

CHIRO NEWS

A publication of the Maryland Board of Chiropractic
& Massage Therapy Examiners

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SPRING 2014



REVISED CA REGULATIONS EFFECTIVE 1/6/2014 VIOLATORS SUBJECT TO DISCIPLINARY ACTION

The Board revised regulations were formally implemented by the DHMH Secretary on January 6th, 2014. The Board sent every licensee a formal notice of the revised regulations with summaries and directions on accessing them at the Board Website at www.mdchiro.org. All licenses are urged to download COMAR 10.43.07 which covers all Supervising Chiropractor and CA Program regulations.

REVISIONS TO THE CA HIRING & TRAINING PROGRAM:

In Spring 2013, Board representatives and officers met with MCA Representatives and course instructors to craft revisions to the CA Training and Registration program. It was unanimously determined that the changes were necessary because of substantial intentional and negligent conduct by Supervising Chiropractors in administering the Program. The revisions were informally introduced in May 2013 and a 7-month grace period was instituted for all licensees to come into compliance. On January 6th, 2014, these revisions were promulgated into formal regulations by the State of Maryland after months of review, consideration, input and discussion. **THE REGULATIONS ARE NOW IN PLACE AND COMPLIANCE IS REQUIRED WITHOUT EXCEPTION TO AVOID DISCIPLINARY ACTION.**

REGULATIONS SUMMARY:

In summary, the revised regulations fully implement stringent changes to the hiring, training, and reporting of CA Applicants and Registered CAs. Significant time and expense continues to be spent on the CA Program and still there is a major problem with compliance by Supervising Chiropractors in meeting the training and reporting requirements. In response, the Board has stepped up enforcement and violators may have their licenses subjected to administrative action. Additionally, failure to abide by the program requirements usually results in suspension of the CA Applicant from the Program until compliance is assured. This is unfair to the young man or woman who is diligently working to achieve the Program goals but his/her Supervising Chiropractor is lax or negligent. It is important to remember that as a Supervising Chiropractor, a licensee who disregards these regulations for any reason puts his/her license in jeopardy. It is categorically significant that every Supervising Chiropractor is professionally responsible for the mentoring and training of their CA Applicants. From initial hiring forms, through hands-on cliental training and didactic coursework, the Supervising Chiropractor is the professional certifying the quality and abilities of the applicant. Correspondingly, the Supervising Chiropractor is responsible to insure that all administrative procedures implanted by regulation are followed. The full text of the regulations are found in COMAR 10.43.07 and are posted on the Board website at www.mdchiro.org.

DISCIPLINARY ACTION FOR VIOLATORS:

Since May, 2013, violations of the CA Training Program have been handled with informal advice and reminders. With the "grace" period now over, violations will be forwarded for investigation as an official disciplinary case file. These will be investigated and reviewed by the full Board to determine if disciplinary sanctions are appropriate. Licenses of violating doctors may be subject to fines, suspension, revocation, compulsory education, public orders, and other administrative penalties.

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BOARD OF EXAMINERS

Composition for 2014

Michael Fedorczyk, DC, Pres.
Jonathan Nou, DC, Vice Pres.
Robert Frieman, DC, Secty/Treas.
Stephanie Chaney, DC, Past Pres.
Karen Biagiotti, LMT, Member
David Cox, LMT, Member
Gwenda Harrison, LMT, Member
Ernestine Jones-Jolivet, Consumer Member
Gloria Boddie-Epps, Consumer Member
Michael Moskowitz, DC, Member
Chiropractor Member—VACANT

2014 REMAINING BOARD MEETINGS (Board meetings commence at 10a.m. unless otherwise noted)

April 10
May 8
June 12
July 10
Aug 14
Sept 11
Oct 9
Nov 12
Dec 11

DISCIPLINARY CASE SUMMARIES

FORMAL AND INFORMAL SANCTIONS

(Note: Only formal public sanctions permit the release of the Respondent's identity)

