



Issue 19 February 2009

## Dear Registrant

On behalf of the Board, I hope you had an enjoyable Christmas. We wish you and your families a healthy and prosperous New Year.

It was with some regret and reluctance that, just prior to Christmas, I accepted the resignation of our Registrar, Ken Badenoch. Ken's contribution to the effective operation of this Board over the past eight years has been immense and his diligence, dedication and commitment to the day to day administration of the Board's activities is worthy of special acknowledgement. Ken has taken up a position as CEO of the Dental Practitioners Board of Victoria. We wish him well in his new role and I have no doubt he will provide his new employer with same commitment and valuable service that he has afforded this Board over the past years.

On a more positive note I am pleased to advise the profession that Dr. Paul Fisher, Assistant Registrar, has accepted the Board's offer to become the new Registrar. Paul was appointed to the position of Assistant Registrar in 2004 and has proved himself to be a most capable and hard working individual. On behalf of the Board I would like to formally congratulate Paul on his appointment as Registrar and express our confidence that Paul will be an excellent registrar.

I'd also like to take the opportunity to thank Mr Peter Hansen, who has stepped down from his position as a non-practitioner member on the Board to pursue other interests. In his time on the Board, Peter has made a valuable contribution both to the Board and to the Education Standards Committee, and we thank Peter for his efforts. In his stead we welcome back Mr William Burns, who has been appointed to the Board to replace Peter as a non-practitioner member. Bill's experience and acumen will no doubt be an asset to the Board as it was during his previous terms.

### Complaints

Over the past year a total of 14 complaints either required the practitioner to appear before a Professional Standards Panel or were settled by agreement with the Board.

Of these 14 complaints 9 related to breaches of the advertising guidelines and or breaches of the *Health Professions Registration Act 2005*. Three advertising-related offences have been referred to the Magistrates Court. Two practitioners have already appeared before the Magistrates Court and the third case is awaiting a date for hearing.

While it appears some other Boards regularly refer advertising breaches to the Magistrates Court this is the first time, to my knowledge, that this Board has taken this step. However, the Board will continue to adopt this approach, where

### 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](http://chiroreg.vic.gov.au)**

### Board Members

Dr John Reggars  
*President*

Dr Amanda Kimpton  
*Vice President*

Dr Stan Innes  
*Chiropractor*

Dr Paul Wise  
*Chiropractor*

Dr Judy Courtin  
*Chiropractor*

Ms Joanna Devrome  
*Lawyer member*

Mr William Burns  
*Non chiropractor*

Ms Esther Alter  
*Non chiropractor*

Mr Rex Deighton-Smith  
*Non chiropractor*

appropriate, in the future. The Board hopes that the publication of the following details of these cases will serve to underline the seriousness of such breaches and highlight forms of advertising that are clearly in breach of the guidelines, for the guidance of other practitioners.

#### Dr Ben Dorrat

Dr. Ben Dorrat was found guilty in the Melbourne Magistrates Court on 10th December 2008 on a total of ten charges that included the use of testimonials, misleading and deceptive advertising and creating an unreasonable expectation of the benefits of treatment. Dr. Dorrat pleaded guilty to all charges and was fined \$2500 and ordered to pay \$2500 towards the Board's legal costs.

Some examples of the false and misleading advertising heard by the Court included: advertising that chiropractic would boost the immune system, when this has never been clinically proven; claiming that chiropractic could cure leukaemia; and publishing before and after pictures of a patient without stating whether or not the person was a patient of Dr. Dorrat, and with the suggestion that other patients may expect similar results.

In his findings, Magistrate Fitzgerald stated that he did not consider the use of testimonials, misleading and deceptive advertising and creating an unreasonable expectation to be "at the lower end of the scale" of offences and that in other circumstances he might have imposed a much higher fine. Magistrate Fitzgerald also stated that there was a great need to look beyond Mr. Dorrat's individual case and focus on the need to protect the public.

#### Dr Ian Deitch

Dr. Ian Dietch was found guilty in the Heidelberg Magistrates Court on 8th January 2009 of various breaches of the Act. The charges related to advertising that was considered to be misleading and deceptive, engendering fear, creating an unrealistic expectation of beneficial treatment and indirectly encouraging indiscriminate or unnecessary use of chiropractic services with the aim of generating work/business for the defendant. Dr. Dietch pleaded guilty to all charges and was fined \$5000 and ordered to pay \$2500 towards the Board's legal costs.

