

# California Department of Insurance

## Eight-Hour Mandatory Long-Term Care Course

### Attachment III

#### Applicable Laws & Penalties

##### Long Term Care

Long-Term Care Insurance, California Insurance Code (Cal. Ins. Code) sections 10230 – 10237.6

##### Applicable Laws:

- Cal. Ins. Code sections 10233.3, 10234.85, 10234.86, and 10234.87
- Cal. Ins. Code section 10234.97: Various requirements for the replacement of LTC policies
- Cal. Ins. Code section 10234.95: All sales of LTC insurance shall meet the “suitability” standards

##### Penalty

*All violations of Chapter 2.6 subject to the following penalties in addition to court penalties, attorney’s fees, and costs per Cal. Ins. Code section 10234.2*

- Cal. Ins. Code section 10234.3(a): Penalty of not less than \$250 for each 1<sup>st</sup> violation; not less than \$1,000 and not more than \$25,000 for each subsequent or knowing violation; for inappropriate replacement of LTC coverage, penalty not more than \$5,000 for each violation
- Cal. Ins. Code section 10234.4(a): Suspend or revoke license
- Cal. Ins. Code section 10234.4(c): Ordered to cease marketing long-term care insurance in California

##### General Provisions

Misrepresentation of Policies, Cal. Ins. Code section 780

Twisting, Cal. Ins Code section 781

##### Applicable Laws:

- Cal. Ins. Code section 780: Prohibited statements re: terms, benefits, privileges, or future dividends of policy
- Cal. Ins. Code section 781(a): Twisting: prohibited statement known to be a misrepresentation to induce person to take out a policy, refuse a policy and take out another, let lapse, forfeit of surrender policy
- Cal. Ins. Code section 781(b): Prohibited misleading statement or comparison of insurers or policies to induce person to let insurance lapse, forfeit, change, or surrender policy

##### Penalty:

- Cal. Ins. Code section 782: Any person who violates Cal. Ins. Code sections 780 or 781 is punishable by a fine not to exceed \$25,000, or if victim loss exceeds \$10,000, the fine is not to exceed three times the loss suffered by the victim, by imprisonment not to

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exceed one year, or by both a fine and imprisonment; restitution to victim pursuant to Penal Code section 1202.4 shall be satisfied before any fine imposed by this section is collected

- Cal. Ins. Code section 783: Any insurance agent, broker, or solicitor who knowingly violates Cal. Ins. Code sections 780 or 781 may have their license suspended for up to three years after a hearing

#### **Unfair Practices Sections, Cal. Ins. Code sections 790 – 790.15**

##### **Applicable Laws:**

- Cal. Ins. Code section 790.01: Applies to insurers, agents, and “all other persons engaged in the business of insurance”
- Cal. Ins. Code section 790.02: Prohibits use of unfair trade practices or unfair method of competition or deceptive act or practice in the business of insurance
- Cal. Ins. Code section 790.03: Lists in detail prohibited acts such as misrepresentations about the terms of any policy issued or the benefits or advantages promised; prohibits making, disseminating, causing to be made or disseminated in any manner any known or reasonably should be known, untrue, deceptive, misleading statement
- Cal. Ins. Code section 790.037: Unfair practice selling healthcare products; cold lead advertising; appointments; Medicare products restrictions on sales discussions

##### **Penalty**

*All violations of Article 6.5 subject to penalties as follows:*

- Cal. Ins. Code section 790.035(a): Civil penalty not to exceed \$5,000.00 for each act; if act or practice is willful, civil penalty not to exceed \$10,000.00 for each act
- Cal. Ins. Code section 790.05: Cease and Desist Order; subsequent violations license may be suspended/revoked for up to one year
- Cal. Ins. Code section 790.06: Prosecution of acts not defined in Cal. Ins. Code section 790.03 – Cease and Desist Order
- Cal. Ins. Code section 790.07: Violation of Cease and Desist Order; penalty not to exceed \$5,000; if willful, penalty not to exceed \$55,000 plus penalty under Cal. Ins. Code section 790.05
- Cal. Ins. Code section 790.08: Provides that the penalties in this article are in addition to any other powers of the Commissioner to enforce the laws

#### **Other Relevant Insurance Code Sections**

#### **Insurance Information & Privacy Protection Act, Cal. Ins. Code sections 791 – 791.28**

##### **Applicable Laws:**

Cal. Ins. Code section 791.03: Prohibits the use of “pretext interviews” to obtain information in connection with an insurance transaction (i.e. “free lunch” seminars)

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#### **Penalty**

*All violations of Article 6.6 subject to penalties as follows:*

- Cal. Ins. Code section 791.17: Cease and Desist Order issued
- Cal. Ins. Code section 791.19: Violation of Cease and Desist Order: penalty of not more than \$10,000 for each violation, or not more than \$50,000 if frequent violations constitute general business practice
- Suspension and revocation of license for knowing violation

