



Issue 4 December 2002

Dear Registered Chiropractor

Dear Registrant,

This issue of the Chiropractors Registration Board of Victoria's newsletter is devoted to two principal areas, that of advertising and the problems that it creates, and secondly, to a summary of complaints processed by the Board in recent times.

Advertising

In spite of previous Newsletters and other professional publications, it would appear that a number of issues still create confusion.

- Firstly, testimonials in advertising material **cannot** be used in any format. This is written into the Act (*Chiropractors Registration Act 1996* Section 60 (c)), and is common to other Health Acts, both in Victoria and interstate.

A committee involving the Board and the Profession is presently developing some guidelines on the use of case studies or peer-reviewed articles where the origin of the patient cannot be traced, even if it is with their consent.

- Far too many articles still contain the "can" word when used to describe the benefits of care. Use of the "may" word avoids an implied guarantee of help.
- Do not claim that chiropractic care is the "only" chance or hope for relief.
- Do not claim to be the only person who can assist, or that other chiropractors are not able to do what you do, or that you have specialized training that makes you somehow better than they are. With respect to specialist titles, that aspect is not governed by the Act, but is an issue which the profession is exploring.
- Please remember that the medical profession, osteopaths and physiotherapists are all permitted under their respective acts to perform spinal manipulative therapy, so do not claim the territory as your own.
- If you use the title "Doctor" in any literature, including stationery, make sure that you qualify it with the title Chiropractor. Some Registrants have run foul of the AMA for creating the impression, unintentionally or otherwise, of being a "doctor" rather than a "Chiropractor" e.g. "Confessions of a Doctor ...".
- All offers of discounted fees must be clearly understood. The use of the term "free x-rays" is potentially mis-leading unless you personally take, process and read the films. X-ray procedures carried out in radiodiagnostic clinics under Medicare, are essentially "free" and therefore should not appear to be part of the discount.

Information and Contacts

If you are unsure or require further information on any topic, please contact the Registrar on:

Telephone (03) 9639 8652

Facsimile (03) 9639 8653

The Board has a home page on the Internet, the address is:

chiroreg.vic.gov.au

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Mr Michael Brett Young
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Non chiropractor

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Non chiropractor

- Ensure that all pre-paid contracts are properly understood by the patient, with properly documented “out” clauses and an explanation of the calculation of refunds.

In essence, the principal guideline under the Act, with respect to Advertising, is that material should not be: -

- False
- Misleading or
- Deceptive

The Board is not, and will not be, the arbiter of taste, however, we would be remiss if we did not comment that some material that we have seen has been tasteless and tacky, and borders on lowering the expected standards of professionalism.

If you insist on writing material yourself, have it vetted by your legal representative. Check your references for accuracy and note them, this alone will ensure less likelihood of challenge. The professional bodies have a wealth of advertising material available, so make use of that resource.

Complaints made to the Board

The Board is required by the Act to process all complaints it receives, attempts are made to test the veracity of these before proceedings of any kind are undertaken. Where possible, the majority are dealt with “in house”, and only the more serious ones ever reach the “Formal” level.

Processing, whilst fast-tracked as much as possible, is none-the-less a time consuming process, and depends upon the speed of response by the Practitioner, the time taken by investigators to perform their task and to report back, and last, but by no means least, the time taken by legal counsel. Add to this the bringing together of all parties, witnesses, expert witnesses, availability of Panel members and legal counsel and availability of Hearing Rooms, all this can add up to a number of months.

The Board does not take these matters lightly as there are considerable costs involved, paid for through registration fees.

A summary of cases over the past 12 months is listed below.

Case 1

Chiropractor "A" was subject to the following allegations:

- Exaggerated or inappropriately described the condition of a patient.
- "Overserviced" the patient by recommending or undertaking treatment, which was inappropriate, too frequent, excessive or unnecessary.
- Recommended or undertook treatment which was inappropriate or inadequate.
- Failed to confirm the diagnosis or the patient's condition by way of x-ray or similar or the obtaining of a second opinion.
- Recommended or undertook treatment which led to additional problems being experienced by the patient or a deterioration in the condition in which the patient presented to the Chiropractor.
- Failed to prepare and make treatment/patient records, which were adequate, accurate and complete.
- Response letters providing an explanation in relation to the complaints of the patient to the Health Services Commissioner and the Chiropractors Registration Board of Victoria were not accurate or complete and did not correspond with the contents of the patient/treatment records in relation to the patient.

