

# Ethics Top 10: Common Board Violations & How to Prevent Them

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## Wayne Coleman, DC



- ▶ Life West Faculty  
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Ethics, Technique  
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1987 - present



## The Top 10 Most Common Board Violations\*

1. Insurance fraud
2. Sexual misconduct
3. Excessive treatment
4. Negligence/incompetence
5. Crime, drugs & alcohol
6. False advertising
7. Scope of practice
8. Patient records
9. Payment for referrals
10. Unlicensed practice

\*as determined by the California Board of Chiropractic Examiners

## Foundational Ethical Concepts

- ▶ First: Health Care Ethics
  - ▶ The first rules of U.S. Health Care Ethics were based on Judeo-Christian and Muslim values
- ▶ Next: Bioethics
- ▶ Then: Medical Ethics



### Nuremberg Code: Directives for Human Experimentation

1. The voluntary consent of the human subject is absolutely essential.
2. The experiment should be such as to yield fruitful results for the good of society.
3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease.
4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.
5. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur.
6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.
7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.
8. The experiment should be conducted only by scientifically qualified persons.
9. During the course of the experiment the human subject should be at liberty to bring the experiment to an end.
10. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.



## Protecting Human Research Participants

NIH Office of Extramural Research

### Codes and Regulations

#### The Belmont Report

Following the public outrage over the Syphilis Study at Tuskegee, Congress established the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research in 1974. The National Commission was charged with:

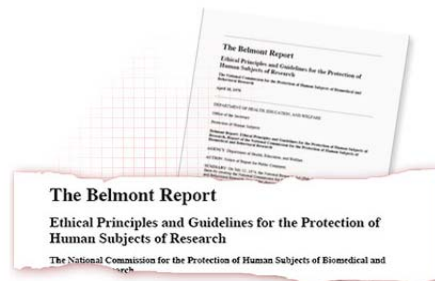
1. Identifying the ethical principles to guide all research involving human subjects
2. Developing guidelines for the conduct of ethical research involving human subjects

In 1979, the National Commission drafted [The Belmont Report – Ethical Principles and Guidelines for the Protection of Human Subjects of Research](#).

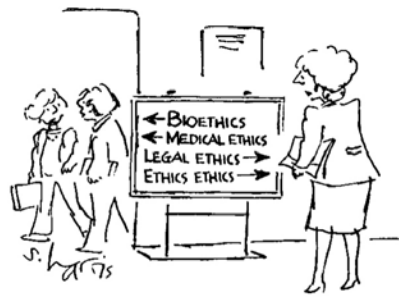
The Belmont Report identified **three principles** essential to the ethical conduct of research with humans:

1. **Respect for persons**
2. **Beneficence**
3. **Justice**

These three basic principles serve as the foundation of the current HHS regulations and guidelines for the ethical conduct of human subjects research supported by HHS.



## 6 Values of Medical Ethics



### 1. Beneficence

Benefit the patient  
Kind, charitable, or beneficial

### 2. Non-maleficance

Do no harm

### 3. Autonomy

Patient's right to choose

### 4. Dignity

Patient's right to dignity

### 5. Justice

Fairness & equality

### 6. Truthfulness (honesty)

Informed consent  
List of side effects, including trauma due to adjustment



## AMA CODE OF MEDICAL ETHICS

### AMA PRINCIPLES OF MEDICAL ETHICS\*

#### Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct that define the essentials of honorable behavior for the physician.

#### Principles of medical ethics

- I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
- II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- IV. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.
- V. A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.
- VII. A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.
- VIII. A physician shall, while caring for a patient, regard responsibility to the patient as paramount.
- IX. A physician shall support access to medical care for all people.

\* Revised June 2001.

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## Suspension or Revocation

Section 10b of the California Initiative Act of 1922 states that the board may suspend or revoke any license issued by them.

