

Chiropractic Consent Agreement Monitors

*** Consent Agreement Monitoring Principles ***

Monitor Responsibilities Acknowledgement form

Consent Agreement Monitor Application form

Dear Prospective Monitor:

The Massachusetts Board of Registration of Chiropractors (the Board) appreciates your interest to serve as a chiropractic consent agreement monitor or auditor. Consent agreement monitors and auditors (monitors) perform an important service within public licensing. Monitors help assess the status of licensees under administrative discipline as these licensees work to correct deficiencies within their professional practices and multi-practitioner facilities.

Monitors provide the objective reporting needed to accurately gauge a licensee's progress toward achieving a fully compliant practice. Monitors also provide the licensee guidance and feedback. The Board encourages the productive dialog between a monitor and licensee and values the practical knowledge that monitors bring to these relationships. However, it is not a monitor's role to be an advocate for the licensee. A monitor must retain their objectivity and independence throughout the term of their service. A monitor's fundamental responsibility is to the Board. Monitors are expected to employ their professional judgment and accurately appraise how a licensee is operating his or her practice relative to accepted standards.

A monitor should realize that a licensee's progress, whether rapid or slow or non-existent, is not a reflection of the monitor's performance. Monitors are only expected to report on what they observe. It is the job of the Board to heed the monitor's findings and from this and other information, formulate an appropriate corrective program for the licensee under consent order that also protects the interest of the public.

The United States Department of Justice, Office of the Deputy Attorney General, developed a 2008 memorandum that describe principles for the selection, scope of duties and duration for using monitors in federal prosecution agreements. The Board utilized that memorandum as the basis for the Consent Agreement Monitoring Principles outlined below. The Board expects all monitors to adhere to these principles in the course of providing monitoring services for the Board.

CONSENT AGREEMENT MONITORING PRINCIPLES

Selection

- (1) A monitor should have integrity and possess the necessary expertise and skills within the ethical, clinical and/or administrative fields of chiropractic practice.**
- (2) A monitor should not have a potential or actual conflict of interest with the licensee they are being asked to monitor. Nor should the monitor, or any member of the**

monitor's immediate family, have any ownership, financial, or employment relationship with the practice which the monitor is overseeing, or any personal or business relationship with the licensee.

- (3) A monitor should not be employed by or financially affiliated with the licensee being monitored for a period of at least one-year from the date on which their monitoring relationship ends. However, the Board recognizes that the working relationship between a monitor and licensee can be beneficial and that there may be reasons why their relationship should be allowed to continue. Any proposed exception to this one-year moratorium should be brought to the attention of, and discussed with, the Board.

Scope of Duties, Independence

- (4) A monitor is an independent third party, and not an employee or agent of the Board or the licensee. The monitor is responsible for his or her own acts or omissions relative to his/her performance and statements as a monitor.
- (5) A monitor should not provide legal advice to the licensee, nor should the licensee seek to obtain legal advice from their monitor.

Scope of Duties, Monitoring Compliance with the Agreement

- (6) A monitor's primary responsibility should be to assess whether a licensee has both adopted and effectively implemented all corrective measures, which are reasonably necessary to reduce the risk of recurrence of the licensee's misconduct. The responsibility for designing an ethics and compliance program containing these corrective measures to prevent misconduct remains with the licensee.

Scope of Duties, Communications and Recommendations by the Monitor

- (7) A monitor should make periodic written reports to both the Board and the licensee.
- (8) If the licensee does not choose to adopt the recommendations of the monitor within a reasonable time or adopt them at all, either the monitor or the licensee, or both, should report that fact to the Board.

Scope of Duties, Reporting of Previously Undisclosed or New Misconduct

- (9) A monitor should report any previously undisclosed or new misconduct involving the licensee to the Board. Misconduct that poses an immediate risk to the public health and safety or involves gross mismanagement of the practice being monitored, criminal activity, or activity that carries a substantial risk of harm should be immediately reported directly to the Board.

Duration

- (10) A monitor should understand that in rare instances, the duration of the monitoring period could extend beyond the established term. Conversely, there could be circumstances that justify early termination of the monitor's obligation.

Consent Monitor Protocols:

The Board includes the following definitions and general protocols relative to the use of monitors in chiropractic consent agreements.

TYPES OF MONITORS:

- 1. Clinical and Administrative Monitor** (Clinical Monitor) is for monitoring the ethical, clinical, and basic administrative operations of a licensee and the licensee's chiropractic practice.
 - A Clinical Monitor must be a Massachusetts licensed chiropractor with expertise in clinical practice, including, clinical decision-making, clinical necessity of care, record-keeping requirements, appropriate reporting protocols and proper coding. A Clinical Monitor must also be well-versed in pertinent Massachusetts laws and the Board's rules & regulations.
 - Clinical Monitor reviews will be conducted in accordance with the monitoring criteria provided by the Board and include, but not limited to, the random selection of patient and billing records for review, observation of the licensee's interaction with patients, and submission of a written Monitor Report which identifies deficiencies in a licensee's clinical and administrative practices which in the monitor's judgment warrant corrective action.
 - The Monitor Report should be provided to the licensee as well as the Board. An exception would be the immediate reporting provision outlined in principle #9.
- 2. Compliance Auditor** (Auditor) is for assessing the business operations of a licensee's chiropractic practice or of a licensed Chiropractic Facility.
 - An Auditor must have demonstrated knowledge, training, and expertise in determining whether a solo licensed chiropractor or chiropractic facility is in compliance with all applicable state and federal laws and regulations that affect that chiropractor or facility, and in preparing and implementing compliance programs (including a Compliance Plan) for such entities. An Auditor does not necessarily need to possess a Massachusetts chiropractic license.
 - An Auditor performs an initial healthcare Compliance Audit of a solo practice or facility. The results of the audit are provided to the licensee and his or her counsel and would not be customarily shared with the Board.
- 3. Compliance Monitor** is for assessing and monitoring the business operations of licensee's chiropractic practice or of a licensed Chiropractic Facility.
 - A Compliance Monitor would have the same knowledge, training, and expertise as a Compliance Auditor. Depending upon the particular expertise of this individual, including the possession a Massachusetts license to practice chiropractic, a Compliance Monitor could also simultaneously serve as the Clinical Monitor.
 - Compliance Monitor reviews will be conducted in accordance with the monitoring criteria provided by the Board and include, but not limited to, a review of the practice's business and employee records, random selection and review of patient and billing records, observation of the licensee's and/or Chiropractor-of-Record's management performance, and submission of a written Compliance Report which