#### **Medicare Supplement Insurance, Cal. Ins. Code sections 10192.1 – 10192.24**

#### **Applicable Laws:**

- Cal. Ins. Code section 10192.18: Application forms require certain questions to determine if applicant already has a policy or certificate; must be signed by both applicant and agent
- Cal. Ins. Code section 10192.21(b): Prohibits sale of a Medicare supplement policy or certificate if individual already has one
- Cal. Ins. Code section 10192.23: States time periods for replacement of policies

#### **Penalty**

*All violations of Article 6 subject to the following penalties:*

- Cal. Ins. Code sections 10192.165(a) and (c): Court penalties, including damages and restitution
- Cal. Ins. Code section 10192.165(b)(1): Penalty of no less than \$250 for first violation by agent, broker, other person/entity engaged in business of insurance
- Cal. Ins. Code section 10192.165(b)(2): Penalty of no less than \$1,000 and no more than \$25,000 for each second, subsequent, or knowing violation
- Cal. Ins. Code section 10192.165(d): Order to cease marketing any Medicare supplement policy or certificate
- Cal. Ins. Code section 10192.165(e): Any person who knowingly or intentionally violates this article is punishable by imprisonment in county jail not to exceed one year, or by imprisonment per Penal Code section 1170 or a fine not to exceed \$10,000 or both

#### **OTHER RELEVANT INSURANCE CODE SECTIONS**

##### **Welfare and Institutions Code section 15610.27**

"Elder" means any person residing in this state, 65 years of age or older.

##### **Welfare and Institutions Code section 15610.30**

(a) "Financial abuse" of an elder or dependent adult occurs when a person or entity

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does any of the following:

- (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both
- (2) Assists in doing the above activities
- (3) Does or assists in the above activities by undue influence, as defined in Cal. Ins. Code section 15610.70
- (b) A person or entity shall be deemed to have committed the above acts for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.
- (c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.
- (d) For purposes of this section, "representative" means a person or entity who is either of the following:
  - (1) a conservator, trustee, or other representative of the estate of an elder or dependent adult
  - (2) an attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney

#### **Conspiracy, California Penal Code section 182**

- (a) If two or more persons conspire to:
  - (1) commit any crime
  - (2) falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime
  - (3) falsely to move or maintain any suit, action, or proceeding
  - (4) cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises
  - (5) commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws
  - (6) commit any crime against the person of the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States

#### **Financial Elder Abuse, California Penal Code section 368(d)**

A person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult is

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punishable as follows:

- (a) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to California Penal Code section 1170(h) for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950)
- (b) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950)

#### **Burglary, California Penal Code section 459**

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, as defined in s Harbors and Navigation Code section 21, floating home, as defined in the Health and Safety Code section 18075.55(d), railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach as defined the Vehicle Code (VC) section 635, any house car, as defined in VC section 362, inhabited camper, as defined in VC section 243, vehicle as defined by the VC, when the doors are locked, aircraft as defined by the Public Utilities Code section 21012, or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.

#### **Forgery, California Penal Code section 470**

Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

#### **Grand Theft, California Penal Code section 487**

When the money, labor, or real or personal property taken is of a value exceeding nine hundred fiftydollars (\$950)

#### **Computer Access Fraud, California Penal Code section 502(c)**

- (a) Any person who commits any of the following acts is guilty of a public offense:
  - (1) knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data

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- (2) knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network
- (3) knowingly and without permission uses or causes to be used computer services
- (4) knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network
- (5) knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network
- (6) knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section
- (7) knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network
- (8) knowingly introduces any computer contaminant into any computer, computer system, or computer network
- (9) knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and thereby damages or causes damage to a computer, computer system, or computer network
- (10) knowingly and without permission disrupts or causes the disruption of government computer services or denies or causes the denial of government computer services to an authorized user of a government computer, computer system, or computer network
- (11) knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a public safety infrastructure computer system computer, computer system, or computer network
- (12) knowingly and without permission disrupts or causes the disruption of public safety infrastructure computer system computer services or denies or causes the denial of computer services to an authorized user of a public safety infrastructure computer system computer, computer system, or computer network
- (13) knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or public safety infrastructure computer system computer, computer system, or computer network in violation of this section
- (14) knowingly introduces any computer contaminant into any public safety infrastructure computer system computer, computer system, or computer network

#### **Identity Theft, California Penal Code section 530**

Every person who falsely personates another, in either their private or official capacity, and in such assumed character receives any money or property, knowing that it is intended to be

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delivered to the individual so personated, with intent to convert the same to their own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

**Theft by False Pretenses, California Penal Code section 532**

Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, or who causes or procures others to report falsely of their wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets possession of money or property, or obtains the labor or service of another, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained.