CHIROPRACTIC BOARD OF AUSTRALIA news

Issue 13 – November 2016

Chiropractic Board of Australia

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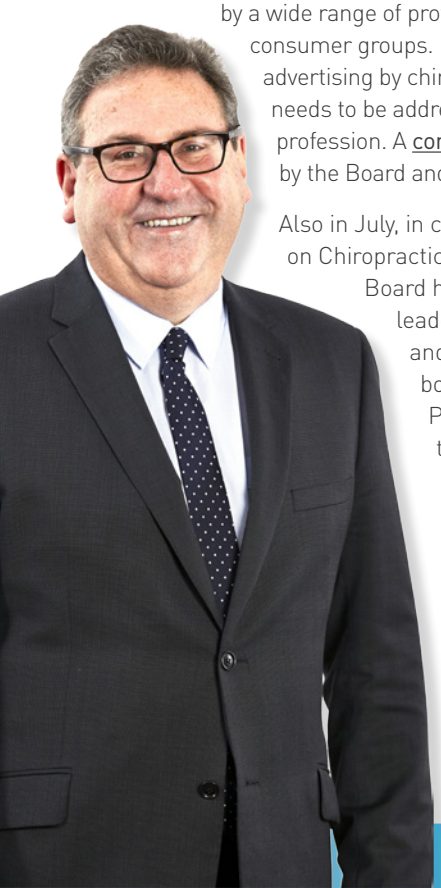
## Note from the Chair

As the deadline for renewals moves closer, I feel it is imperative to remind practitioners of the importance of their renewal obligations. Most important is the requirement that practitioners declare honestly about their compliance with the National Board's registration standards. Incorrect or false declatrations are a very serious matter and may result in disciplinary action and/or affect a practitioner's ability to be registered. I urge all practitioners to carefully review their requirements before completing their renewal so that they are well informed when making their declaration.

The Board is committed to broad community and stakeholder engagement as part of its work. During July the Board hosted a forum on advertising by chiropractors. This forum was attended by a wide range of professional, community and consumer groups. It was generally agreed that advertising by chiropractors is a problem that still needs to be addressed by both the Board and the profession. A communiqué has been published by the Board and AHPRA about this event.



Also in July, in conjunction with the Council on Chiropractic Education Australasia, the Board hosted a forum workshop for the leaders of the professional bodies and educational programs from both Australia and New Zealand. Professor Charlotte Rees was the keynote presenter at the forum and her presentation on the hidden curriculum of professionalism set the platform for an informative day.

The Board is also seeking to highlight some important ethical and professional issues that come to its notice through the work of its Registration, Notification and Compliance Committee (the RNCC). These insights are provided as a learning aid and aim to provide practitioners with a better understanding of their ethical and professional obligations.

Thank you to everyone who has participated this year in the Board's work and to all those whose everyday work underpins and upholds the confidence and trust that the Australian community places in the chiropractic profession. Wishing you all a peaceful and happy holiday season.

**Dr Wayne Minter AM**
Chiropractor
Chair, Chiropractic Board of Australia

## Registration renewal is now open

Practitioners will have received their first advice to renew their registration by 30 November 2016. Under the National Law[1], chiropractors are responsible for renewing their registration on time each year. Renewal applications received within a month after the expiry date will incur a late fee.

Those who do not renew their registration within one month of their registration expiry date must be removed from the Register of Chiropractors. Their registration will lapse and they will not be able to practise or work as a chiropractor in Australia until a new application for registration is approved.

A series of reminders to renew are being sent to chiropractors by the Australian Health Practitioner Regulation Agency (AHPRA), on behalf of the Board. The email reminders include a link to online renewal.

The Board encourages you to renew online and to make sure that AHPRA has your current contact information so that you receive future email and hard copy reminders to renew. You can watch a new video explaining how to renew online, which is available on the Practitioners Services page of the AHPRA website.

[1] The Health Practitioner Regulation National Law, as in force in each state and territory.

## Compliance with registration standards

As part of registration renewal, you must declare whether or not you have complied with a number of the mandatory registration standards including criminal history, professional indemnity insurance (PII) arrangements , continuing professional development (CPD) and recency of practice.

The CPD registration standard requires all practising chiropractors to complete at least 25 hours of CPD per annual registration period. At least 50 per cent of these hours (a minimum of 12.5 hours) must be formal learning activities. The balance may be formal or informal learning activities. All practitioners must hold a current Senior First Aid (Level 2) certificate or equivalent. First aid certificates need to be renewed every three years to remain current.

To get maximum benefit, it is important to do your CPD in a planned and purposeful manner. It is helpful to start planning your CPD now to avoid a late rush before you are due to renew your registration in November. Please refer to the registration standards and codes and guidelines on the Board's website for advice about what constitutes formal and informal learning.

