



Issue 15 May 2007

Dear Registrant

Much has been happening over the past month in preparation for the introduction of the new Health Professions Registration Act 2005 on 1st July 2007. The Board's Registrar, Ken Badenoch, and Assistant Registrar, Paul Fisher, have been working feverishly to ensure that the implementation of the new Act occurs as a smooth transition, and the Board extends its heartfelt thanks to Ken and Paul for their tireless efforts in achieving this goal.

REGISTRATION FEES

First the good news. Through good fiscal management, and the fact that the Board was successful in recovering some of the costs it incurred in the recent VCAT appeal, the Board's reserve funds are now at a level where a reduction in Registration Fees is possible.

The new Registration Fees for 2007-08 will be:

Initial Registration including Application Fee	\$400
Annual Renewal Fee	\$350
Locum Registration Fee	\$235
Restoration to the Register	\$150
Late Registration Fee	\$150

THE HEALTH PROFESSIONS ACT 2005

Application for Registration

Under the new Act the application process for Initial Registration and Renewal of Registration has become somewhat complex and time consuming, with both forms involving some 9 pages, including explanatory notes. The new forms include declarations by the applicant relating to Fitness to Practice, Professional Indemnity Insurance and consent to obtain a Criminal History Record Check. The new Act will also require each applicant to provide '100 Points of Identification'. This process is the same as that required for an individual to open a bank account, and includes providing the Board with copies of such documents such as a current Passport, Birth Certificate, Drivers Licence etc. Importantly, each application, whether it is for Initial Registration or Renewal of Registration, must be accompanied by "Certified Copies" of all required documents. The registration forms include explanatory notes regarding what is a certified copy and who is authorised to certify a document as a true copy, as well as what is required to obtain 100 points of identification and how to complete the Consent to a Criminal History Check.

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

Board Members

Dr John Reggars
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Dr Robert Cathie D.C.
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Dr Bruce Ellis
Chiropractor

Ms Michelle Ehrlich
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Mr Peter Hansen FAICD
Non chiropractor

Ms Esther Alter
Non chiropractor

Complaints

The new Act broadly divides offences into either Unprofessional Conduct or Professional Misconduct:

1. Unprofessional Conduct relates to offences such as the provision of health services which are of a lesser standard than expected by the public and the practitioner's peers, over servicing, breaches of advertising regulations or guidelines, failing to act as a health practitioner when required to do so under an Act and the finding of guilt of an offence which would compromise the practitioner's suitability to practice.
2. Professional Misconduct relates to offences where the conduct of the practitioner involves a substantial, or consistent, failure to reach or maintain a reasonable standard of competence. Under this category a practitioner can also be prosecuted if he is deemed to be not of good character or otherwise not a fit and proper person to engage in the practice of that health profession.

After a complaint is received by the Board, an Investigations Committee determines whether the complaint has substance or not. If it is determined that the complaint has substance the Investigations Committee may recommend that the practitioner be referred to a Health Panel, a Professional Standards Panel (PSP) or directly to VCAT for a hearing.

Penalties

In general, more serious offences will be referred to VCAT, but the PSP may, if the practitioner is found guilty, either caution or reprimand the practitioner, impose conditions on their registration, require the practitioner to alter the way he practises or require the practitioner to undergo further education. A Health Panel, in addition to the options available to the PSP, may suspend the practitioner's registration, require the practitioner to enter into an agreement with the Board, undergo counselling, work under supervision of another practitioner or attend another health practitioner for treatment. In the case of more serious offences VCAT, among other options, can fine the practitioner not more than \$50,000 and cancel their registration.

ADVERTISING

It appears that regardless of the number of times practitioners have been advised as to what is appropriate advertising under the Act and the Board's Guidelines, we are still receiving numerous complaints about inappropriate advertising. In fact at the March Board meeting five new complaints were received and all related to advertising breaches. The Board has therefore decided that random practice audits will be conducted by a Board appointed investigator. Practitioners who undergo an audit will be asked to provide copies of all their advertising material including patient handouts and other educational material in order to determine whether it complies with the Act and the Board's Guidelines. The Board will also examine Websites to see if they comply with the regulations

The Board recognises that the majority of inappropriate advertising material is often supplied in pro-forma kits by commercial chiropractic marketing and management companies. However, it is the responsibility of each practitioner to check to see whether such material complies with the Board's regulations and failure to do so may result in disciplinary action by the Board.

