college or various employment situations. As a licensee, you are fully authorized to conduct such examinations; however, it is exclusively up to the school or institution whether or not a chiropractor's signature will be accepted. There is a state statute that restricts high school sports physicals solely and exclusively to medical doctors. For other schools or organizations, it varies from county to county and from school board to school board. Check with the institution before commencing the examination.

**Issues regarding business law, CPT coding and/or insurance:**

The Board does not have jurisdiction to provide advice or information on business choices, practice set up, office management, coding or issues/disputes with insurance carriers. For all such issues, the licensee should contact private counsel, a business consultant or the insurance carrier in issue.

## BOARD DISCIPLINE & COMPLIANCE PROGRAM



### **General Administration:**

The compliance and disciplinary programs for chiropractic licensees, chiropractic assistants and massage therapists are administered by the Board. The Executive Director is the Chief of Compliance and manages the compliance program assisted by the Deputy Director and Investigation staff. Under the law and regulations, licensees, their records, patients and any pertinent documents or witnesses or evidence are subject to subpoena. In most cases, the subpoena will direct the licensee to appear to testify at an interview and/or to bring certain documents or records. The chiropractor ('Licensee') is required to fully cooperate in accordance with the ethics regulations. Failure to cooperate may result in charges being brought against the license. The licensee is not required to be advised of the existence of or the nature of a pending investigation. In fact, many times, the licensee discovers he/she is the subject of an investigation only when the subpoena is served.

The Board is composed of seven members, five chiropractors and two consumer members – all selected by the Governor's Office of Executive Appointments. The Board meets on the second Thursday of every month to hold both General and Executive Sessions. The General Session is open to the general public. Executive Sessions are closed to only members and staff. Infrequently, Board meetings are not held due to disciplinary hearings.

Any licensee or member of the general public may petition the Board asking questions, filing general comments or complaints. Such petitions must be in writing and submitted at least two (2) weeks prior to the General Session in which it will be heard. At the General Session, the Board will fully address and discuss the issue. The petitioner may personally appear to present comments.

### **Complaints:**

The discipline and investigative process are complaint-driven. The Board does not engage in broad based, sweeping dragnets, audits or inspections without reasonable cause based on a complaint. Complaints may be submitted regarding actions or omissions of a licensee for a number of reasons such as: billing fraud, over utilization, coding infractions, misrepresentation of a service, malpractice, sexual boundary issues, unprofessional conduct, incompetence, drug or alcohol use, failure to cooperate, etc. Complaints must be in writing with few exigent exceptions. Anonymous complaints are generally not accepted since their source, validity and factual bases cannot usually be corroborated. Where an anonymous complaint can be corroborated by other evidence, an investigation may be opened. Complaints are usually filed by patients, employees, fellow or competing practitioners or members of the consumer general public.

### **The Complaint Process:**

When a complaint is received by the Board, a review is conducted to determine if jurisdiction exists over the case. In other words, the complaint must involve a particular alleged act or conduct that is addressed by statute or regulation. If no jurisdiction exists, the complaint is closed to file and no case is opened. If jurisdiction exists, a case file is opened, given a case number and an investigator is assigned to the case. Generally, separate investigators conduct investigations for the chiropractic and massage programs. The Executive Director is the Chief of Compliance and conducts the initial jurisdictional review with the assistance of the Board Counsel and the Deputy Director. Closed files are not used in any manner against a licensee and are not releasable as public information to any 3<sup>rd</sup> party.

### **Investigations:**

Once a formal case file is assigned a case number and opened, it is assigned to an investigator. The investigator commences an investigation of all

pertinent witnesses, records and documents. The investigator issues a subpoena to the licensee under investigation. The licensee is referred to as the “subject” of the investigation. Key witnesses may be summoned to provide testimony and documentary evidence may be subpoenaed. Frequently, documentation subpoenaed includes: letters, memoranda, patient files, office calendars, patient lists, employment records, time cards, etc. Each licensee is required by regulation to fully cooperate and may not refuse to cooperate regarding responding to questions or to requests for evidence. The investigation process usually takes several weeks to months depending upon the complexity and peculiar aspects of each case.

