

CHIROPRACTORS REGISTRATION BOARD OF VICTORIA STANDARDS OF PRACTICE GUIDELINES

ADVERTISING

September, 2008

1. Introduction

The *Health Professions Registration Act 2005* (“the Act”) outlines the responsibilities of the Chiropractors Registration Board of Victoria in relation to regulation of advertising by registered chiropractors. Section 94 states – “A person must not advertise regulated health service or a business providing regulated health services in a manner which :

- a) is or is intended to be false, misleading or deceptive, or
- b) offers a discount, gift or other inducement to attract patients to a business providing regulated health services unless the advertisement also sets out the terms and conditions of that offer, or
- c) refers to, uses or quotes from testimonials or purported testimonials, or
- d) creates an unreasonable expectation of beneficial treatment; or
- e) directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services or medicines.”

The penalty for breaches of this provision is 60 penalty units (currently \$6,000) for a natural person and 300 penalty units (currently \$30,000) for a body corporate.

2. Purpose of the Guidelines

The Board recognises that provision of information to the public about chiropractors and the services they provide is of value. Advertising can provide a means of conveying general information on the availability of services to consumers, helping them obtain a better understanding of available services and enabling them to make informed health care choices.

However, there are risks that advertising which is false, misleading or deceptive can lead to the provision of unnecessary chiropractic services, or create unrealistic expectations about the benefit of such services, with adverse consequences for consumers.

For the purpose of these Guidelines, advertising includes but is not limited to any public communication using television, radio, motion picture, newspaper, book, list, display, the internet or directory and includes business cards, announcement cards, office signs, office publications, posters, letterhead, telephone directory listings, professional lists, professional directory listings and notices. Advertising also includes situations where practitioners make themselves available for, or provide information to, media reports, magazine articles or advertorials.

These Guidelines have been developed by the Board to advise chiropractors of:

- a) the provisions of Section 94 of the Act
- b) how the Board exercises its discretion in applying Section 94
- c) what the Board has determined to be minimum standards of good practice in relation to advertising of chiropractic services

These Guidelines aim to protect the public from advertising which is false, deceptive and misleading and provide guidance to registered chiropractors about advertising of chiropractic services, in order to promote the quality provision and use of these services.

Compliance with the Guidelines does not represent endorsement of an advertisement or a chiropractic service by the Chiropractors Registration Board of Victoria.

3. Consequences of Breaching the Guidelines

A breach of section 94 of the Act may result in the practitioner (or a body corporate) being prosecuted in the Magistrates' Court of Victoria and a financial penalty imposed. A breach of these Guidelines may also be considered evidence of unprofessional conduct and may be investigated by the Board, either on its own motion or in response to a claim or notification.

Where a chiropractor is found by the Board to have engaged in unprofessional conduct in relation to advertising of chiropractic services the Board has the power under the Act to impose one or more of the following sanctions:

- That the matter be referred to a Tribunal Hearing
- If the Panel is of the opinion that the practitioner's ability to practice is affected, that the matter be referred to a health panel hearing
- That the health practitioner be cautioned
- That the health practitioner be reprimanded
- That the health practitioner undergo counseling
- That any conditions be imposed on the health practitioner's registration or endorsement of registration
- That the health practitioner alter the way in which he or she practices as a health practitioner
- That the health practitioner undertake and complete specified further education or training within a specified period

4. Trade Practices Act 1974 and Fair Trading Act 1999

All advertisements for chiropractic services are subject to the applicable statutes and common law of the Commonwealth, States and Territories. Compliance with these Guidelines does not exempt advertisements from the application of those laws. Under federal law, the *Trade Practices Act 1974 (Cth)* permits advertising unless it is misleading or deceptive or likely to mislead or deceive.

Chiropractors should become familiar with the provisions of the TPA and the provisions of the *Fair Trading Act 1999 (Vic)*. Chiropractors are referred to the publication 'Fair Treatment: A Guide to the Trade Practices Act for advertising or promotion of Medical Services (Commonwealth of Australia, July 2000). Taken in the broad context of the Advertising Guidelines this publication is applicable to chiropractors. The publication can be accessed on the ACCC's website at <http://www.accc.gov.au/fs-pubs.htm>.