INFORMED CONSENT

The Board's requirement for practitioners to obtain Informed Consent from their patients prior to any treatment is currently outlined within the Code of Professional Conduct Guidelines and the Record Keeping Guidelines. However, because of the importance of this aspect of practice the Board has now issued a specific guideline on Informed Consent.

For your information I have included a full text copy this new guideline but like all the Board's formalised guidelines they are available for viewing via the Board's Website. www.chiroreg.vic.gov.au

CHIROPRACTORS REGISTRATION BOARD OF VICTORIA
STANDARDS OF PRACTICE GUIDELINES

INFORMED CONSENT

March 2007

1. INTRODUCTION

The purpose of these guidelines is to inform and remind all registered practitioners of their obligation to obtain informed consent from their patients prior to examination and or treatment. This is founded in each person's right to make informed decisions about what is to be done to their own body and is covered by the obligation of this Board to minimize the risk to which the public is exposed.

This document is not intended to be a substitute for specific legal advice on this issue.

2. GENERAL COMMENTS

Whilst there are several types of consent it is suggested that informed consent be obtained for both examination and treatment procedures. Informed implied consent may be satisfactory for examination purposes but explicit informed consent is essential before treatment procedures commence.

Since *Rogers v Whitaker*¹, the legally complex issue of informed consent has become increasingly important to health care practitioners. Informed consent is where the patient consents to care with a knowledge and understanding of their diagnosis, the proposed care and the material risks associated with that care, other treatment options and the possible consequences of no care at all.

The following points (in italics) emerged from the South Australian case *F v R*² as "the complex of factors" upon which depended "the amount of information or advice which a careful and responsible doctor would disclose."

In the *Roger's* case, the High Court agreed that this complex of factors must be considered in deciding whether to disclose information of risk in any procedure. Further, the High Court stated that "a risk is material if, in the circumstances of the particular case, a reasonable person in the patient's position, if warned of the risk, would be likely to attach significance to it or if the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it."

- *The nature of the matter to be disclosed*-More likely and more serious harms require disclosure.
- *The nature of the proposed procedure*- Complex interventions require more information, as do procedures where the patient has no illness.
- *The patient's desire for information*- Patients who ask questions and make known their desire for information should be accommodated.
- *The temperament and health of the patient*- Anxious patients and patients with health problems or other relevant circumstances that make a risk more important for them (such as their medical condition or occupation) may need more information.
- *The general surrounding circumstances*- The patient's specific circumstances and the type of care proposed may require other information to be disclosed.

It is important to understand that the obligation to obtain informed consent may not be delegated i.e. the practitioner must personally provide information and be satisfied that it is understood and that informed consent is being provided.

1. (1992) 175 CLR 479

2. (1983) 33 SASR 189

3. GUIDELINES

As the primary aim of Informed Consent is to allow a person to be informed in matters relating to their health prior to freely making a decision about their care, the following factors should be considered in addition to the disclosure of material risks:

- All information provided to the patient should be reasonable and accurate, and if required substantiated by a reasonable body of knowledge.
- Any consent should be freely given. There should be no coercion or pressure exerted in an attempt to gain consent.
- A reasonable diagnosis or working hypothesis based on a proper history and examination should be communicated to the patient.
- An explanation of the treatment recommended, its likely duration, expected benefits and cost should also be communicated to the patient.
- Any alternative(s) to the proposed care and their relative risks/benefits and the likely consequences of no care
- The patient's right to refuse consent, seek clarification or obtain a second opinion.
- The ability of the patient to properly understand the information. This entails a consideration of how the information is presented and the capabilities of the patient (eg age, language difficulties, learning difficulties).
- The provision for consent by a parent or guardian in cases when the patient is unable to give proper consent themselves. A young person may give or refuse to give consent if they are sufficiently competent. Competence is not governed by age alone, as assessment of their maturity and cognitive ability must also be taken into consideration.
- Although a written form of consent is preferred, verbal consent is sufficient if all of the same issues are covered and it is recorded in detail in the patient's treatment record. It is strongly recommended that any record of consent is witnessed by both practitioner and patient.
- The informed consent obtained relates to the proposed treatment. A change in treatment mode would require further consent.
- For more detail and further advice about informed consent it is recommended that you obtain specific legal advice and contact your professional body and your insurer to discuss any additional recommendations and requirements.

I hope you find the material contained in this Newsletter informative and useful and I welcome any suggestions any registrant has regarding specific issues which they feel should be included in future Newsletters.

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President

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