#### **Formal Investigatory Report and Case Resolution Conference:**

The investigator prepares a comprehensive written report which is submitted to the Board for review and discussion. Following review and discussion, the Board usually has three options: (1) dismiss the complaint for lack of evidence, (2) issue an informal administrative sanction such as a letter of education or reprimand, (3) forward the case to the DHMH Office of Attorney General (“AAG”) for legal review with a recommendation of charges against the respondent’s license. If this occurs, an administrative prosecutor is assigned by the AAG and a pre-hearing case resolution conference (“CRC”) is scheduled. At the CRC, the licensee will have the opportunity to settle the case without a full hearing. The CRC is an informal meeting at which the respondent may have the assistance of legal counsel. The AAG may make an offer of settlement and the respondent may accept, counter-offer or reject the AAG’s offer. If accepted, the prosecutor will draft a settlement agreement and Board Order which will become binding upon execution by all parties. If a settlement is not reached, the case will be scheduled for a full administrative hearing before the Board of Examiners.



### **Board Hearings:**

At a full Board administrative hearing, the seven Board members serve as the trier-of-fact. In some cases, it may be forwarded to an Administrative Law Judge at the Office of Administrative Hearings. Usually, however, the Board hears its own cases. At the hearing, the respondent is permitted to be represented by counsel or to be assisted by a representative. The respondent has the right to review all evidence, present his/her own evidence, call his/her own witnesses and cross-examine the witnesses of the prosecution. This hearing is a formal administrative proceeding with a court reporter and a verbatim transcript of all proceedings.

### **Board decision - order and appeal rights:**

The Board may vote that the charges are not proved or, if proved, the Board may vote a number of sanctions including: formal warning, admonishment, letter of education, cease and desist order, license suspension, revocation, community service, education courses, mentorship, hearing costs and monetary penalties of up to \$5,000.00 per offense. Board decisions and orders are public information and are releasable to the public upon request. The Board also publishes orders in its newsletters and on its website. The respondent may appeal any administrative decision through the Maryland court system at his/her expense.



### **Legal counsel:**

The decision to retain legal counsel is up to the sole and exclusive decision of the respondent. Please do not seek any advice or counsel from the Board, its members or its staff. They are not permitted to discuss any substantive aspects of a case with a respondent. Prior to retaining counsel, the respondent may wish to contact his/her malpractice carrier to determine if any/all legal expenses are covered by the insurance policy. Depending on the insurer, limited attorney defense costs may be reimbursed in some cases. In some cases, however, depending on the alleged offense or policy, carriers may not cover the legal expenses. Check with the malpractice insurance carrier for detailed information.

### **Scope of legal participation:**

All licensees who are respondents under an investigation have the right to legal counsel at an administrative hearing; however, there is no absolute right to legal counsel at any other stage of an investigation. This includes interview sessions with the Board investigator. In most cases, however; the Board allows legal counsel to be present at an investigation interview provided the attorney does not impede the investigatory process. This means that the attorney may not raise objections, become abusive or disruptive or compel his client to not cooperate. Remember, under regulations, every licensee must cooperate with an ongoing investigation.

### **Investigation documentation and release of evidence:**

Generally, any respondent may request copies of documentation in the investigation file; however, the ultimate decision to release or withhold

documentation is with the Board on the advice of AAG legal counsel. The Board generally may withhold release of documentation if such release will have a chilling or adverse effect upon the conduct of the investigation. Once a hearing is scheduled, formal rules of discovery are in effect and the respondent has the ability to request and receive certain evidence through the discovery process provided in law and regulation.



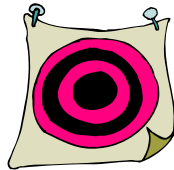
### **Hearing Procedures:**

During the hearing, the prosecution has the burden of proving its case by a preponderance of evidence. Note that this is not a criminal trial but an administrative hearing. At a criminal trial, the prosecution must prove its case beyond a reasonable doubt – a much heavier burden of proof. At an administrative hearing, the formal rules of evidence are relaxed and hearsay is admissible in the discretion of the Board. The respondent has the right to cross-examine prosecution witnesses and has the right to opening and closing arguments and to present evidence and testimony on his/her own behalf. The following are sanctions that are frequently issued by the Board:

<b>Revocation:</b>	Revoking all practice privileges
<b>Suspension:</b>	Suspending of practice privileges for a period of time
<b>Probation:</b>	Usually used in conjunction with a suspension to review the conduct of a respondent for a specified period of time.
<b>Fine:</b>	A monetary penalty – up to \$5,000 per offense
<b>Admonishment:</b>	A formal letter advising the respondent of the nature of his/her conduct

**Education:** Requiring the respondent to complete specified courses or programs

**Other:** The Board may also issue sanctions of community service and/or mentorships under the tutelage of a chiropractor-proctor



## **TROUBLESOME TARGET ISSUES & FREQUENTLY ASKED QUESTIONS**

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### **Trade Names**

Under Section 3-407 of the Chiropractic Practice Act, all trade names must be submitted for approval by the Board. The Board retains a comprehensive list of all trade names that have previously been approved and recorded by the Board. When a licensee decides to establish a trade name, for example '*Acme Chiropractic Clinic*', the licensee must submit that specific name by written petition to the Board for review and approval. The Board will conduct a review at its next monthly meeting and vote on the name. Names must be clear and delineate the practice as chiropractic by the trade name or by adding the word '*chiropractor*' or '*D.C.*' Examples of approved trade names are: '*Acme Chiropractic Clinic*' and '*Acme Health & Rehab, John J. Jones, D.C.*' Trade names must be clear and not confusing or misleading to the public. Also, they may not conflict with an already authorized trade name.