identifies deficiencies in a licensee's practice or chiropractic facility which in the monitor's judgment warrant corrective action.

- The Compliance Report should be provided to the licensee as well as the Board. An exception would be the immediate-reporting provision outlined in principle #9.

SELECTION OF A MONITOR:

- The Board recommends that a licensee submit the names/applications of at least three qualified candidates to serve as their monitor. Monitor candidates may be required to appear before the Board for an interview to assess their qualifications and potential conflict of interest.
- The Board maintains a listing of monitors who provided monitoring services in the past. Prior service does not necessarily imply that an individual will be approved to serve as a monitor again.
- The Board reserves the right to reject any monitor candidate.

LICENSEE/ MONITOR RELATIONSHIPS:

- A monitor is required to complete a Monitor Responsibilities Acknowledgement form with the Board as a pre-condition to consideration.
- The Board does not prohibit or endorse financial arrangements between a monitor and a licensee for providing monitoring services. An exception would be the general 1-year moratorium outlined in principle #3.

ETHICAL STANDARDS:

- The Board considers the performance of monitoring when conducted by a licensed chiropractor (peer review) as the practice of chiropractic in Massachusetts. A chiropractor monitor is held to the same ethical, confidentiality, regulatory and clinical standards in monitoring as in his or her chiropractic practice.
- The Board may consider a breach of the above-mentioned professional standards as a potential violation of board regulations and possible grounds for disciplinary action.
- The Board reserves the right to excuse any monitor from their assignment at any time.

CORRECTIVE ACTIONS:

- After receiving a Monitoring Report and/or Compliance Report from a monitor, a licensee shall submit to the Board a detailed written Corrective Action Plan identifying the actions the licensee intends to take to correct the deficiencies cited in the report(s), and the dates the corrective actions will be completed.
- A licensee and/or monitor may be required to appear before the Board to discuss the contents of a Monitor Report, Compliance Report, Corrective Action Plan, Practice Compliance Plan, or other pertinent information.

ACKNOWLEDGEMENT OF RESPONSIBILITIES:

I, _____, (MA chiropractic license # _____)
have read and understand all of the above information about serving as a Consent Agreement Monitor for
the Massachusetts Board of Registration of Chiropractors.

I hereby attest that I accept and will adhere to the fore-mentioned principles in my service as a Consent
Agreement Monitor should I be selected.

(signature)

(date)

(address)

***Please submit the above “Monitor Responsibilities Acknowledgement” form to:**

Massachusetts Board of Registration of Chiropractors
Division of Professional Licensure
239 Causeway St. Suite 500
Boston, MA 02114

You only need to complete and submit the above “-Monitor Responsibilities Acknowledgment” form once.

Submission of this form will result in your name being included on a list of prospective monitors. If you wish to be excluded from this public listing, please indicate your intent on this form or inform the Board via future correspondence.

***Please submit the below “Consent Agreement Monitor Application” form to the Board if you are requesting consideration to serve as a monitor relative to a specific Licensee.**

The application form must be filled out in its entirety, signed and dated. Use the back of the application form if additional space is needed.

Please discuss the specifics contained within the Licensee’s consent agreement with the Licensee, including the type of monitor(s) required and monitoring term’s duration, prior to submitting an application requesting to monitor that Licensee. Know what the task of monitoring fully entails.

A separate “Consent Agreement Monitor Application” form must be completed each time you are requesting consideration to serve as a monitor relative to a specific Licensee.

Keep a copy of the completed Monitor Responsibilities Acknowledgement form and any Consent Agreement Monitor Application form(s) for your own records

Commonwealth of Massachusetts
Division of Professional Licensure
Board of Registration of Chiropractors

APPLICATION FOR POSITION OF CONSENT AGREEMENT MONITOR

Complaint #:

Licensee:

Proposed Monitor Period: (from) _____ (to) _____

Monitor Type: Clinical Monitor ☐ Auditor ☐ Compliance Monitor ☐

Applicant's Name: _____

Address: _____

MA License #: _____

Home Telephone: _____

Work Telephone: _____

- ◆ Please describe your personal and/or professional relationship with the Licensee:

- ◆ Please describe all past and/or present business relationship with the Licensee:

- ◆ Have you ever had a complaint filed against you, either past or present, before a Massachusetts or any other state board? If yes, please explain:

- ◆ Please enclose a copy of your most up-to-date Curriculum Vitae.

The above information I have submitted is to the best of my recollection true and accurate; signed under the pains and penalties of perjury.

Applicant signature: _____ Date: _____