



Issue 13 September 2006

## Dear Registrant

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### **New Act**

As alluded to in previous Newsletters, *The Health Professions Registration Act 2005* will come into force on the 1st July, 2007, and will cover all registered Health Service Providers under the one Act, replacing all of the currently existing Acts.

The Board is currently undertaking an in depth review of the Act, in order to determine exactly what impact the changes will have on the profession and Board. However, some of the new provisions include: the registration of Students, compulsory Professional Indemnity Insurance, recommendations regarding Continuing Professional Development, all Formal Hearings into Unprofessional Conduct to be heard by VCAT, Informal Inquiry scope extended, Boards empowered to investigate a registrant's ability to practice, and an extended requirement for registrants to provide extensive information each time they renew their registration.

Additionally, the Minister's powers regarding course accreditation and the issuing of guidelines have been expanded.

Once the Board's deliberations on the ramifications of the new Act have been completed we will issue a simplified guide to all registered practitioners.

### **Change of Address**

Once again, all practitioners are reminded that they are obliged under the Act to inform the Board of any change of address within fourteen days of the change being made. In this context "change of address" relates not only to the registrant's practice address but also their residential address. Failure to notify the Board within the prescribed period exposes the practitioner to an appearance in the Magistrates Court, and the possibility of a significant fine.

### **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 Robert Cathie D.C.  
*Chiropractor*

Dr Bruce Ellis  
*Chiropractor*

Mr Don O'Halloran  
*Lawyer member*

Mr William Burns  
*Non chiropractor*

Ms Esther Alter  
*Non chiropractor*

### **Prosecutions and Complaints.**

Whilst the number of complaints received by the Board is less than in some recent years, we continue to receive complaints regarding over-servicing and inappropriate advertising.

One Formal Hearing, which occurred last year and has been the subject of a VCAT Appeal, is of particular importance and I would urge all registrants to read the full transcript of the VCAT Decision, as this decision may have important ramifications for certain wellness based practitioners who utilise “Contracts of Care”. . <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/vic/VCAT/2006/436.html?query=pearson-gills>

The Formal Hearing, as published in the Victorian Government Gazette, (No. G28 Thursday 14th July 2005), [www.gazette.vic.gov.au](http://www.gazette.vic.gov.au) related to Knox chiropractor, Dr. Mark Pearson-Gills. As a result of the hearing, Dr. Pearson-Gills was found guilty in July 2005 of unprofessional conduct. The Panel heard that Dr. Pearson-Gills recommended, to the mother of a 6 ½ week old infant, that the child required some 60 visits over 48 weeks to address spinal subluxations, allegedly detected by Dr. Pearson-Gills, in his physical and thermographic examinations of the infant.

The Panel found that “Dr. Pearson-Gills recommended a course of care (including treatment or consultations) which, having regard to the child’s condition, was not necessary, appropriate or in the interests of the patient, was more frequent than was justified, was not required for the well being of the patient and did not have regard to the individual needs of the patient.” and that “Dr. Pearson-Gills recommended and tried to induce the mother.... to enter into a payment, care, treatment and consultation regime, the characteristics of which were not appropriate, fair or in the interests of the patient or her mother.”

The Panel, among its determinations, recommended Dr. Pearson-Gills undergo further education, including a mentoring component, at his expense with a body approved by the Chiropractors Registration Board of Victoria (CRBOV) and that the registration of Dr. Pearson-Gills be suspended for a period of four months.

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Dr. Pearson-Gills lodged an appeal against the Panel's decision and the case was heard by Mr. Robert Davis, Senior Member of VCAT on 22nd March 2006, and lasted for three and a half weeks.

Mr. Davis found Dr. Pearson-Gills guilty on the charge of Unprofessional Conduct and increased the Board's penalties in that he:

- Suspended Dr. Pearson-Gills' registration for 10 months
- Placed restrictions on Dr. Pearson-Gills registration in that he is required to undergo further education at his expense. Such education to include patient management, case history taking, patient examinations, diagnosis and management plan and professional ethics with particular reference to children under 12 years of age.
- Required Dr. Pearson-Gills to undergo a mentoring component in regard to his treatment of children under the age of twelve months.

In both Board's deliberations, and those of Mr. Davis, Dr. Pearson-Gills previous appearance at the Board in December 2002 was taken into account. On that occasion Dr. Pearson-Gills was found to have engaged in unprofessional conduct in November 2001 in that, among other determinations, he inappropriately or inadequately explained his diagnosis and proposed treatment of the patient to the patient's parents, exaggerated the seriousness of the patient's condition, indicated the need for the patient to receive more extensive and frequent treatment than was justified. In that case Dr. Pearson-Gills admitted to all the allegations and was fined \$3000, had his registration suspended for fourteen days and was directed to undergo further education at his own expense.

Shortly after Mr. Davis delivered his finding Dr. Pearson-Gills appealed that decision to the Supreme Court of Victoria. Dr. Pearson-Gills has since withdrawn this appeal and the penalties imposed by Mr. Davis are now in effect.

The costs incurred by the Board for this appeal and subsequent appeal to the Supreme Court amount to in excess \$130,000. The Board is currently attempting to recover these costs from Dr. Pearson-Gills.

## Advertising

As mentioned above, advertising continues to be a major area of concern for the public and therefore the Board. Issues relating to advertising are the source of the greatest number of complaints processed by the Board.

In a recent spate of Informal Inquiries, largely to do with false and misleading advertising, the majority of practitioners were found to have breached the advertising provisions of the Act, and were reprimanded and required to undertake further education at their expense.

All practitioners are reminded to check the provisions of the Act and the Board's advertising guidelines before undertaking any advertising. This is particularly important in cases where practitioners purchase packages designed to increase the level of new patients, as these packages may contain elements which place the practitioner, unwittingly, in breach of the Act.

Whilst there is no law against bad taste, the use of some forms of advertising, which are by-and-large considered to be in poor taste does nothing to enhance the reputation of the profession. Admittedly, there is a fine line between "bad taste" and when the advertisement becomes "false and misleading", in terms of the Act, so caution needs to be observed by practitioners. More often than not, the public views some of the advertisements used by some practitioners as being somewhat akin to snake oil salesmanship, and this reflects badly on the profession as a whole.

Consider carefully the sort of advertising that you choose to use and to avoid any complaints consult both the Act and the Board's guidelines before proceeding.

### **Board Address:**

Level 17  
150 Lonsdale Street  
Melbourne 3000

### **Mailing address:**

GPO Box 4831VV  
Melbourne 3001

### **Telephone**

(03) 9639 8652

### **Facsimile**

(03) 9639 8653

### **Email**

[chirobd@chiroreg.vic.gov.au](mailto:chirobd@chiroreg.vic.gov.au)

### **Website**

[chiroreg.vic.gov.au](http://chiroreg.vic.gov.au)