### **Advertising**

Advertising is specifically regulated by the Board under COMAR 10.43.03.01. Under this regulation, advertisements may not misrepresent, deceive, create false expectations of cure or convey an impression that the

licensee has special privileges or contain improbable promises. For example, a licensee who advertises in the yellow pages and claims that his/her unique procedures can cure headaches and insomnia is probably in violation of the advertising regulations. In addition, advertisements must clearly reflect that the practice is that of chiropractic. For example, an advertisement for a chiropractic practice may not refer to the chiropractor as *Dr. John Jones*. It must specifically relate that the doctor is in fact a chiropractor (e.g. *Dr. John Jones, D.C.*). Generally, a safe rule of thumb is that advertising meets the regulations if it is honest, clear, does not misrepresent facts or promise cures and lists the chiropractor, his address and phone number. There are also several articles in past newsletters reviewing and discussing the nuances of professional advertising.

### **Advertising Physical Therapy (PT) Privileges**

Notwithstanding that a chiropractor with PT privileges may practice a full range of PT modalities, he/she may not advertise as a 'physical therapist' unless separately licensed as a physical therapist by the MD Board of Physical Therapy. A proper advertisement identifies the licensee as a chiropractor 'practicing physical therapy' or with 'physical therapy privileges.' Accordingly, the Board has ruled that a licensee not holding a separate PT license but holding physical therapy privileges may advertise under the '*physical therapy*' heading of the yellow pages but NOT under the '*physical therapist*' heading.

### **Using Novel or Unapproved Devices or Modalities**

Licensees may not employ methods or devices that are not generally recognize or accepted by chiropractic schools, national accrediting societies or organizations. In particular, the FDA is a recognized approving agency for healthcare devices. However, note that FDA approval of a device does not per se authorize its use without Board approval. For example, low level lasers are frequently approved by the FDA; however, a licensee may not use low level

lasers on a patient unless/until he/she has completed the required training and received formal approval from the Board.

### **Referral for Compensation**

It is a violation of Section 3-313 of the Chiropractic Practice Act to refer a patient for a fee or anything of intrinsic value or to accept the referral of a patient for a fee or anything of intrinsic value. The compensation or fee may be money, barter in trade, coupons, entertainment tickets, prizes, etc. It does not matter! If there is a value reasonably attached to the item or service, it constitutes 'compensation' and will serve to make the referral a violation. This issue frequently occurs with practices trying to increase patient traffic. Recently, several licensees have adopted novel methods to try and skirt the law. For example, the licensee may offer a lottery ticket or a chance to win a TV for every patient referred or a discount on a modality. All of these things have intrinsic value and are prohibited. It is permissible for a licensee to offer *de minimis* items of no intrinsic value as thanks to patients. These include inexpensive t-shirts with the office logo, pens, pencils, mugs, key chains, etc.



### **Employee Bonuses**

The Board has determined that it is permissible for a licensee to be employed under a bonus or 'salary-plus' arrangement (in which the employee receives compensation for bringing in a certain number of patients). In such cases, however; the licensee and practice must insure that the health, care and well-being of the patient are paramount to any bonus or pay incentive.

### **Using non-qualified or non-Licensed/Registered Personnel**

Many times, licensees hire nurses, massage therapists or chiropractic assistance in their practice. However, many times, the supervising chiropractor

fails to insure that these healthcare practitioners are properly licensed, certified or registered. It is the responsibility of the licensee who hires and supervises the employee to insure that they meet all State standards and requirements for the healthcare position in issue. This requirement can be easily met by personally viewing the official State documentation of the employee. Their license, certificate or registration must be original and must be current. You can also telephone the Board for an immediate verification. A common misconception is that any healthcare practitioner (e.g. massage therapist, nurse, medical doctor, physical therapist) can serve as a Chiropractic Assistant ('C.A.'). This is not true. Regardless of the status of the individual, he/she must specifically hold a separate C.A. Registration issued by the Board in order to practice as a C.A. in Maryland. Regarding massage therapists, remember that only a Certified Massage Therapist ('CMT') may work in a chiropractic practice. Registered Massage Therapists ('RMPs') are restricted to non-healthcare settings.



