

# California Attorney General Strikes Down Illegal E-Commerce Operations

Editorial Staff

As was previously reported,<sup>1,2</sup> the California Board of Chiropractic Examiners requested that the California Attorney General review e-commerce deals that are being offered to DCs that involve marketing or sales to their patients. At question are online companies that set up websites for DCs with the intent to sell products to their patients. The internet companies fulfill the orders and give a percentage to the chiropractors.

A legal analysis previously prepared by the National Association of Chiropractic Attorney's Vice President Michael Schroeder, stated flatly that such arrangements were illegal. Mr. Schroeder specified, however, that an e-commerce arrangement where the chiropractor received payment from the patient, then purchased the goods from the internet company and provided them directly to the patient, would be legal.

California Attorney General Bill Lockyer was asked:

Does Business and Professions Code Section 650 prohibit chiropractors from participating in an internet marketing plan in which they agree to promote the naturopathic products of an internet company and to refer their patients to the company's website in exchange for fees equaling 20 percent of the price of the products purchased by their patients from the company?

Attorney General Lockyer, in the first part of his response, concluded that Section 650 applied to both medical doctors and chiropractic doctors. He said that it was clear that California's anti-kickback law applied to these types of arrangements:

"Having determined that section 650's prohibition is applicable to chiropractors, we have little difficulty in concluding that the internet marketing proposal here would violate the terms of the statute. Both the plain language and the purposes of Section 650, as noted above, would be violated by implementing the marketing plan. It is manifest that chiropractors who would agree to promote and refer their patients to a commercial distributor of naturopathic products in exchange for fees of 20 percent of the price of the products purchased by their patients "may be induced [to make the referral] by considerations other than the best interests of the patients." [See 82 Ops.Cal.Atty.Gen. 1, 4 (1999); 79 Ops.Cal.Atty.Gen. 225,231-232 (1996).] It is also evident that the promotion, the profits from which would be determined by and directly tied to the quantity of products purchased by the patients, may result in excessive health care costs. [See 76 Ops.Cal.Atty.Gen. 204, 206 (1993); 53 Ops.Cal.Atty.Gen. 117, 118 (1970).] Such additional costs may arise simply as a function of providing referral fees to the participating practitioners."

Attorney General Lockyer agreed with Mr. Schroeder that e-commerce arrangements would be legal if the chiropractor was paid by the patient and was the owner and vendor of the product:

"In contrast, section 650 would not be applicable where the chiropractor was the owner of the

naturopathic products and thus the vendor of the products to the patients. Section 650 prohibits only the 'referring' of patients."

"There can be no remaining doubt whether these types of arrangements are illegal," asserted Mr. Schroeder. "Chiropractic doctors who are involved in e-commerce deals with internet companies should *immediately* run these arrangements by their attorneys to make sure that they are legal. Not only are violations criminal under state and federal law, but they also provide a basis for revoking a doctor's license."

### *Reference*

1. Some e-commerce deals are illegal. *Dynamic Chiropractic* November 15, 2000. <http://www.chiroweb.com/archives/18/24/20.html>.
2. National Association of Chiropractic Attorneys warns of e-commerce deals. *Dynamic Chiropractic* January 1, 2001. [www.chiroweb.com/archives/19/01/07.html](http://www.chiroweb.com/archives/19/01/07.html)

MARCH 2001