### Mitigation factors:

- ▶ Harm, potential or actual to the patient or the public
- ▶ Discipline record including compliance
- ▶ Number and variety of current violations
- ▶ Nature and severity
- ▶ Mitigating evidence
- ▶ Rehabilitation measures: Detoxification, education, treatment
- ▶ Criminal record
- ▶ Time past since violation
- ▶ Intentional/Negligent/Incompetent
- ▶ Participated in another's act
- ▶ Financial benefit

None of the above is required to justify minimum/maximum or intermediated discipline.

## License Discipline



- ▶ **Revocation.** Indefinite, harshest
- ▶ **Suspension.** Specified period of time
- ▶ **Interim suspension.** During investigation
- ▶ **Probation.** Win a stay of Revocation or suspension. Must adhere to conditions
- ▶ **Letter of reprimand.** Warning not repeat action. On public record.
- ▶ **Citation and fine.** On public record. Considered an alternative to discipline.



## Violation Category 1

Relatively minor

- ▶ Minimum:  
Revocation stayed  
1-2 years probation
- ▶ Maximum:  
Revocation
- ▶ Failure to notify board of address change
- ▶ Failure to post license
- ▶ Failure to provide records upon request
- ▶ Improper fictitious name
- ▶ Waive co-payment or deductible
- ▶ Substituting adjustment for vaccination



## Violation Category 2

More serious, greater disregard for law, safety, ethics

- ▶ Minimum:  
Revocation stayed  
3 years probation
- ▶ Maximum:  
Revocation
- ▶ Treating sexual disorders
- ▶ Violation of patient confidentiality
- ▶ Misleading use of license
- ▶ Advertising violations
- ▶ Producing or signing false documents
  - ▶ Maintaining proper patient records including billing
  - ▶ Billing for free or discounted service



## Violation Category 3

More serious

- ▶ Minimum:  
Revocation stayed  
30 day suspension  
5 years probation
- ▶ Maximum:  
Revocation
- ▶ Practice outside the scope of practice
- ▶ Sex with a patient
- ▶ Gross negligence
- ▶ Excessive treatment
- ▶ Drug /alcohol abuse
- ▶ Crimes of moral turpitude
- ▶ Failure to refer
- ▶ Use of cappers or steerers
- ▶ Unauthorized practice of medicine
- ▶ Fee for referral
- ▶ Aiding/abetting unlicensed activity



## Violation Category 4

Most serious

- ▶ All:  
Revocation



- ▶ Same acts as 3 but more egregious
- ▶ Failure to appear at a disciplinary hearing
- ▶ Violation of probation terms



## The Top 10

1. **Insurance fraud**
2. Sexual misconduct
3. Excessive treatment
4. Negligence/incompetence
5. Crime, drugs, & alcohol
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## Medical Necessity

Medical necessity is somewhat ill defined.

- ▶ Subjective patient complaints
- ▶ Objective findings
- ▶ Beneficence
- ▶ How you are judged relative to your community



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## Unprofessional Conduct

Includes but is not limited to:

- ▶ Gross negligence. Not just negligence.
- ▶ Repeated negligence.
- ▶ Incompetence
- ▶ Excessive treatment or diagnosis. Defined by...?
- ▶ Dangerous conduct.
- ▶ Drug use or alcohol abuse
- ▶ Crime substantially related to practice.
- ▶ Any conviction of moral turpitude, DUI, Dishonesty, violence or corruption not necessarily related to practice.
- ▶ More than one misdemeanor or any felony involving alcohol or drugs.
- ▶ Selling drugs
- ▶ Signing a false document
- ▶ Lying on a license application
- ▶ Advertising violation
- ▶ Any fraud or misrepresentation
- ▶ Unauthorized disclosure of patient information from exam or TX
- ▶ Using “cappers” or “steerers”.
- ▶ Being compensated for referring patients to anyone (use a PI attorney – 3 referrals)
- ▶ Waive copays or deductibles
- ▶ Not referring patients when TX is outside your scope, **unless** patient states they are under care (S.O.A.P.)
- ▶ Advertise adjustment in place of vaccination



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## Advertising

You are liable for any advertising which contains:

- ▶ Misstatements
- ▶ Falsehoods
- ▶ Misrepresentations
- ▶ Distorted, sensational or **fabulous** statements or anything that is intended or has the **tendency** to deceive
- ▶ You cannot say that you can help regulate or reestablish menses.
- ▶ You cannot say that you treat, cure, or attempt to treat or cure sexual disease or weakness

You may be disciplined for violations of advertising rules by your license being suspended or placed on probation or other actions not including REVOCATION.

