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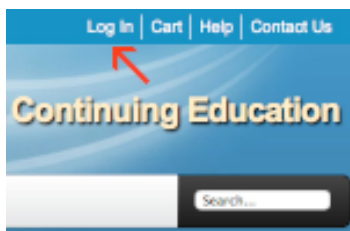
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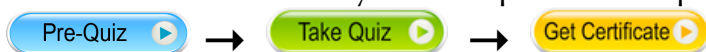


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# Ethics in Acupuncture

## Medical Ethics

Ethics are moral principles that act as guidelines for behavior. They act as a guiding philosophy, impart moral importance and help discern right from wrong. Although ethics correlate to legality, ethical obligations are often greater than what is legally required. Conversely, simply because something is legal does not necessarily make it ethical. The following is an excerpt from the American Medical Association's website on the topic of the relation of law and ethics:

Ethical values and legal principles are usually closely related, but ethical obligations typically exceed legal duties. In some cases, the law mandates unethical conduct. In general, when physicians believe a law is unjust, they should work to change the law. In exceptional circumstances of unjust laws, ethical responsibilities should supersede legal obligations.

The fact that a physician charged with allegedly illegal conduct is acquitted or exonerated in civil or criminal proceedings does not necessarily mean that the physician acted ethically.<sup>1</sup>

While it is ethical to practice acupuncture, it is not legal to practice it in many jurisdictions and settings. Likewise, there are acupuncture procedures that are ethical to perform but lack legal support in state scope of practice definitions. The same is true for herbal medicines. Herbs may be illegal that are safe and effective. In all cases, acupuncturists must abide by the law but ethics imparts the responsibility of working towards changing the laws for the betterment of humanity.

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1. <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion102.page?>  
1-1-16.

## Patient Referral Signs

The acupuncturist can use clarifying questions to help decide when to refer a patient. However, the best measure an acupuncturist can take is to actively monitor patients for medical red flags. Some referral situations include:

- Sudden chest pain (coronary occlusion, pneumothorax, or aneurysm)
- Excessive hemorrhaging (shock risk)
- Recent head trauma (concussion, brain injuries)
- Persistent cough (pleural effusion, lung cancer)
- Severe abdominal pains (appendicitis, ruptured abscess)
- Gastro-intestinal bleeding from upper or lower GI tract
- New onset of severe headache (aneurysms, brain tumor)
- Seriously Infected wounds (any infected foot ulcers in diabetic patients should be referred)
- Persistently swollen lymph nodes, difficulty swallowing, breast lumps, abdominal masses, unexplained weight loss (cancer)
- Unexplained weight loss, thirst, frequent urination (Diabetes Type II)
- Persistent tenderness and swelling in lower leg or thigh (thrombophlebitis, peripheral vascular disorder)
- Visual disturbances or severe redness in eyes (glaucoma)
- Altered levels of consciousness (stroke or impending coma)
- Broken bones or dislocated joints that need immobilizing
- Suicide risks
- Severe depression or emotional disturbance which may require behavioral therapy or counseling
- Children with neurological deficits, developmental delays, or learning disabilities
- Sudden onset of new neurological problems
- Sudden respiratory distress

- Signs of an undiagnosed highly infectious disease (Hepatitis, HIV, tuberculosis)
- Spotting during pregnancy or patients with pre-eclampsia who develop severe headaches and blurred vision (miscarriage risk)
- Post-menopausal vaginal bleeding
- Fever of unknown origin
- Frequent syncope or light-headedness (brain tumor)
- Anaphylaxis (anaphylactic shock)
- New occurrence of exophthalmos/enlarged eyes or goiter (Grave's disease)
- Elder or child abuse (needs to be reported to the proper authorities)

Scope of practice and legal obligations may stipulate a referral in some or all of the above situations dependent upon the state or country. Ethics guides us to contact the referred provider or authority directly to ensure effective action is taken on the patient's behalf.