### **Record Keeping**

Licensees are frequently sanctioned for failure to maintain legible, succinct, SOAP notes reflecting patient intake, history, examination, diagnosis, procedures, treatment and follow up care and progress. Additionally, many times the payment, billing and insurance records are not maintained in accordance with regulatory requirements. COMAR 10.43.15.03 requires that all chiropractors maintain “accurate, detailed, legible, and organized records, documenting all data collected pertaining to the patient’s health status.” The Board is the final fact finder as to whether records meet this requirement. The licensee must make sure that his/her records can be read, make sense and fully describe every thing that occurred regarding patient care. If a modality, treatment or procedure or

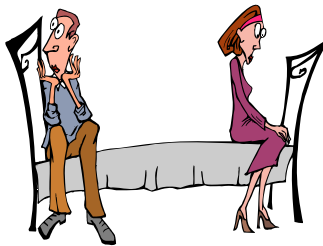
billing is not in the record – technically, IT NEVER HAPPENED and cannot be justified! A good test is to give one or two of your patient records to a fellow practitioner and see if they can easily comprehend what occurred regarding patient treatment. Codes, and written shorthand or shortcuts are permitted, however, there must be a key or table in the record so that any 3<sup>rd</sup> party reviewer can readily comprehend the full scope and details of the patient treatment in issue. Remember, in any complaint case, the primary source of all information is the patient record. The records of a licensee are usually indicia of a well-maintained, efficient practice or a sloppy, practice that violates regulatory requirements.

State and Board recordkeeping regulations require that licensees maintain their records for five (5) years after termination of treatment or from the time a minor patient reaches the age of 18 years. Some of federal HIPAA requirements, require the retention of certain records (generally relating to patient disagreements, complaints, correspondence to address grievances). Accordingly, the prudent choice is to maintain records for six (6) years in all cases to concurrently meet both State of federal HIPAA requirements.

### **Billing and Insurance Fraud & Abuse**

Billing and coding irregularities, misrepresentation and fraud comprise many of the investigations and sanctions imposed by the Board. Many cases evolve around mis-billing, over utilization of treatment, and outright intentional fraud by billing for services that were never performed. In today's computer/database age, most insurance carriers flag potential fraudulent abuse very quickly. The Board works with complaints from both patients and from insurance carriers to investigate allegations of fraud and billing irregularities. Many times, complaints are generated from investigative offices at major insurance companies. Remember, in most instances, your contract with an insurance carrier permits them to access your records and obtain detailed information regarding billing.

Many times, patients are very detail-oriented and will proactively contact their insurance carrier to compare the services on their bills to those submitted by the provider to the insurance carrier. If these do not match up, there is a major problem for the licensee. Also, remember, the licensee is fully responsible for all billing and documentation, regardless of whether or not the licensee uses a billing service or databank to prepare and issue billing statements. Insurance and billing fraud cases are very serious and are frequently also referred to state and federal criminal prosecutors for review and criminal prosecution. Accordingly, licensees should know that involvement in such illegal conduct may subject them and their licenses to both administrative sanctions and to criminal prosecution, fines and imprisonment.



### **Boundary Issues**

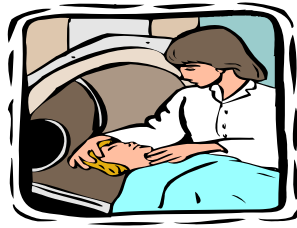
The Licensee Code of Ethics is found at COMAR 10.43.14. Licensees should read and remember the key requirements of this regulation. Frequently, complaints are filed against licensees by patients based on inappropriate language, comments, nuances, jokes or off-color remarks. These include language relating to sex, gender, age, ethnicity, race or religion. In addition, inappropriate touching may be alleged. While joking or impromptu comments may seem innocuous, they can result in formal complaints and sanctions against your license. For example, in one Board case, a licensee told a young female patient that her “upper torso was unusually large and well proportioned and that she had the body of a gymnast.” The comment was intended as a compliment and not intended to offend the patient. However, the patient was offended and felt threatened, considering the remark as sexual in nature. She filed a formal complaint. Another example occurred when a licensee told a series of off-color jokes about marital love-making to an elderly male patient. The patient felt

insulted and filed a complaint. Yet another example occurred when a licensee who was a devout Christian of a particular religious sect literally preached the attributes of Christianity to all of his patients. This resulted in numerous complaints.

