

233 CMR: BOARD OF REGISTRATION OF CHIROPRACTORS

Proposed Redline 233 CMR 5.00

4/15/14 10/1/2015 – Brd approved changes

For Discussion Purposes Only

233 CMR 5.00: CHIROPRACTIC FACILITIES

Section

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5.01: Scope and Purpose

233 CMR 5.00 establishes the standards for applying for and operating a licensed Chiropractic Facility pursuant to M.G.L. c. 112, § 94A. The purpose of 233 CMR 5.00 is to prevent insurance fraud and protect the health, safety, and welfare of the public by promoting minimum standards for Chiropractic Facilities throughout the Commonwealth.

5.02: Facility Standards

(1) Places for Treatment. Chiropractic Treatment may only be delivered at a place, office, clinic or establishment holding a current, valid Chiropractic Facility license issued by the Board.

(2) License Required. Each Chiropractic Facility within the Commonwealth shall be licensed by the Board before providing Chiropractic Treatment and shall annually renew its license with the Board using an application provided by the Board.

(a) If one Chiropractic Facility consists of more than one location, building, lot of land, or address, said locations, buildings, lots or addresses must be adjoining and connecting.

(b) The Board will consider the following in determining whether two or more places, offices, clinics or establishments (establishments) delivering Chiropractic Treatment at the same address constitute one or more Chiropractic Facilities:

1. The business structure of each establishment, including but not limited to overlap in areas of financing, management, or ownership;
2. The resources shared by the establishments, including but not limited to office space, staff, record storage and maintenance facilities; and
3. The overall impression created by advertising, signage, stationery, and office layouts.

(3) Exceptions.

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- (a) Solo Practices are ~~excepted~~ exempted from the Chiropractic Facility requirements but are held to all standards, rules and regulations of individual Chiropractors. In order for a chiropractic practice to constitute an exempt solo practice, it must meet each of the criteria set forth in the definition of Solo Practice in 233 CMR 2.00. To determine whether a chiropractic practice meets such criteria, the Board shall consider, but shall not be limited to considering, the following factors:
1. whether any individual or entity, other than the licensee, has the right or ability to direct or control any of the following:
 - a) the licensee's exercise of professional chiropractic judgment, including but not limited to, the scope, type and frequency of services provided;
 - b) the scheduling of patients;
 - c) the fees charged by the licensee; or
 - a)d) the financial arrangements between the licensee and his or her patients.
 2. whether any individual or entity, other than the licensee, has the right or ability to control the financial operation of the licensee's practice, including but not limited to, how income is received, distributed, deposited and reported to the Internal Revenue Service, how profits or losses are determined, whether expenses are reimbursed and the purchasing, maintenance and use of equipment and supplies.
 3. the existence of any lease, contract or any agreement which subjects the licensee to control or undue influence of another entity.
- (b) Chiropractic Facility licenses are not required for the following:
1. Hospitals, clinics and other healthcare facilities licensed by the Massachusetts Department of Public Health;
 2. Chiropractic Treatment that is rendered outside of a Chiropractic Facility when:
 - a. such Chiropractic Treatment is provided on a limited basis; and
 - b. no more than 15% of the Chiropractic Facility's annual revenue is generated by the off-site Chiropractic Treatment;
 3. Board approved continuing education programs; and
 4. Peer Reviews ~~or Independent Medical Examinations~~ that are performed in the confines of a Solo Practice.
- (c) The Board may require any place, office, clinic or establishment (establishment) at which Chiropractic Treatments are delivered to provide satisfactory evidence why it is eligible for the exception from Chiropractic Facility licensure requirements. The burden of proving eligibility shall rest with the establishment.
- (4) Required Displays. True copies of the following must be conspicuously displayed for

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the benefit of the public at each Chiropractic Facility.

- (a) The Chiropractic Facility's license;
- (b) The license of each licensed chiropractor and of every other licensed health care provider who provides any Chiropractic or other services at the Chiropractic Facility, whether licensed by this Board or any other licensing Board or licensing entity; and