5. General Guidelines

A registered chiropractor should ensure that all relevant people, including those employed or associated with the registered chiropractor, are aware of the content of the Advertising Guidelines and the relevant provisions of all relevant Commonwealth and/or Victorian Acts, Regulations or other legal instruments that relate to the functions and operations in chiropractic practice.

Practitioners should always consider their professional ethical obligations when advertising chiropractic services. They should always consider how their advertisement will be received by members of the public and be mindful that some consumers may have particular vulnerabilities in relation to the advertising of, and the provision of chiropractic services.

When advertising a chiropractic service a registered chiropractor should ensure that he or she is competent by reason of his or her education, training or experience, to perform the chiropractic service advertised or to act in the manner or professional capacity advertised. Chiropractors must be certain that they can substantiate any claims made in advertising material, particularly in relation to outcomes of treatment, whether implied or explicitly stated.

In determining whether an advertisement is misleading, or whether it creates an unreasonable expectation of beneficial treatment or directly, or indirectly, encourages the indiscriminate or unnecessary use of chiropractic services, the Board will consider the overall impression of the advertisement and the likely impact the advertisement may have on a member of the public. Specifically, the Board will consider what conclusions a member of the public can reasonably infer from material contained within an advertisement and whether the material is likely to mislead or deceive either directly or by omission. The Board considers that conditions, qualifiers or disclaimers should be displayed obviously and should not be contained in fine print.

5.1 What is acceptable advertising?

The main purpose of advertising of chiropractic services should be to present information that is reasonably needed by consumers to make an informed initial decision about the availability and suitability of the chiropractic services offered.

It is important to note that any initial decision by a consumer in this respect does not substitute for informed consent nor does it remove the obligation on a practitioner to obtain informed consent.

Advertising used to inform the public of chiropractic services will be considered acceptable to the Board if it is factual, honest, accurate, complete, verifiable and not misleading. As such, advertising may contain:

- a) a factual statement of the service(s) and/or any product(s) offered
- b) contact details of the office of the chiropractor, including e-mail, website and telephone numbers
- c) a statement of regular office hours of the chiropractor and any after hours details
- d) non-enhanced photographs or drawings of the chiropractor or his/her office
- e) the availability of wheelchair access to any premises to which the advertisement relates
- f) a statement of any language(s), other than English, fluently spoken by the chiropractor or another person in his/her office
- g) a statement about fees charged and/or third party information
- h) details of names of approved educational institutions and postgraduate clinical

training program from which the chiropractor has graduated; also degrees and diplomas received

- i) a statement that the chiropractor has a 'special interest' in a particular field of chiropractic practice provided that the statement can be supported by special post-graduate qualifications recognised by a chiropractic professional body acceptable to the Board, or by the Board itself. Use of the term 'specialist' is not permitted by the Act. (sec. 27 HPRA)
- j) a list of the chiropractor's publications in books and/or professional journals
- k) a statement providing public health information encouraging preventative or corrective care. (Refer to the Code of Conduct, and Frequency and Duration of Care Guidelines)

5.2 What is unacceptable advertising?

This section of the guidelines is intended to provide a clear indication of the type of advertising of chiropractic services that the Board considers unacceptable. This list is not intended to be exhaustive:

- a) create or be likely to create unwarranted and unrealistic expectations about the effectiveness of the chiropractic services to be provided
- b) encourage inappropriate or excessive use of chiropractic services (ref Guidelines on Frequency and Duration of Care)
- c) use testimonials or purported testimonials
- d) mislead either directly or by implication; or through emphasis; or by comparison; or by contrast; or by omission
- e) abuse the trust or exploit the lack of knowledge of consumers
- f) contain language that could cause fear or distress
- g) contain price/fee information that is inexact or fails to specify any conditions or variables to the advertised information
- h) contain any claim, statement or implication:
 - either expressly or by omission, that the treatment is infallible, unailing, magical, miraculous, a certain, guaranteed or a sure cure
 - that a chiropractor has an exclusive or unique skill or remedy
 - that a chiropractor provides superior services to those provided by other chiropractors
 - that the result of the chiropractic service offered is always effective
- i) contain terms, conditions or qualifications in small print or in an obscure component of the advertisement
- j) purport to fully inform the public of the risk of undertaking a chiropractic procedure or to replace the process of informed consent
- k) use graphic or visual representations that are, or could be construed to be, false or misleading
- l) be vulgar, sensational or likely to bring the profession into disrepute.