Other complaints are routinely filed regarding a licensee's over-friendly conduct, attitude or comments. Examples include hugging, patting, tickling. In many cases, such conduct is well-intentioned; however, it can easily be misinterpreted by the patient. Many times complaints are filed by office staff members who are upset or disgusted by the inappropriate conduct of their employer. The following are some suggestions and guidelines to assist licensees in keeping clear of violating boundary issues:

- ***Look and act the professional, including dress, attitude, speech and deportment;***
- ***Avoid all unnecessary touching such as hugging, patting, tickling, etc – A firm, cordial handshake will do nicely;***
- ***Avoid unnecessary probing, embarrassing questions or comments regarding a patient's spouse, sexual activities, family or personal circumstances.***
- ***If possible, use a chaperone of the same sex as the patient – particularly with females;***
- ***Avoid all off-color jokes and discussion topics including: race, religion, sex, age, ethnicity, etc. Don't assume such jokes are acceptable or humorous;***
- ***Avoid treating any patient with whom you have had or are currently having a personal relationship. Such patients must be promptly referred to another professional;***
- ***Never make even a casual advance or proposition of sex, romance, dating, lunch, etc with any patient – this is unprofessional conduct;***
- ***Promptly apologize if you slip up! Everyone occasionally slips up and may unintentionally mis-speak. If this happens and you are cognizant of it, apologize***

*immediately. Many time a complainant will readily accept an apology and not file a complaint.*



### **Patient Dignity and Autonomy**

Under COMAR 10.43.14.03, a licensee is required to concern themselves at all times primarily with the welfare of their patients. Licensees are required to ethically treat all patients with dignity, respect, honesty and fairness. A licensee may not abandon a patient and must make all efforts to transfer/refer the patient to a qualified healthcare professional if the licensee terminates practice or becomes incapacitated or incompetent. Licensees must provide accurate fee information to all patients and must provide accurate, clear billing statements to the patient and to the insurer.



### **Extended Treatment Contracts**

A licensee is free to use whatever patient contract he/she desires provided that the contract is clear, fair, and may be terminated at any time for any reason, without penalty by the patient. If a contract unduly restricts a patient to commit for extended periods of treatment requiring penalties for termination, the contract is unconscionable and considered as unprofessional conduct by the licensee. Licensees must carefully assess binding a patient to an extended care contract since parameters of care, patient health and patient desires change as time goes by. For example, a patient may simply not like the personality or treatment methods of the licensee. In such cases, the patient must have the free,

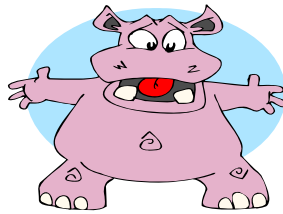
unfettered and unobstructed right to terminate the patient care contract for any reason and at any time without penalty. The Board has received numerous complaints from patients regarding the unfair use of such contracts. For these reasons, the Board strongly advises licensees to refrain from the use of long-term, extended treatment contracts.

### **Patient Requests & Demands**

Probably 90% of complaints filed by patients result from a poor attitude of the licensee or from the refusal of the licensee to negotiate a reasonable resolution or settlement with the patient. It is important for licensees to keep in mind that litigation and/or defense costs in a Board investigation or administrative prosecution can be substantial. Accordingly, the licensee must individually evaluate if he/she should resolve the problem with the patient. The following are some frequent patient requests and demands that result in complaints:

- **Request for records or x-ray films:** The patient has an absolute right to review his/her files and films or to have them forwarded to another healthcare practitioner on written request. Additionally, the patient has the right to obtain copies of his/her patient file. The licensee may charge a copying/processing fee (call board for most recent allowable fees) for the service. Licensees should be prompt and reasonable in providing the information for the patient. Patients get very frustrated and upset by licensees who are not amenable to a patient request.
- **Request for clarification of billing or insurance:** Many times the patient is confused or unsure of insurance coverage and charges. A prudent licensee ensures that every patient fully understands and acknowledges the parameters of insurance coverage, billing and charges. It is wise to get the patient to sign an acknowledgement notice regarding of insurance and billing responsibilities. This will serve the licensee if/when the patient claims that no clarifying information was provided.

- **Requests for refunds on termination of extended contracts:** As stated previously, extended treatment contracts MUST allow for the full refund of all amounts, for any reason upon request of the patient. There have been several disciplinary cases evolving around instances of a licensee refusing to terminate an extended contract or refunding deposits.



## **HIPAA – HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996**

### **HIPAA Background**

*No, it's not "Hippo"...but it can be just as big, ugly and cumbersome if you let it run over you!* The Health Insurance Portability and Accountability Act of 1996, more commonly known as HIPAA was enacted by Congress as part of an initiative to simplify and streamline the federal government. The main thrust of HIPAA was to improve and streamline the efficiency of the overall American healthcare system. It hoped to accomplish this through promulgating and enforcing standards for patient and record privacy, particularly in the area of electronic transmission of information from a provider to a third party such as an insurer. The regulations were promulgated by the U.S. Department of Health and Human Services. Enforcement is done through the U.S. Office of Civil Rights.

### **HIPAA regulations were promulgated to cover the following areas:**

- Health claims
- Health plan enrollment & disenrollment

- Health plan eligibility
- Health care payment advice
- Health plan premium payments
- Health claim status
- Coordination of benefits
- Referral certification and authorization.

### **To Whom Does HIPAA Apply**

This is a frequently asked question. Several unfounded rumors abound regarding to whom HIPAA applies. Essentially MOST medical and health care practitioners and care facilities THAT EXCHANGE ANY PROTECTED HEALTH CARE INFORMATION WITH ANOTHER COVERED ENTITY MUST COMPLY WITH HIPAA. For example, if you are a chiropractor billing a 3<sup>rd</sup> party such as an insurance company, you would be required to fully comply with HIPAA. Similarly, if you process your claims through a clearing house or professional service, you fall under HIPAA. Additionally, HIPAA compliance analysts and experts advise that even the few exceptions are most likely to be removed in later years. The federal HIPAA website is [www.wpc-wdi.com/hipaa](http://www.wpc-wdi.com/hipaa). It will provide substantial updated information and assistance in understanding and complying with HIPAA.

### **HIPAA Electronic Requirements**

Under HIPAA, payers and electronic health networks must be capable of electronically transmitting and accepting:

- Enrollment in health plans
- Eligibility for health plans
- Health care claims
- Health care payment and remittance advice
- Health plan premium payments
- Health claim status
- Referral Certification

### **Will HIPAA Go Away – Ever?**

HIPAA is here to stay.....it will, in all probability, expand in scope in time and will extend regulatory coverage to a broader base. Accordingly, the prudent advice is for licensees to know and understand HIPAA. The Board does not have jurisdiction over HIPAA issues. HIPAA is regulated by the U.S. Department of Health and Human Services. Enforcement is conducted by the U.S. HHS Office of Civil Rights. Enforcement regimen includes:

- \$100.00 per incident
- Up to \$25,000. administrative fine per person/year/provision violated
- Audits conducted by HHS investigators
- Criminal penalties for willful misconduct including fines up to \$250,000. and 10 years imprisonment

While the foregoing sounds extremely harsh, to date, most issues are usually dealt with by advisory warnings unless the conduct is grievously intentional or repetitive after previous warnings.

### **HIPAA General Privacy Aspects**

Under HIPAA, Protected Health Care Information (PHI) consists of individually identifiable healthcare information that is made or received by a provider, payer or claims clearing house related to a health condition, care of payment for care. Many aspects of HIPAA privacy requirements are already covered by Maryland law and regulation. In summary, under HIPAA, the following are the identifiers which fall under HIPAA compliance:

- Names
- Addresses
- E- mail
- Social Security Numbers
- Medical record numbers
- Health Plan beneficiary numbers

- Account numbers
- Certificate numbers
- License numbers
- Vehicle identifiers
- Facial photographs
- Telephone numbers
- Device identifiers
- URLs
- IP addresses
- Biometric identifiers
- Geographic units
- Any other unique personal identifier or code

## **CA & SUPERVISING CHIROPRACTOR PROGRAMS**

### **Background:**

The Chiropractic Assistant ('CA') Program was established approximately 20 years ago to provide a ready source of trained healthcare assistants with a background in chiropractic and physical therapy. In Maryland, Registered CAs are considered as healthcare practitioners. Only a registered CA or applicant may work under the guidance of a certified supervising chiropractor.

### **Beginning the hiring process:**

An applicant may NOT begin work unless/until the Supervising Chiropractor has submitted the CA Applicant Notification of Employment Form (downloadable from the website at [www.mdchiro.org](http://www.mdchiro.org)). A CA's in-service time will not count unless the aforementioned form has been submitted. Moreover, it is a violation of law and regulation to begin training an individual unless/until the CA Applicant Notice of Employment Form has been submitted to the Board. The Board will subsequently use the form to track the progress of the applicant throughout his/her in-service and didactic training and education.