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5.02: continued

- (c) The most recent inspection report completed by the Board or its agents.
- (5) Chiropractor of Record. Each Chiropractic Facility must have a Chiropractor of Record.
- (a) A Chiropractic Facility shall designate a Chiropractor of Record, and such designation is subject to Board approval.
- (b) A Chiropractic Facility must notify the Board in writing within five business days of any change in its designation of a Chiropractor of Record.
- (6) Employee Record. A copy of the Chiropractic Facility's Employee Record must be provided to the Board upon application for licensure, ~~annually upon renewal,~~ and upon request by the Board or its designee(s).
- (7) Record Retention. Patient Records and Business Records shall be stored in a manner that protects them from foreseeable damage or destruction.
- (a) A Chiropractic Facility shall maintain Patient Records on the premises for each active patient.
- (b) Business Records shall be maintained for a minimum of seven years.
- (c) For a patient who is younger than two years of age when he or she receives Chiropractic Treatment, the Patient Record shall be maintained at least until the patient reaches the age of nine.
- (d) For a patient who receives Chiropractic Treatment on or after the patient reaches the age of two, the Patient Record shall be maintained for a minimum of seven years from the date of the last patient encounter.
- (e) If a chiropractor terminates his or her relationship with a Chiropractic Facility, the arrangements for storage and retrieval of Patient Records shall be set out in writing between them. A copy of any such agreement shall be available to the Board upon request.
- (f) Patient or Business Records stored electronically shall have an established system of weekly back-up. Copies of the back-up records shall be maintained safely and securely at an off-site location, and back-ups shall be delivered weekly to the off-site location.
- ~~(8) Compliance Plan. At each Chiropractic Facility there shall be implemented and maintained a business Compliance Plan, which shall include but is not limited to the following:~~
- ~~(a) The designation of a compliance officer charged with implementing the compliance plan; and~~
- ~~(b) A written set of standards, procedures, and policies that address the Chiropractic Facility's administrative and clinical protocols. The standards, procedures, and policies shall include but are not limited to addressing the following issues:~~
- ~~1. The methods of due diligence used when hiring personnel and delegating authority;~~

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- ~~2. The methods for training personnel regarding the Chiropractic Facility's standards, procedures, and policies on an ongoing basis;~~
 - ~~3. The methods of maintaining and encouraging open lines of communication among the Chiropractic Facility's personnel;~~
 - ~~4. The methods for adequately publicizing and providing consistent disciplinary standards for the Chiropractic Facility's personnel; and~~
 - ~~5. The mechanisms used to respond to violations in an appropriate manner.~~
- ~~(e) The implementation and maintenance of a schedule of practice compliance audits.~~
- (89) Physical Conditions. The Chiropractic Facility shall be equipped with proper and adequate lighting and ventilation and kept in clean, orderly, and sanitary condition.

(109) Transfer of Ownership.

(a) Transfer of controlling ownership interest in of a Chiropractic Facility warrants a new Chiropractic Facility license.

~~(1.a)~~ The Board must be notified in writing at least 60 days prior to the sale or change in controlling ownership interest in of a Chiropractic Facility.

~~2.(b)~~ Upon transfer of a controlling interest in a Chiropractic Facility, the license for the Chiropractic Facility expires and the person or entity holding the controlling interest must apply for a new Chiropractic Facility license.

(b) Transfer of 10% or more of pecuniary or ownership interest in a Chiropractic Facility requires Board approval.

1. The Board must be notified in writing at least 60 days prior to the transfer of 10% or more of pecuniary or ownership interest in a Chiropractic Facility.

2. The Board may refuse to approve the transfer of 10% or more of a pecuniary or ownership interest to any individual who the Board determines pursuant to 233 CMR 5.04(5) lacks the good moral character or current suitability to operate a Chiropractor Facility.

(104) Change in Location. A facility license is valid only for the location stated on the license and is not transferable or assignable.

(a) The Board must be notified in writing at least 60 days prior to a change in location of a Chiropractic Facility.

(b) Upon approval of the new location by the Board, the license for the previous location will be cancelled and the Chiropractor of Record shall request a new facility license for the new location, that is subject to Board approval.

(112) An individual participating in the operation of a Chiropractic Facility, including but not limited to the Chiropractor of Record, an officer, a director and an individual having more than 10% ownership interest must not engage in any activities that raise a question of his or her good moral character as outlined in 233 CMR 2.04.

(123) A Chiropractic Facility that is a Limited Liability Company (LLC) or a Limited Liability Partnership (LLP) must adhere to the insurance requirements set forth in 233 CMR

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4.04.

(134) At each Chiropractic Facility the following must be maintained:

- (a) general liability insurance;
- (b) professional liability insurance for all licensed health care providers who provide treatment at the Chiropractic Facility; and
- (c) documentation that establishes that each individual chiropractor associated with the Chiropractic Facility has professional liability insurance.

5.03: Duties of the Chiropractor of Record

(1) The Chiropractor of Record must be of good moral character as set forth in 233 CMR 2.04.

(2) The Chiropractor of Record is responsible for the Chiropractic Facility's compliance with M.G.L. c. 112, § 94A and 233 CMR 2.00 through 5.00.

(3) The Chiropractor of Record shall cooperate with inspections or investigations conducted by the Board or its agents.

(4) Upon the request of the Board or its agents, the Chiropractor of Record shall provide immediate access to and, if requested, copies of Patient and Business Records.

(5) The Chiropractor of Record must notify the Board within five business days of ceasing to serve as a Chiropractor of Record for any Chiropractic Facility.

(6) The Chiropractor of Record must notify the Board of any known disciplinary actions against any licensees and of any criminal convictions against an employee of the Chiropractic Facility. Such notice must be made to the Board within ten business days of such conviction or disciplinary action.

5.04: Application

(1) Application for a Chiropractic Facility License may be made by a sole proprietorship, partnership, corporation, limited liability company, or limited liability partnership.