In this matter the Panel brought down the following Findings:-

- As the Chiropractor had not adequately examined the Patient, the Practitioner was not in a position to determine the extent of the Patient's condition, and hence did not exaggerate or inappropriately describe the Patient's condition.
- Over a sequence of some 24 visits in three months, the Chiropractor failed to take an adequate case history, to fully examine, diagnose or provide a plan of care, and that the lack of use of any outcome measures meant that there was no assessment of progress nor an assessment of the on-going need for care with respect to both frequency and duration of care.
- The Chiropractor maintained a poor case history, examination and working diagnosis, which led to care, being provided which was inappropriate and inadequate.
- Given the nature of the Patient's presenting complaint, a registered chiropractor would have held the view that an x-ray examination was an essential component for a working diagnosis.
- The treatment by the Chiropractor did lead to additional problems or a deterioration in the Patient's condition.
- The Chiropractor's standard of treatment records were less than that required of a registered chiropractor.

- The Chiropractor's clinical notes do not support the statement contained in his letter to the Health Services Commissioner.

With the exception of the first allegation, the Panel found all of the remainder proven.

As a consequence, the Chiropractor received two reprimands, two fines totaling \$3,250, and was required to undergo re-training in the areas of patient management, case history taking, patient examination, diagnosis and management plan, all at the practitioner's expense.

Case 2

Chiropractor "B" was subject to the following allegations:-

- Exaggerated or inappropriately described the extent of a patient's condition.
- Over-serviced the patient by recommending or undertaking treatment which was inappropriate, too frequent, excessive or unnecessary or not reasonably required for the well-being of the patient and involved fees higher than could be justified.
- Recommended or undertook treatment which was inappropriate, inadequate, unnecessary or not reasonably required for the well-being of the patient.
- Made and provided a diagnosis which was wholly or partially incorrect or unjustified, having regard to the age of the patient, the presentation and the symptoms.
- Failed to prepare and make treatment/patient records, which were adequate, accurate and complete.

The Panel found the allegations proven, and imposed the following penalties:-

- A reprimand.
- The practitioner to undertake further training at their own expense, covering ethics, patient record keeping and diagnosis and treatment plans.
- Registration suspended for four months.

Case 3

Chiropractor "C" was alleged to have behaved in an un-professional manner in that he:-

- Involved himself with a female patient in a way, which had connotations of a sexual nature by kissing her and pressing his genital area against her.
- Requested the patient to hug him and embracing her.
- Fondled the patient and had physical contact with her whilst his penis was erect and simulating sexual intercourse with her.

- Had sexual intercourse with the patient on multiple occasions.

The Panel found that all of the allegations were proven and imposed the following penalties:-

- A fine of \$2,000 on each allegation, totaling \$10,000
- Suspension of Registration for a period of one month

Case 4

Chiropractor “D” was alleged to have behaved un-professionally in the following manner:-

- That the practitioner inappropriately diagnosed a patient’s condition or made a diagnosis which was not justified or was wholly or partially incorrect having regard to the age of the patient, which was two months at the time of consultation, the visual presentation and the symptoms explained by the patient’s mother.
- That the practitioner inappropriately or inadequately explained the diagnosis and proposed treatment of the patient to the patient’s parent(s) by exaggerating the seriousness of the patient’s condition, providing written information which was not sufficiently relevant to the patient’s condition and circumstances, indicating the need for the patient to receive more extensive and frequent treatment than was justified in all the circumstances and recommending a treatment regime that was excessive, unjustified and not reasonably required for the patient’s well-being.
- That the practitioner recommended a course of treatment which was excessive and involved attendances by the patient which were more frequent than was justified, was planned in response to practice policies and objectives rather than the individual and changing needs of the patient.
- Was not fully justified or required for the well-being of the patient, was ineffective or did not demonstrate significant benefit to the patient’s well-being and involved fees in accordance with a fee structure which was excessive, unjustified and fixed in response to practice policies and objectives rather than the individual needs of the patient or the financial constraints of the patient’s parents and involved “over-servicing” of the patient.
- Failed to prepare and make treatment/patient records, which were adequate, accurate and comprehensive.

During the course of the Inquiry, the first allegation was withdrawn, and then the practitioner admitted the remaining allegations.

As a consequence, the allegations were found to be proven, and the Panel imposed the following penalties:-

- Fines totaling \$3,000
- Registration suspended for fourteen days
- That the practitioner undertake re-training at their own expense in the areas of patient management, case history taking, patient examination, diagnosis and management plan, with particular reference to children under the age of 12 years.
- That he review the format of literature given to patients be reviewed and that any review to be submitted to the Board for approval within one month.

In the cases described above, the differences in the level of fines reflect the differences in the Panels findings.

In addition to the Formal Hearings conducted by the Board, there were also 15 Informal Hearings, most of which dealt with complaints regarding alleged breaches of the advertising provisions of the Act or inappropriate use of the title "Doctor". Of these, one was dismissed as a commercial dispute, four received reprimands and the remaining ten cases were dismissed.

At the time of writing this Newsletter, there were a further 16 complaints under investigation, at least two of which are likely to result in Formal Hearings.

The message of this newsletter is to adhere to the requirements of the Act and do not become a Board statistic.

Respectfully,

Dr. John Waterhouse DC
PRESIDENT

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