## Billing

### Balance Due

*What happens when your patient has an acupuncture office visit bill and states that they cannot pay?*

Legally, the patient is obligated to pay but ethically an acupuncturist benefits by remaining sympathetic to the patient's situation by carefully listening to the patient's explanation. A solution may be to provide a payment plan via credit card, installment payments, or financing. Providing options may avoid tension and help to build a stronger partnership with the patient.

An acupuncturist may choose to forgive the debt based on financial hardships or other reasons. Be sure to have a clear office policy for

discounts and debt forgiveness that is consistent. Ideally, maintain proof of the patient's financial hardship and document all attempts to collect payments.

Anti-kickback laws and statutes such as those in the False Claims Act pertain to this topic. These types of laws and regulations are generally in place to prevent overcharging insurance providers and Medicare. If an acupuncturist never collects co-pays, for example, their fees may be deemed inflated by third party payers. A clear and consistent office policy helps to sort out both ethical and legal issues. Consider a financial hardship application form for patients requiring assistance. Most of all, ethical considerations guide us to treat all patients equally regardless of how much they can pay or what type of insurance coverage they have.

## **Misrouted Insurance Check**

*What happens when an insurance company mistakenly pays the patient directly when the acupuncturist should have received the check?*

Never allow the insurance company to create anger or distrust between the acupuncturist and the patient. One option is to contact the patient and have them sign the check over to the licensed acupuncturist to whom the balance is rightfully due. Alternately, contact the patient, explain the circumstance and bill for the balance due.

Including payment options via credit card or installments may help when the balance is large. In all cases, be understanding and avoid arguments. An acupuncturist's reputation is worth more than a finite monetary value. Leniency, albeit with clear guidelines and expectations, solidifies trust in the acupuncturist-patient relationship both on a one-to-one basis and throughout the community. If the patient refuses to pay, reiterate lenient payment options to encourage compliance and to engage a cooperative process. Here, ethical considerations of patients' needs are congruous with sound financial policies.

## Underpayment or Non-Payment

*What happens when the insurance company said they would pay but later refuses reimbursement?*

For acupuncturists providing insurance billing for patients, they may often bill the patient for the unpaid balance. However, certain HMOs and third party payers restrict contracted providers from collecting payments. Absent these contractual agreements, it is legal and acceptable to bill the patient for the balance due.

A patient may have expected the insurance company to pay. It is important if checking the patient's insurance coverage to tell the patient that the information provided by the insurance carrier is not a guarantee of payment. This is also best put in writing for the patient to sign on a financial agreement form. It is important to be clear that insurance company representatives often make mistakes and that true knowledge of actual reimbursements is only known when an EOB (Explanation Of Benefits) or payment is issued.

Underpayment or non-payment by the insurance carrier may cause barriers to patient care. As a protection, document the time of the insurance verification phone call along with the representative's first name and last name. Reference this phone call to the patient when discussing this issue. Provide payment options for the patient and let them know why the insurance carrier refuses payment despite the representative's verification of coverage. *Under no circumstances should the insurance company come between you and the patient's care.*

There are several reasons a carrier may refuse benefits. They may have high deductibles, diagnosis limitations, and other special provisions that were omitted from the verification phone call. One recent provision from a large group insurance provider was that acupuncture was only covered "in lieu of anesthesia" when the patient is having a surgical operation. The insurance representative was unaware of this provision and therefore did



not communicate this limitation to the acupuncturist, staff, or the patient when personally double-checking the information.

Try to encourage cooperative plans of care. For insurance coverage checking, let the patient know that the acupuncturist or staff will check but that they are also encouraged to check as well. Additionally, engage the patient to help seek reimbursement when the carrier fails to pay after making a verification mistake. In the case of the large group insurance provider with the “in lieu of anesthesia” limitation, the patient had their human resources agent arrange for full payment although, technically, the carrier could have refused. Cooperative agreements with the patient encourage teamwork, avoid distrust and anger, and get everyone on the same page towards proper patient care. Encourage the spirit of working together towards good health.