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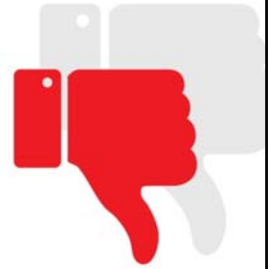
## California Code of Regulations: Scope of Practice (302)

### You CAN:

- ▶ May manipulate and adjust all joints (spinal and extraspinal) of the **human body** and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereto.
- ▶ As part of a course of chiropractic treatment, a chiropractor may use all necessary mechanical, hygienic and sanitary measures to care for the human body, P.T. techniques & modalities including but not limited to in air, cold, diet, exercise, heat, light, massage, physical culture (conditioning) rest, ultrasound and water **in conjunction with Chiropractic Manipulation and Adjustments on bone or soft tissue.**
- ▶ May treat and diagnosis any condition disease or injury within the scope of practice (Do these fit: Otitis Media, DISH, Arthritis, Viral infections, Shingles, Bell's palsy, Sinus infection).
- ▶ Use vitamins & food supplements in the treatment of illness or injury.
- ▶ Use X-Ray or thermography for diagnosis not treatment. Use ultrasound for diagnosis of NMS disorders
- ▶ Sign a death certificate



## California Code of Regulations: Scope of Practice (302)



### You CANNOT:

- ▶ Practice Surgery or Medicine\* sever or penetrate tissue (umbilical cord)  
*(\* Medicine according to Taber's Cyclopedic Medical Dictionary: "The act of maintenance of health and prevention & treatment of disease & illness".)*
- ▶ Deliver humans or sign a birth certificate
- ▶ Practice dentistry or optometry
- ▶ Use drugs or medicine
- ▶ Use a lithotripter
- ▶ Use ultrasound on a fetus – diagnosis or treatment
- ▶ Perform mammography



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## Record Keeping

### Patient Records and Billing

- ▶ Save all patient records for five years past last TX
- ▶ Definition of active patient (see in past 12 months)
- ▶ Active patient records immediately to any Board representative
- ▶ Inactive 10 days



### Active & Inactive Records – Must Include

- ▶ Patient name
- ▶ Date of birth
- ▶ Social Security Number
- ▶ Gender
- ▶ Height & weight
- ▶ History, diagnosis, treatment (signed by DC)
- ▶ Patient signature (on intake form)
- ▶ X-Rays or record of transfer (x-ray log)
- ▶ Billing (copy all)(Repay over billing in 30 days from discovery)



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## California Code of Regulations: Illegal Practices / Unlicensed Individuals (312)

**Unlicensed individual:** Anyone including a student or grad without a license  
Exception: in board approved preceptor program

### CANNOT:

- ▶ **Can't** – Diagnosis, Analyze or Adjust unless in board approved preceptor ship program.
- ▶ **Can't** – X-ray Patient (positioning, set machine, push button) unless they hold a valid x-ray tech certificate from the Dept. of Health Services.

**Violators** can be prohibited from applying for License for indefinite period.

### CAN:

- ▶ **Can** - Take HX in conjunction with Dr. doing consultation
- ▶ **Can** - Perform neuro, ortho, physical, chiro, exams but can't interpret them. Licensed Dr. must be on the premises at all times where the exam is being performed (under immediate and direct supervision).
- ▶ **Can** - Do P.T. procedures Under adequate supervision (on premises. 50% of work week)
  1. Dr. Does exam and TX program
  2. Dr. Re-examines every 30 days
  3. Dr. Does exit exam on Patient.
- ▶ **Can** - Mark X-Rays but draw no conclusions including listings.
- ▶ **Can** - Develop film



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