(2) An applicant for a Chiropractic Facility License shall:

(a) submit to the Board an application as prescribed by the Board;

(b) In support of the application, each applicant shall submit the following information:

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1. If owned by an individual, partnership or trust, the names and ownership percentages of such individual, partners or trustees, except that, in the case of a limited partnership, such information shall be provided only for those limited partners owning 10% or more of the partnership interest and the general partner.

2. If owned by a for profit corporation, the names of all stockholders who hold 10% or more of any class of the outstanding stock, specifying the percentage owned.

3. If owned by a not for profit corporation, the names of the members and directors of the corporation.

4. The name and ownership percentage of each individual who directly or indirectly has any ownership interest of 10% or more.

~~(c)~~ pay the required non-refundable fees; and

~~(e)~~ arrange for the premises to be inspected and approved by the Board.

(3) The application must be attested to by the owner, if a sole proprietorship, or by an authorized agent of record, if a partnership, corporation, limited liability company or limited liability partnership.

(4) Unless a waiver is granted by the Board, the Chiropractor of Record must have a minimum of four years of verifiable experience as a Chiropractor licensed in the Commonwealth or another jurisdiction, where the person's responsibilities included but were not limited to patient care, record keeping, and billing.

(5) To determine eligibility for a Chiropractic Facility license, the Board will require and consider evidence of good moral character as outlined in 233 CMR 2.04, and current suitability to operate a chiropractic facility. Factors relevant to this consideration include, but are not limited to, sufficiency of present resources, financial background and licensing history (including previous or current participation in the operation of any licensed facility or licensed practice) ~~financial background, and licensing history~~ of the following individuals:

(a) the Chiropractor of Record;

(b) the Operator;

(c) any person who has authority to direct and control the billing operations of the practice;

(d) all licensed professionals (in any licensed profession) who practice at the Chiropractic Facility;

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- (e) company directors;
- (f) company officers;
- (g) owners, shareholders or other entities having a 10% or greater ~~ownership-pecuniary~~ interest in the Chiropractic Facility; and
- (h) any other relevant employees as determined by the Board.

(6) The Board also requires identification of any previous Chiropractic Facility that existed at that location and may require and consider supplemental application information and materials reasonably necessary to prevent insurance fraud, protect the health, safety, or welfare of the public, or for other regulatory purposes.

(7) The Board will not issue a facility license based on an incomplete submission.

(8) The Board will not issue a facility license if required local permit and certificates have not been obtained or if the Board's inspection reveals that the premises is in violation of 233 CMR 1.00 through 5.00.

5.05: Renewal

(1) To renew a Chiropractic Facility's license, on or before October 31st of each year, an applicant shall submit the following:

- (a) a Chiropractic Facility renewal form as prescribed by the Board;
- (b) complete information as required on the form, including changes in information since the original application or last renewal; and
- (c) the renewal fee.

(2) If a Chiropractic Facility's license has Expired, an applicant may request that the Chiropractic Facility license be renewed by submitting to the Board:

- (a) all of the items required by 233 CMR 5.05(1);
- (b) a late fee; and
- (c) any other pertinent information as required by the Board.

The Owner or the Chiropractor of Record may be required to personally appear before the Board.

5.06: Inspections

The Board or its agent may inspect any Chiropractic Facility at any time during regular business hours, and without prior notice, for the purpose of verifying that the Chiropractic Facility, and its agents or employees are in compliance with all applicable requirements of M.G.L. c. 112, §§ 61 through 65, M.G.L. c. 112, §§ 89 through 97, and 233 CMR 2.00 through 5.00.

5.07: Grounds for Disciplinary Action

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(1) The Board may, through the processes set out in M.G.L. c. 30A, M.G.L. c. 112, §§ 61 through 65, and 801 CMR 1.00 *et seq.*, take disciplinary action against any Chiropractic Facility. Grounds for disciplinary action shall include, but shall not be limited to:

- (a) Violation of any provision of 233 CMR 5.00 *et seq.*;
- (b) Unlicensed practice at the Chiropractic Facility or arranged through the Chiropractic Facility. Unlicensed practice includes practice by an individual who:
 - 1. Has never held a license to render care within the discipline in which he or she is acting;
 - 2. Has let his or her license to practice lapse, Expire, or become inactive;
 - 3. Has had her or his license to practice suspended or revoked; or
 - 4. Has voluntarily surrendered his or her license.
- (c) Where an owner, Operator, Chiropractor of Record, or any employee of the Chiropractic Facility:
 - 1. Violates or permits the violation of any of the Grounds for Disciplinary Action under 233 CMR 4.06;
 - 2. Interferes with or obstructs the Board or its agent in the performance of the Board's duties;
 - 3. Is sanctioned for violations of state or federal laws regarding insurance fraud; or
 - 4. Solicits, facilitates, or otherwise permits any provision of sexual services.

REGULATORY AUTHORITY:

233 CMR 5.00: M.G.L. c. 112, §§ 90, 94A, and 96.

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