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# Not So Fast… Broadening the Chiropractic Statute Does Not Mean Broadened Coverage Under the No-Fault Act

**By: Alexander R. Baum** **February 16, 2016**

## SECREST WARDLE NOTES

The Court of Appeals' recent decision in *Measel v Auto Club Group Insurance Company* demonstrates the importance of being well-versed in the strict parameters of MCL § 333.16401 as it existed in January 2009. Understanding what services fall within the definition of "practice of chiropractic" is essential when determining what chiropractic services are compensable.

While more recent changes to the chiropractic statute, MCL § 333.16401, may lead to more chiropractic care being "lawfully rendered," it does not change the fact that a No-Fault carrier is only required to reimburse for chiropractic care that existed under the statute in January 2009.

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Changes to Michigan's chiropractic statute, MCL § 333.16401, do not translate to changes in what is compensable under the No-Fault Act the Michigan Court of Appeals declared in the recent decision of *Measel v Auto Club Grp Ins Co*, (Docket No. 324261). While the Chiropractic Statute, MCL § 333.16401, has changed in recent years, most notably in 2010, insurers must still look to its history to determine whether or not certain chiropractic care is compensable under the No-Fault Act, specifically MCL § 500.3107b.

In *Measel*, the plaintiff alleged bodily injuries as a result of a motor vehicle accident, and presented bills from Complete Care Chiropractic as part of her claim for No-Fault benefits. The dispute in the case centered around Complete Care Chiropractic's charges for a new patient examination that included examination of the plaintiff's "whole arm," ultrasound therapy, and massage therapy that was applied to the plaintiff's extremities in addition to her spine. After Blue Cross Blue Shield refused to cover the expenses, the plaintiff's No-Fault Insurer, Auto Club Insurance Company, likewise denied reimbursement, arguing that they were outside the scope of chiropractic in Michigan as outlined in MCL § 333.16401.

Both the district court and on appeal, the circuit court held that because Auto Club conceded that the services were lawfully rendered and reasonably necessary under MCL § 500.3107, the question as to whether the treatment actually fell within the scope of the chiropractic statute was irrelevant.

The Court of Appeals disagreed, and took a deeper look into the interplay between MCL § 500.3107b(b) and MCL § 333.16401.

First, the Court found that the treatments qualified as "the practice of chiropractic service" under MCL § 333.16401 as it exists today. With regard to the new patient examination, MCL § 333.16401(1)(e)(ii)(A) provides that physical examinations are included under the definition of "practice of chiropractic". Regarding ultrasound and massage therapy, MCL § 333.16401(1)(e)(iv) includes the use of physical measures, analytical instruments, nutritional advice, rehabilitative exercise, and adjustment apparatus . . . " The Court further looked to a 2010 Michigan Department of Community Health letter which indicated that physical measures included massage and sound.

The *Measel* Court then relied on the explicit language of MCL § 500.3107b(b), stating, "Pursuant to MCL 500.3107b(b), because each of the services at issue in this case was '[a] practice of chiropractic service," reimbursement is not required unless the service "was included in the definition of practice of chiropractic under MCL 333.16401 . . . as of January 1, 2009'". The Court found that they were not.

Not only did the subsections cited above not exist in the January 2009 version of the statute, the *Measel* Court was able to rely on past decisions of the Michigan Supreme Court, specifically *Attorney General v Beno*, 422 Mich 293 (1985), wherein it held that treatment to extremities is not covered under the former statute.

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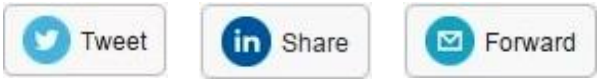



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