**Qualifications for CA Registration:**

Pursuant to COMAR 10.43.07, a CA applicant must:

- Be at least 18 years old
- Be a high school graduate
- Complete a minimum of 520 in-service clinical training hours
- The first 40 hours must be in observation of clinical modalities of the supervising chiropractor
- Complete 103 hours of Board approved courses in anatomy, terminology, physical therapy, risk management and jurisprudence
- All of the above training/education must be completed in 1 year
- Hold a current CPR certification from the American Red Cross or American Heart Association (Provider Level)
- Pass a Board proficiency and jurisprudence examination
- At the time of application for examination, submit a legible, complete training log executed by the supervising chiropractor detailing all training at the in-service level

**Training Log Required:**

Only a Board certified Supervising Chiropractor may work with CAs and CA applicants. The Supervising Chiropractor must maintain a legible, comprehensive, written record/log of all CA training including: dates, modalities, time and competency. This record must be submitted by the CA to qualify for examination. The Board may audit this record/log at any time for any reason to ensure that sufficient training is being conducted by the Supervising Chiropractor.

**Discretionary Waiver of Educational Requirements:**

Pursuant to COMAR 10.43.07.05C, a CA applicant may have his/her educational requirements waived at the discretion of the Board if such applicant has substantial educational qualifications in healthcare AND holds a healthcare license/registration/certification (e.g. RN, PT, PTA). These waivers are

determined on a case-by-case basis. Applicants must petition the Board via a detailed, typed letter with copies of all supporting documentation. Call the Executive Director for details.

**Supervising Chiropractors:**

A CA or applicant may ONLY work under the guidance of a Supervising Chiropractor that has been certified in writing by the Board. It is a violation of law and regulation for a CA to work with a Chiropractor who has not been certified as a Supervising Chiropractor. Similarly, it is a violation of law and regulation for a Chiropractor to supervise an individual who is not a CA or applicant. To become a Supervising Chiropractor, the licensee must:

- Be licensed in good standing with no disciplinary history
- Hold physical therapy privileges
- Attend a special Board seminar
- Pass a Board Examination and Interview
- Submit a \$300.00 fee with the application

It takes approximately 60-90 days to process Supervising Chiropractor applications. Applicants will be contacted regarding times & dates of the interviews and examinations.

**BOARD REHABILITATION PROGRAM**

**An 'Open-Door' Program offered for the  
Rehabilitation of Dependent Professionals**

**Program Origins:**

Pursuant to MD Code Ann., Health Occupations Article, Section 3-406, the Board established a rehabilitation program for professionals dependent on drugs,

alcohol or prescription medication. The program was developed following the enactment of the federal Americans with Disabilities Act of 1990. The general concept of the program is **SELF-VOLUNTARY REFERRAL** for chiropractors, chiropractic assistants and massage therapists/practitioners with substance abuse issues or who have physical, emotional or mental conditions adversely affecting their practice.

**Open Door – Safe Harbor Guaranteed:**

Under this program, an open-door/safe-harbor are established to allow regulated professionals to voluntarily submit to evaluation and treatment. If the professional voluntarily joins the program, is cooperative, honest and follows all precepts and requirements, he/she will avoid disciplinary action by the Board. However, if the professional refuses to join the program or fails to meet requirements, then the case shall be referred for Board disciplinary action.

**Confidentiality Assured:**

The cornerstone of this program is confidentiality regarding all communications, documentation and records relating to the referred professional. By statute, no rehabilitation information may be transmitted to the Board nor is it discoverable under any proceeding. Any Board member sitting as a member of the Rehabilitation Committee is recused from participating in any subsequent related matter.

**Process:**

The rehabilitation process begins when the licensee pro-actively submits to the program by contacting a member of the committee. The committee will review the case and thoroughly discuss all ramifications with the licensee. The licensee will complete paperwork that will reflect acknowledgement and agreement to the terms and costs of the rehabilitation program. The licensee will then be referred to the Board PhD consultant, Dr. Hoolighan, who will set a stepped monitor and counseling program for the licensee with frequent reports to the Board. The licensee must agree to pay all costs associated with this program. The consultant will then make recommendations to the Board regarding any restrictions on the licensee's scope of practice. Following successful completion of the program, the licensee will be cleared to return to practice without any disciplinary action against his/her license. If, however, any adverse reports are issued from the consultant, the Board may take disciplinary action and terminate the rehabilitation program for failure to cooperate to meet program requirements.