### **Phone Call For Insurance Verification**

A phone call is often necessary to determine insurance reimbursement amounts and restrictions. A patient member ID number, patient name, patient date of birth and possibly the group number is required. The ID number is normally written on the patient’s insurance verification card. If you don’t have the ID number you may be able to use the name, date of birth and social security number instead. The practitioner’s name, physical address and the NPI and/or Tax ID number are required.

Be prepared to wait on-hold. Identify insurance company call centers that have quick links to a live operator. For example, some carriers allow the caller to press 0 to get an operator. Others force the user to sift through a phone tree of selections every time. A speakerphone or wireless headset is recommended.

Determine whether or not you are in-network or out-of-network and be sure to specify network membership status when confirming benefits. If unsure, get both in and out-of-network parameters.

## **Basic Call Questions**

Remember to get the name or ID number of the carrier's operator and document the date and time. After getting all of the information, *get the call reference number*. At the beginning of the call, provide a call-back number to be used in the event that the call is prematurely disconnected.

### **General Opening Question**

Is there acupuncture health insurance coverage for licensed acupuncturists?

*In some states and policies, acupuncture may be limited to an MD or another type of practitioner. However, this restriction is increasingly seen as a type of discrimination both ethically and legally.*

### **Deductible**

How much is the deductible and how much of it has been met?

*You may want to ask if other types of office visits apply towards the deductible. Some insurance companies will only accept acupuncture visits towards an acupuncture deductible that is separate from another general medical deductible.*

Has the deductible been met?

Is there a maximum amount towards each visit applied to the deductible?

*Some insurance companies will only apply a small fraction of the amount charged towards the deductible.*

### **Payments**

What is the co-pay?

What percentage does the insurance pay?

What is the dollar maximum paid per visit?

Is the reimbursement paid based on the usual, customary and reasonable reimbursement (UCR) determination by the carrier?

What dollar amount is the UCR maximum per visit?

After the UCR amount is met, what percentage is paid on the remainder?

## Limits and Exclusions

Is there a limit on the amount reimbursed per year?

Is there a limit on the number of visits per year?

*In some states, limits on the number of visits per year is illegal on many types of policies. In these cases, limits are based on medical necessity but may require additional documentation to support necessity of care.*

Are there any limits or exclusions on the policy?

*This is a never ending story of fine black ink. Prior, it was mentioned that one insurer limits acupuncture to cases of “in lieu of anesthesia” for surgery. The best way to avoid miscommunication with the patient over insurance verification is to get clarity from the insurance representative. Nonetheless, let the patient know that the information was given to you by the insurance representative but may not be entirely accurate.*

Are there any limits on diagnoses? Please let me know what they are.

*Pain codes are often payable but some insurance companies have highly restricted sets of payable diagnosis billing codes.*

Are there limits on acupuncture when combined on the same day of service with other services such as physical therapy and chiropractic?

## Authorization of Care

Is pre-authorization or a referral required and by whom?

*Authorizations are commonly required in worker’s compensation systems and HMOs.*

Is there a utilization review process (UR) required?

## Physical Medicine Codes

A trouble encountered by licensed acupuncturists is underpayment when adding physiotherapy CPT codes. Legally, acupuncturists are allowed to use these codes but insurance companies may wind up paying for these

codes and ignoring the acupuncture codes entirely. Physiotherapy codes include:

- 97110 for therapeutic exercises
- 97112 for neuromuscular reeducation
- 97114 for functional activities
- 97540 for training of activities of daily living
- 97610 for soft tissue mobilization, etc....

An example would be the application of tui-na, shiatsu or another form of massage that is billed with the 97610 code, soft tissue mobilization. One would expect that adding additional time for the application of massage would yield a higher reimbursement rate. Unfortunately, some insurance carriers either ignore the physiotherapy code(s) and pay the acupuncture codes or ignore the acupuncture codes and pay the physiotherapy codes.

The carrier may also reduce the patient's annual allotment of physical therapy appointments by one visit because a physiotherapy code was used. This reduction will appear on the patient's EOB (Explanation Of Benefits) paperwork that is mailed directly to the patient. This may lead to uncomfortable communication issues wherein the patient may become irate towards the licensed acupuncturist because of the actions of the carrier. If the licensed acupuncturist is aware that the patient's physical therapy visits will be limited by using these codes, an ethical consideration for avoiding these codes becomes important.