6. Specific Guidelines

A chiropractor should not use the following in the advertising of chiropractic services:

- Comparative advertising, since it is difficult to include all required information to avoid a misleading comparison being made, and it has the potential to bring the profession into

disrepute. Any advertisement using words of comparison must be based on verifiable data substantiating the comparison.

- Any reference to being a 'specialist.' (Refer 5.1 i 'special interest).

6.1 Advertising of Qualifications and Titles

It is an offence under the Act for an unregistered person to claim to be a chiropractor or registered chiropractor.

A registered chiropractor may state his or her chiropractic qualifications after his or her name in any advertising provided that those credentials correspond to qualifications obtained from a chiropractic educational institution recognised for this purpose by the Board.

A registered chiropractor should, in any advertising including the word 'Doctor', qualify that title by:

- a) clearly using the word 'Chiropractor', or
- b) using qualifications which include the title 'Chiropractic' immediately following his or her name e.g. 'Doctor of Chiropractic' (if applicable).

Information pertaining to other qualifications held may also be stated.

6.2 Advertising Price Information

Advertising of fees for services, prices for products and price information should be accurate, with all fees for services, prices for products and price information clearly identifiable and any conditions or other variables to an advertised price disclosed.

Chiropractors should not compensate or give anything of value to a representative of the press, radio, television or other communication medium for professional publicity unless the fact of compensation is made known publicly.

6.3 Use of Scientific Information

The Board would encourage caution in the use of scientific information in chiropractic advertising. However, where a practitioner chooses to use scientific information, the following guidelines apply:

Scientific information in an advertisement should:

- Be presented in a manner that is accurate, balanced and not misleading,
- Use terminology that is readily understood by the audience to whom it is directed,
- Identify the relevant researchers, sponsors and the academic publication in which the data appears.

6.4 Use of Graphic or Visual Representations

- Advertisements should not portray persons before and/or after chiropractic services (ref Comparative Advertising – section 6 of these guidelines)
- Representations portraying a physical condition and/or injury are permitted

- Representations depicting the chiropractor providing the advertised services are permitted provided that no patient in an image shall be identifiable without consent

Graphic or visual representations should comply with the prescribed standards of appropriate advertising listed above in 5.1.

6.5 Use of Gifts or Discounts in Advertising

Chiropractors should not advertise that they will perform certain professional services free of charge or at a discount unless the advertised claims are truthful e.g. X-rays should not be advertised as 'free' if the cost is to be covered by Medicare.

In addition, no further charge should be made for any other professional service rendered or products provided to a patient during any visit in which free or discounted services are offered or provided unless, prior to the accrual of such charges, the patient is informed of the cost of the additional services or products and agrees to pay for them.

7 Delegation of Responsibility for Advertising

These guidelines apply to all advertising actively placed or disseminated by chiropractors of their agents and to material published with the knowledge of practitioners regardless of this authorship.

A chiropractor cannot devolve responsibility for the advertising of chiropractic services to another party and is ultimately responsible for the style, content and likely inference of all advertised material associated with the provision of their chiropractic services. Specifically, practitioners cannot delegate responsibility for ensuring accuracy of advertising and compliance with these guidelines to an administration, manager, director, or other non-chiropractic staff member.

8 Conclusions

The Board reminds all practitioners of their legal and ethical responsibilities in providing the public with clear and accurate information regarding the availability and provision of chiropractic services. Practitioners are also reminded that the public may have limited understanding of many aspects of these services and may be vulnerable as a result. Chiropractic advertising is therefore required to conform with these Guidelines so as to safeguard the public.

Failure to adhere to the Guidelines may be investigated by the Board, either in response to a notification or on its own motion, and may constitute unprofessional conduct.

The Board cannot give legal advice or opinion and cannot review or approve advertisements.

Definitions

In these guidelines:

“Act” means the *Health Professions Registration Act 2005*

“Board” means the Chiropractors Registration Board of Victoria

“Chiropractic Services” includes all aspects of chiropractic practice including the sale of complementary health products

“Photograph” in relation to the advertising of chiropractic services includes images, graphic or other representations or facsimiles

“Registered Chiropractor” has the same meaning as in the *Health Professions Registration Act 2005*

“Testimonial” means a personal affirmation or recommendation given by one person about one’s self or about another person, product or activity

“Visual representations” includes photographs