FORMAL PUBLIC ORDERS

- **STEVEN HORWITZ, DC, 10/10/13:** Formal Consent Order; Reprimand with fine of \$5,000; Probation for one year; Completion of Board-approved ethics, professional boundaries, and recordkeeping courses: Unprofessional conduct by practicing chiropractic with an unauthorized person; recordkeeping violations; violations of regulations.
- **DHANUSHKA GAMAGE, RMP, 12/12/2013:** Formal Revocation of Registration: Inappropriate illicit sexual activity under the guise of massage therapy; Conviction for 4th Degree Sexual Offense.
- **ANDRY MARUSICH, MASSAGE APPLICANT, 12/3/13:** Final Order of Denial of Application to Practice Massage Therapy: Failure to meet prerequisite of good moral character to practice in the State of Maryland; Conviction for practicing massage therapy without a license; Fraudulently or deceptively attempting to obtain a license or registration.
- **DERRICK TURNER, RMP, 10/15/13:** Order of Registration Suspension for Delinquent Child Support: Suspension of registration to practice massage therapy pursuant to Md. Code Ann., Fam. Law, §10-119(e)(2)(i) for delinquent child support.
- **JASON CAVINESS, RMP, 3/1/14:** Order of Registration Suspension for Delinquent Child Support: Suspension of registration to practice massage therapy pursuant to Md. Code Ann., Fam. Law, §10-119(e)(2)(i) for delinquent child support.
- **DWAYNE HAYNES, RMP, 3/1/14:** Order of Registration Suspension for Delinquent Child Support: Suspension of registration to practice massage therapy pursuant to Md. Code Ann., Family Law, §10-119(e)(2)(i) for delinquent child support.
- **MICHELLE ARONHALT, APPLICANT, 1/13/14:** Final Order of Denial of Application to Practice Massage Therapy: Failure to meet prerequisite of good moral character to practice in the State of Maryland for practicing massage therapy without a current, valid registration; Unprofessional behavior.
- **BRIAN SURGUY, APPLICANT, 1/15/14:** Final Order of Denial of Application for Chiropractic Assistant Registration: Failure to meet prerequisite of good moral character to practice in the State of Maryland; Unprofessional conduct; Fraudulently or deceptively attempting to obtain a license or registration by failing to disclose criminal history; Conviction for a crime of moral turpitude (Theft Less than \$1,000, 2nd Degree Assault).
- **KRISTY KECK, LMT APPLICANT, 4/14/14:** Formal Reprimand, \$250.00 fine, ethics course. Practicing without a license pending application.

INFORMAL (NON-PUBLIC—ADMINISTRATIVE) ACTIONS

- **LICENSED MESSAGE THERAPIST "X", 7/2013:** Letter of Education. Failure to release patient records with a timely manner upon proper request.
- **LICENSED MESSAGE THERAPIST "Y", 9/2013:** Letter of Education. Unprofessional behavior, violation of client-therapist boundaries.
- **CHIROPRACTOR "Z", 9/2013:** Letter of Admonishment/Education. Employed an underage/unregistered Chiropractic Assistant Trainee.
- **CA APPLICANT "X", 3/2014:** Letter of Education. Failing to fully report past misdemeanor conduct/conviction on application for CA training.
- **CHIROPRACTOR "Y", 3/2014:** Letter of Education. Failure to comply with CA Program requirements.

Note: All Formal Orders and Informal Actions are the result of the decision of the quorum of the full Board of Chiropractic & Massage Therapy Examiners, meeting and deliberating in closed, Executive Session. Informal Actions are not releasable to the public.

FAQs (Frequently Asked Questions)

QUESTION: *Is a parent or legal guardian required to remain with a minor during chiropractic treatment?*

ANSWER: Treatment of Minors with/without the presence of the parent or legal guardian is a matter of discretion between the treating practitioner and the parent/legal guardian. These situations vary with the age of the minor, types of treatment/procedures and the peculiarities of each case. Maryland Regulations in COMAR 10.43.14.06 promulgates detailed standards regarding informed consent that are applicable to these situations. Any treatment/procedure involving minors requires implantation of informed consent. The practitioner should give the parent/legal guardian a detailed description of the treatment/procedure, the risks, benefits, and costs. The parent can then issue their informed consent and make the personal decision if their presence is necessary during said treatment/procedure. The practitioner; however, must ultimately make a determination if he/she is comfortable conducting the treatment/procedure without the presence of the parent or legal guardian. Accordingly, there must be a mutual acknowledgement and agreement between the practitioner and the parent/legal guardian in such a case.

QUESTION: *Is laser use permitted for the reduction of fat cells?*

ANSWER: Non-ablative lasers approved by the FDA for use are authorized under chiropractic scope of practice for all therapeutic purposes, including reduction of fat cells. As with all laser use, the Board expects the licensee to be educated and trained on the use, contraindications, and device operation to insure the safety of the patient.

QUESTION: *Does a Supervising Chiropractor have to report hiring a Registered CA?*

ANSWER: Yes, under existing regulations and policy, hiring an existing Registered CA as a transferee from another practice requires submission of **SUPERVISING CHIROPRACTOR REQUEST TO EMPLOY CA APPLICANT/TRAINEE TRANSFER FROM ANOTHER PRACTICE** form. This form is page 5 enclosure to the **CA Applicant guideline packet** found on the Board website in the forms menu.