**Committee Composition:**

The Committee is currently composed of the following members and contact numbers:

John DeMaio, D.C.	410.721-2222
Steve Acocella, D.C.	410.367-1966
E. Brian Ashton, D.C., P.T.	301-980-9630
Maryanne Frizzera-Hucek	410.764-4726
Martin Hoolighan, PhD.	(Consultant) Reached via Board

***Remember, the bottom line on this program is to pro-actively assist the licensees should they need help. It has proven successful in many cases...but only where the licensee meets the Board half-way by cooperating with the program requirements.***

### **EXECUTIVE DIRECTOR COMMENTS**

The foregoing publication is the work product and property of the MD Board of Chiropractic Examiners. It may be printed and copied and disseminated for non-commercial, non-profit, educational purposes only.

Holding a healthcare license, certificate or registration in Maryland is a privilege, not a right. Accordingly, all holders of these licenses should always take their duties to their patients and profession most seriously. The Board will not tolerate ignorance, disregard or flagrant violation of its laws and regulations. To do so is an injustice to the State, jeopardizes the public, and harms the profession. It is incumbent on each licensee to always practice ethically, professionally and with the utmost respect and regard for the health and safety of the patient. If any licensee ever has a question, they may call me directly at any time at 410|764-4726. I am always available to answer questions and to clarify or interpret any confusing laws, regulations or issues.

## NOTICE:

### **DRY NEEDLING MAY NOW BE USED DIAGNOSTICALLY AND THERAPEUTICALLY**

Until June 2008, the Board had consistently considered the practice of 'Dry Needling' as a modality outside of chiropractic and solely within the practice of licensed acupuncturists. This interpretation and policy was based on the prevalent interpretation concept that dry needling was both a diagnostic and treatment modality used to treat certain muscle anomalies under the neurological aspect of physical therapy. Based on an extensive review by the Board, its legal counsel and input from the profession, all nuances of the procedure were examined and studied. **It is now determined that dry needling is a viable physical therapy tool within the scope of a licensee's physical therapy endorsement. By definition, "Dry Needling denotes the insertion of a needle into a myofascial trigger point associated with a hypersensitive palpable module in a taut band. This procedure is used when a patient presents with myofascial or musculoskeletal pain. The procedure consists of piercing a trigger point with a fine, thin gage (25 gage or smaller) needle. If successful, ideally, the myofascial pain may diminish. It is only one step in a multi-step process for diagnosing, treating and preventing reoccurrence of the patient symptoms."** Jan Dommerholt, P.T., MPS, FAAPM, et al., *Trigger Point Dry Needling*, The Journal of Manual & Manipulative Therapy, E 70-79, Vo.. 4, (2006). Significantly, dry needling has been used by licensed physical therapists with the knowledge of the Acupuncture Board for many years. Since Chiropractors with P.T. endorsements are authorized to perform all modalities of physical therapy on chiropractic patients, the modality of dry needling follows as a viable and authorized practice as long as the procedure does not cross the boundary into licensed acupuncture.

**A few important points are key to this scope-of-practice issue:**

**Only a licensee with a P.T. endorsement may use the physical therapy modality of dry needling. It is important to note that licensees should NOT be using dry needling unless they have attained a degree of training and education which allows them to make the independent, prudent, professional judgment that the modality may be safely and efficaciously used with patients.** It is up to the prudent, professional judgment of every licensee to determine the comfort factor with safely employing dry needling. Serious license malpractice and civil liability issues arise should an untrained or inexperienced licensee use dry needling and injure or malpractice on a patient.

**Dry needling is NOT synonymous with acupuncture.** As opposed to the restrictive modality of Dry Needling, **"Acupuncture is an oriental based healthcare based on a theory of energetic physiology that describes the interrelationship of body organs or functions with an associated point or combination of points"**. (MD Code Ann., H.O. Article Section 1A-101(b)). In essence, acupuncture may pierce a meridian in a remote part of the anatomy to treat a condition in an entirely different anatomical area, whereas, Dry Needling is restricted solely to the piercing of the trigger point of the immediate, affected anatomical area to obtain relief or to arrive at a diagnosis.

Licensees should independently seek out good programs and courses to learn about or to refresh their knowledge of dry needling. Licensees may wish to seek out courses used by licensed physical therapists to bolster their training and knowledge of the procedures. The Board will give full credit for such courses provided that the courses are submitted for pre-approval. This is a scope of practice issue that must be taken seriously. Accordingly, the procedure should not be undertaken without sufficient training and education. Any specific questions should be forwarded to the Board.

## **LOW LEVEL LASER**

Chiropractic licensees may practice low level laser therapy without any special authorization or certification, provided that each licensee believes that he/she is professionally trained, educated and experienced in safely and prudently practicing the modality without contraindications. While no formal certification is required, the Board strongly urges practitioners to attend CEU coursework to keep abreast of any recent updates in low level laser.