***The most important concept here and with all insurance billing is to ensure that a third party, the insurance carrier, does not come between the medical practitioner and the patient.***

In some cases insurance carriers will pay for all of the services rendered and billed. Some premium insurance plans continue to reimburse providers based on the actual services rendered without limits and exclusions. Patients with these plans tend to be in high technology jobs or are union members.

## Conduct

Most states mandate a code of conduct for medical professionals, including acupuncturists. In addition, the NCCAOM® (National Certification Commission for Acupuncture and Oriental Medicine) instituted a Code of Ethics effective in 2008. It is worthwhile to take a look at their Code of Ethics document, which is posted on the NCCAOM® website.

The NCCAOM® Code of Ethics delineates three major areas: commitment to patient, commitment to the profession, commitment to the public. The commitment to the patient section contains many elements covering nondiscrimination, confidentiality, record keeping accuracy, scope of practice limitations, standards of care, and more. Regarding sexual conduct is section A, part #11, it is noted: “Not engage in sexual contact with a current patient if the contact commences after the practitioner/patient relationship is established.” Also, section A, part #12 notes: “Not engage in sexual contact with a former patient unless a period of six (6) months has elapsed since the date that the professional relationship ended. A sexual relationship must not exploit the trust established during the professional relationship.”<sup>2</sup>

The following is the official NCCAOM® Code of Ethics as of January 2015:

### Code of Ethics

*Effective as of October 14, 2008*

All practitioners certified by the National Certification Commission for Acupuncture and Oriental Medicine must be committed to responsible and ethical practice, to the growth of the profession's role in the broad spectrum of American health care, and to their own professional growth. All Diplomates, applicants and candidates for certification agree to be bound by the NCCAOM Code of Ethics.

#### **A. Commitment to the Patient**

1. Respect the rights and dignity of each person I treat.

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2. <http://www.nccaom.org/diplomates/diplomates-home>. 1-6-2015.

2. Accept and treat those seeking my services in a nondiscriminatory manner.
3. Keep the patient informed by explaining treatments and outcomes.
4. Protect the confidentiality of information acquired in the course of patient care.
5. Maintain professional boundaries in relationships with patients and avoid any relationships that may exploit practitioner/patient trust.
6. Keep accurate records of each patient's history and treatment.
7. Treat only within my lawful scope of practice.
8. Render the highest quality of care and make timely referrals to other health care professionals as may be appropriate.
9. Avoid treating patients if I am unable to safely and effectively treat due to substance abuse, physical or psychological impairment.
10. Bill patients and third party payers accurately and fairly.
11. Not engage in sexual contact with a current patient if the contact commences after the practitioner patient relationship is established.
12. Not engage in sexual contact with a former patient unless a period of six (6) months has elapsed since the date that the professional relationship ended. A sexual relationship must not exploit the trust established during the professional relationship.

#### **B. Commitment to the Profession**

1. Continue to work to promote the highest standards of the profession.
2. Provide accurate, truthful, and non-misleading information in connection with any application for licensure, certification, NCCAOM disciplinary investigation or proceeding or recertification.
3. Report any changes to the information on my application regarding professional ethics and my on-going fitness to practice, including but not limited to reporting to the NCCAOM any disciplinary action taken by a school or regulating agency against me, and any criminal charges or civil actions that may be relevant to my health care practice or fitness to practice.
4. Comply with NCCAOM Examination Policies.
5. Report to NCCAOM or appropriate licensing authorities information about any violations by me or by my peers of the Code of Ethics or Grounds for Professional Discipline.