Examples of the advertisements that were considered misleading or deceptive by the court included phrases such as, "5 out of 6 Australians will die due to diseases that are totally preventable" and "... why do so many people end up with poor health, degenerative diseases, cardiac diseases or worse? The answer is simple: the body was unable to do the very job it was designed to do - HEAL and REPAIR... the cause of this, most of the time is due to misalignments (subluxations) of the spine."

The Board also warned a number of practitioners during 2008 with regard to non-compliant press and in-house advertising. It appears that some of these practitioners had bought

commercially produced advertising packages and wrongly believed that these advertisements had been approved by this Board or that, because they were endorsed by some professional group or permitted in another jurisdiction, they would be permitted in Victoria. It is the responsibility of the practitioner to ensure that their advertising complies with both the *Health Professions Registration Act 2005* and the Board's guidelines.

Many of the recent advertising complaints relate to the use of testimonials. Section 94 of the *Health Professions Registration Act 2005* clearly states that:

*A person must not advertise a regulated health service or a business providing regulated health services in a manner which;*

- *refers to, uses or quotes from testimonials or purported testimonials' or*
- *creates an unreasonable expectation of beneficial treatment.*

In their latest newsletter the Chinese Medicine Registration Board included some excellent explanations as to why testimonials have no place in health care.

- Testimonials are inherently misleading or deceptive, in that they never advertise a negative or neutral effect of treatment, relying only on positive outcomes.
- A testimonial may give false hope, as the outcome of the same treatment will often differ when provided to different people;
- A testimonial might be provided with ulterior motive as the testimonial might be provided by someone who receives inducement or financial reward.
- A testimonial can create prejudice towards other practitioners as the public may be lead to believe that one practitioner obtains better health outcomes for his patients than his peers.
- False testimonials, as when the person providing the testimonial is fictitious, are necessarily misleading and deceptive.

The Board has seen several cases in which a practitioner states that he or she became a chiropractor because of a miracle cure they received when undergoing chiropractic treatment. Whether these statements are factual or false is not at issue. The fact that the definition of a testimonial incorporates a self-testimonial, means that such advertising necessarily contravenes s94 of the *Health Professions Registration Act 2005*. The underlying concern with this kind of testimonial is that the general public may be misled into believing that they too will experience the same miracle cure.

The legislation and the Board's guidelines are quite clear on what is and what is not acceptable advertising. I remind practitioners that revised draft Advertising Guidelines were posted on the Board's website for comment in September 2008. The consultation period for

these guidelines has now concluded and the profession will be advised of the publication of the revised guidelines once the Board has considered the consultation comments and responded accordingly. In the interim, the current guidelines are still in effect. I would encourage all practitioners to familiarise themselves with both the current and proposed guidelines in order to avoid the risk of disciplinary action.

### **Guidelines**

As stated in the September Newsletter, the following guidelines have been published for comment on the Board's website:

Advertising  
Chiropractic Care of Children  
Appropriate Duties for Support Staff  
Visiting Lecturers  
Radiation Safety and Diagnostic Imaging  
Surface Electromyography

The Board has also recently formulated a set of "Guidelines for Consultation", which have also been published on the Board's website. These guidelines clearly set out the process under which the Board will consult with stakeholders, government and other interested parties prior to the formalisation of any Standards of Practice Codes and Guidelines.

In accordance with the consultation process for the introduction of guidelines, as per s119 of the *Health Professions Registration Act 2005* and the Board's own guidelines, all submissions received in relation to the above guidelines are currently being reviewed and it is hoped that finalised versions of these draft guidelines will be published on the Board's website in late February. All practitioners will be advised via a separate Newsletter when this occurs

### **Research Fund**

On behalf of the Board I am pleased to advise that the Board has recently decided to establish a research fund under which chiropractic researchers may apply for a research grant of up to \$200K. The exact details of the administration of this fund are yet to be finalised but, in accordance with s118 of the *Health Professions Registration Act 2005*, the Board will consider funding research projects that are intended to „improve a practitioner's ability to practise and a student's ability to undertake clinical training'. In this regard applications for funding which address the Board's overarching principle of setting standards that protect the public will be given priority.

The Board hopes to publicly call for applications for research grant funding in the near future and more details on the proposed grant process will be published in a subsequent Newsletter.

Best wishes for 2009

John W Reggars D.C., M.Chiro.Sc.  
PRESIDENT  
On behalf of the Board.

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