QUESTION: *Can a licensee perform Maryland High School Sports Physical Examinations and execute the exam certification?*

ANSWER: Generally, the answer is "No". Maryland licensees may perform physical examinations under their scope of chiropractic practice unless otherwise prohibited by law or regulation and as long as accepted by the organization in question. A specific regulation (COMAR 13A.06.03.02(2)(1) provides that high school sports physical examinations may ONLY be performed by MDs, Pas, and Nurse Practitioners. Accordingly, chiropractor examinations, while approved for any other programs, are specifically not approved for high school sports physical examinations. For other school programs or organizations, the licensee should check to insure that they will accept examination and certification by a chiropractor.

QUESTION: *How does a licensee become a Preceptor for a Chiropractic Student Extern?*

ANSWER: To become a Preceptor, the licensee must submit an application (found in forms menu on website at www.mdchiro.org). Upon receipt, the Board will schedule an office inspection by a Board Member and Investigator. The team will check on equipment, cleanliness, records, operational procedures, staffing, and administration. If deficiencies are found, the applicant is given written notice and the opportunity to make corrections; then a re-inspection is completed. Upon approval, the licensee is issued a Preceptor Appointment Letter with no expiration. Preceptor status has no expiration unless the Preceptor subsequently becomes disqualified due to disciplinary issues or failure to meet the program requirements set forth in COMAR 10.43.05. Once appointed, the Preceptor must independently coordinate an adjunct instructor status with a CCE Approved Chiropractic College. The College will issue its policies and reporting requirements. Upon conclusion of the student's externship, the Preceptor must file a formal report with the Board on the student's qualifications, performance, and abilities. The Preceptor is personally and professionally responsible to directly supervise the extern student in all regards and must insure that all DHMH and Board laws, regulations, policies and procedures are followed. Preceptor status is a privilege, not a right and may be revoked by the Board for good cause.

QUESTION: *Can a chiropractor have his/her license sanctioned for failing to comply with the CA Training Regulations?*

ANSWER: "Yes", a licensee can have their license sanctioned for failing to comply with the requirements of COMAR 10.43.07 regarding the supervision, training, and administration of the CA Training Program. Supervising Chiropractors are professionally responsible to insure that once they hire a CA Applicant that all requirements are scrupulously met. This means that the Supervising Chiropractor must insure that all educational components are completed on time, all training logs are legibly and accurately maintained, and that the applicant submits all required documentation in the manner and form required by regulation and Board policies. The CA Program oversight has become burdensome and costly as the result of lax and negligent supervision and mentorship. Supervising Chiropractors who violate the regulations may be subject to formal disciplinary charges and may lose the privilege of hiring and training CA Applicants.

Attorney, Marc Cohen, Esq., is a distinguished principal in the law firm of Ober, Kaler. He is their primary counsel in healthcare law relating to DHMH Boards and Commissions. Mr. Cohen is also the legal counsel for the MD Chiropractic Association. Mr. Cohen has graciously permitted us to reprint his well-researched article on requirements for reporting child abuse. The Board considers this information cogent, current, and applicable to all licensees. We sincerely thank Mr. Cohen for the use of his scholarly article.

REPORTING CHILD ABUSE

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Most chiropractors believe they understand their duty to report child abuse, but . . .

there are a number of overlapping and apparently conflicting public policy objectives, and the legal requirements can get confusing. In this article we hope to provide chiropractors and other health practitioners authorized to practice under the Health Occupations Article, a simplified understanding of the reporting duty in cases of suspected child abuse.

The Health Insurance Portability and Accountability Act (HIPAA), Maryland's Medical Records Confidentiality Act, and professional ethics all require that chiropractors and other physicians and health care practitioners keep medical information, including, of course, psychological information, about a patient confidential. However, these laws have exceptions. HIPAA is perhaps this nation's broadest and most comprehensive effort to ensure the confidentiality of a patient's medical information, termed *protected health information* or "PHI." However, HIPAA has an exception to protecting a patient's PHI. HIPAA states that a provider is excused from its confidentiality requirements when the provider is otherwise "required by law" to make a report. In addition, HIPAA expressly states that a health care provider may disclose PHI in order to comply with any state law requiring reporting child abuse. 45 CFR 164.512.

Maryland's Confidentiality of Medical Records Act, a predecessor and close analog to HIPAA, similarly protects a patient's medical information from disclosure. Like HIPAA, it, too, makes clear that it does not limit or create an exception to the reporting requirements relating to child abuse. So with these laws that protect confidentiality in mind, we look to see if there are other state laws that nevertheless require disclosure and reporting of a patient's medical and psychological information.

The state law with regard to child abuse that clearly requires disclosure of confidential patient information gathered in treating and counseling children is found in Maryland's Family Law Article. Title 5, subtitle 7, dealing with reporting of child abuse, directs any "health care practitioner," which, of course, includes chiropractors, to report child abuse to the local Social Services Administration or the appropriate law enforcement agency. Under section 5-704(b) of this Article, a health care practitioner fulfills this obligation by making an oral report to the local department or law enforcement agency as soon as the practitioner has "reason to believe" abuse has occurred. Additionally, the practitioner has 48 hours to file a written report with the local department of social services and provide a copy to the local state's attorney. These forms are available on the Maryland Department of Human Resources website: http://www.dhr.state.md.us/blog/?page_id=3973. ***(continued on page 5)***

REPORTING CHILD ABUSE

(continued from page 4)

According to the Family Law Article sections 5-704 and 5-705, health care practitioners, police officers, educators, and human service workers are required to report suspected child abuse or neglect even if the event occurred in the past, and even if the alleged victim is an adult when the incident comes to light. Moreover, reporting is required even if the suspected abuser is believed to be deceased. Of course, in either case the fact that the victim is now an adult or the abuser is believed to be deceased should be included in the report and may be taken into account by authorities when they determine the actions to take in response to the report.

As we have seen, the responsibility to make reports of suspected child abuse required under this section overrides any duty of confidentiality that might otherwise apply under HIPAA, the Maryland Confidentiality of Medical Records Act or Psychiatrist -patient privilege established in the Courts and Judicial Proceedings Article in Section 9-109 (but note that this specific privilege is not applicable to chiropractors or all physicians, only psychiatrists).. However, there is still a dangerous pitfall regarding the reporting of child abuse. The definition of abuse, including sexual abuse, found in section 5-704 of the Family Law Article is quirky and oddly prescriptive.

In this regard, *abuse*, for reporting purposes, is defined as that abuse caused by “any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member. . . .” As a point of clarification, sexual abuse, of course, includes any act that involves sexual molestation or exploitation of a child, but again, reporting

under this section is limited to perpetration of such an act upon “a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child or by any household or family member.”

Accordingly, whether the abuse is a physical or mental injury or sexual abuse, to be subject to reporting it must be perpetrated by a parent or other person who has “permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member.” Similarly, *neglect* is defined as the leaving of a child unattended or other failure to give proper care and attention to a child by the child's parents, or other person who has “permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member” under circumstances that indicate that the child's health or welfare is significantly harmed or placed at risk of significant harm. Again, to break confidentiality and report the incident the act must have been perpetrated by a parent, guardian, custodian, or person who has permanent or temporary care or custody or household or family member.

ARE YOU ACCURATELY TRACKING YOUR CA APPLICANT TRAINING HOURS?

Recently, the Board staff has discovered that some Supervising Chiropractor Logs contain rote, multiple, identical entries and hours that do not match the actual work dates/times of the CA Applicants. On some, it is obvious that the entries were made all at one sitting and do not reflect contemporaneous tracking/logging of the applicant's hours. Please note that the logs and all submitted documents are now carefully reviewed by both the administrative and investigative staffs. Any noted irregularities or obvious inconsistencies will result in a further investigation or inspection to determine if the log entries are accurate and supportable. Remember, the Supervising Chiropractor is personally and professionally responsible to insure the legibility, accuracy, and consistency of all logged entries. Any questions regarding this issue or the CA Program compliance issues should be addressed to Michelle Czarnecki, JD, Board Compliance Manager at michelle.czarniecki@maryland.gov; 410-764-3922.

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Mailing Address Label

WORDS OF WISDOM

LOVE IS LIKE A HORSE...YOU HAVE TO JUST HOTCH IT UP, JUMP ON, AND GO FOR THE RIDE!
Woodie Guthrie, 1939

KNOWLEDGE SPEAKS...BUT WISDOM LISTENS *Jimmy Hendrix, 1967*

I HAVE ALL THE MONEY I WILL EVER NEED...OF I DIE BY 4 O'CLOCK TODAY! *Henny Youngman, 1956*

MEN WITH POWER SHOULD ALWAYS BE MOST TRUSTED TO SOME DEGREE *James Madison, 1789*

CHANGE OF ADDRESS FORM

(To be submitted every time a licensee changes mailing address)

The Board regulations require all licensees to maintain a current address with the Board. **There is a \$200. penalty for failure to maintain a current address with the Board.** If you have recently moved or are planning a move, please complete and mail the following:

I, _____, submit that my current official mailing address is _____.

The change was/is effective on _____. New phone is _____,
E-mail address is: _____.

Chiropractor signature _____ Date _____.

Mail to: MD Board of Chiropractic Examiners, Suite 301, 4201 Patterson Ave., Baltimore, MD 21215-2299
Attn Ms. Berger

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