### C. Commitment to the Public

1. Provide accurate information regarding my education, training and experience, professional affiliations, and certification status.
2. Refrain from any representation that NCCAOM certification implies licensure or a right to practice unless so designated by the laws in the jurisdiction in which I practice.
3. Use only the appropriate professional designations for my credentials.
4. Advertise only accurate, truthful, non-misleading information and refrain from making public statements on the efficacy of Oriental medicine that are not supported by the generally accepted experience of the profession.
5. Respect the integrity of other forms of health care and other medical traditions and seek to develop collaborative relationships to achieve the highest quality of care for individual patients.
6. Comply with all public health and public safety reporting duties imposed on licensed health care professionals.<sup>3</sup>

## HIPAA

HIPAA (Health Insurance Portability and Accountability Act) regulations comprise two parts. The Health Insurance Portability and Accountability Act of 1996 is a federal law that says employees belonging to group health plans must be allowed to purchase insurance for a period of time after they leave their jobs or change employment status. This law also created standards regarding how healthcare providers and third party entities handle patient health information. The standards specify who has authorization to view patient information and how private information, such as a patient's name or date of birth, should be stored.

As part of their healthcare responsibilities, acupuncturists are legally bound to maintain the confidentiality of patient information and records. Acupuncturists should provide all patients a *Health Information and Privacy*

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3. <http://www.nccaom.org/diplomates/diplomates-home>. 1-6-2015. Code of Ethics web page.

**Notice prior to treatment.** The US Department of Health & Human Services notes in regards to HIPAA:

General Rule. The Privacy Rule provides that an individual has a right to adequate notice of how a covered entity may use and disclose protected health information about the individual, as well as his or her rights and the covered entity's obligations with respect to that information. Most covered entities must develop and provide individuals with this notice of their privacy practices.<sup>4</sup>

The content of the notice is specific and often acupuncturists can obtain a copy suggested by their malpractice insurance provider. The US Department of Health & Human Services notes:

**Content of the Notice.** Covered entities are required to provide a notice in plain language that describes:

- How the covered entity may use and disclose protected health information about an individual.
- The individual's rights with respect to the information and how the individual may exercise these rights, including how the individual may complain to the covered entity.
- The covered entity's legal duties with respect to the information, including a statement that the covered entity is required by law to maintain the privacy of protected health information.
- Whom individuals can contact for further information about the covered entity's privacy policies.

The notice must include an effective date.

Additionally, patient files need to be kept up-to-date and indicate:

- Basic patient information
- Insurance information
- Clinic's cancellation policy

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4. <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/notice.html>. 1-6-15.



- Patient's healthy history
- Informed Consent
- SOAP Notes or Patient Intake Forms with patient name, date, examination, diagnosis, treatment plan, and herbal prescriptions
- ICD-9, ICD-10 and CPT codes.

Records should be maintained according to your state's requirements. In an acupuncture setting, HIPAA noncompliance may not directly lead to a clinical error. However, inaccurate information can lead to mistakes in the treatment room. Acupuncturists, or any staff handling patient records, should comply with all federal and state requirements for handling patient information and records.

The HIPAA protections regulate identity. Staff nor acupuncturists should identify patients in the reception area or other public settings by both their first and last names. The same is true for medical information. Staff nor acupuncturists should publicly ask about a patient's medical issues. For example, during intake in the reception area, a staff member should avoid asking, "What is your reason for the office visit?" Revealing and requiring medical information in a public setting conflicts with privacy rights. This may also make the patient uncomfortable.

## Perspectives

*“Wherever the art of medicine is loved, there is also a love of humanity.”*  
Hippocrates

*“Laws control the lesser man... Right conduct controls the greater one.”*  
Mark Twain

*“Tact is the art of making a point without making an enemy.”*  
Isaac Newton

*“The purpose of human life is to serve, and to show compassion and the will to help others.”*  
Albert Schweitzer

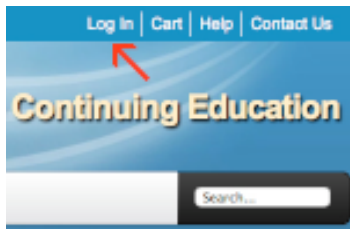
*“I have just three things to teach: simplicity, patience, compassion. These three are your greatest treasures.”*  
Lao Tzu

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