Audits of compliance with registration standards, including the CPD registration standard, are conducted throughout the year. You need to keep CPD documentation for five years.

To support practitioners during the renewal period, the Board is publishing vodcasts on revised registration standards. The first vodcast is now available on the Board's website and introduces the revised CPD registration standard.

### Incorrect or false declarations at renewal

As noted above, practitioners who are seeking renewal under the National Law are required to make declarations about a range of matters to the National Board, particularly compliance with registration standards. When a practitioner makes a false declaration when renewing, the Board may:

- decide whether or not to reject the application under Part 7 – section 74, 82(c)(ii) or 112 after a show cause process (section 81, 111), **and/or**
- decide whether or not to take disciplinary action under Part 8 of the National Law.

## Fees for 2016/17

The registration fees for the 2016/2017 period have been set by the Board.

The fee has been set at $566, limiting the increase to indexation. It will apply from 1 September 2016 and cover the registration period for most practitioners of 1 December 2016 to 30 November 2017.

The fee for practitioners whose principal place of practice is NSW is $417.

## Graduate applications

AHPRA is calling for online applications from students who are in their final year of an approved program of study. Students due to complete study at the end of 2016 are urged to apply for registration before completing their course.

An email reminder to apply early and online will be sent by AHPRA on behalf of the Board to final-year students on the Student Register. Applications can also be made by completing a paper application form.

Chiropractic students are encouraged to read the information on AHPRA's website under Graduate applications. Graduates must meet the Board's registration standards and need to be a registered chiropractor before they start practising.

## Dry needling

A number of National Boards have noted a few notifications related to the use of dry needling as a therapeutic modality. There is some risk of pneumothorax arising from the use of dry needling or acupuncture needles, particularly around the thoracic and cervicothoracic areas (lung apex). While the incidence of such events is still rare, practitioners who are using such needle-based therapies should be:

- aware of this risk and take appropriate steps to prevent its occurrence in the first instance, and
- able to identify and refer patients with this adverse event for urgent medical care.

## Evidence appraisal for advertising claims

Registered practitioners must not advertise health benefits of their services when there is not acceptable evidence that these benefits can be achieved. Also, any evidence should not be contradicted by a higher level of evidence.

Under the National Law, the evidence required for therapeutic claims in advertising and the evidence to be used in clinical decision-making about particular treatments is different. A higher standard of evidence is required to support claims made in advertising regulated health services. This is because in advertising, a statement may be easily misinterpreted or taken out of context and then become misleading. It is the overall impression created by the advertising that will be judged and, as such, it is possible for statements that are technically true to be misleading or deceptive in certain contexts.

AHPRA is responsible for prosecuting breaches of the advertising requirements in the National Law. This means that AHPRA, with National Boards, needs to decide objectively whether there has been a breach that should be prosecuted.

There are many aspects that are taken into consideration when evidence is reviewed and each claim is assessed on its merits alongside the evidence presented to support it.

Relevant issues we consider when assessing whether there is acceptable evidence for therapeutic claims include:

- Is the evidence relied on objective and based on accepted principles of good research? Is the evidence from a reputable source? For example, a peer-reviewed journal.
- Do the studies used provide clear evidence for the therapeutic claims made or are they one of a number of possible explanations for treatment outcomes?
- Have the results of the study been replicated? Results consistent across multiple studies, replicated on independent populations, are more likely to be sound.
- Has the evidence been contradicted by more objective, higher quality studies? This type of evidence is not acceptable.

When considering whether advertising claims are misleading or deceptive or create an unreasonable expectation of beneficial treatment, we will consider the advertising as a whole from the perspective of a member of the public.

The following types of studies will generally not be considered acceptable evidence for advertising claims:

- studies involving no human subjects
- before and after studies with little or no control or reference group
- self-assessment studies
- anecdotal evidence based on observations in practice
- outcome studies or audits, unless bias or other factors that may influence the results are carefully controlled, and
- studies that are not generalisable to the advertising audience.

The evidence base for clinical practice is constantly developing so it is important to make sure that the evidence you rely on is current.

## Issues in notifications

The National Board delegates its powers to consider registration and notification matters to its Registration, Notification and Compliance Committee (the RNCC). This committee meets monthly to consider notifications (complaints) directed at chiropractors which have been received by AHPRA.

In an effort to promote safer and more effective chiropractic care within the profession, and to inform the wider community generally, the Board considers it appropriate to provide illustrative examples of issues which have commonly been dealt with by the RNCC to assist practitioners in better understanding their ethical and professional obligations.

In dealing with notifications generally, the RNCC considers deviation from required professional standards and conduct expected of practitioners to be serious, and will take necessary, proportionate and risk- appropriate regulatory and/or disciplinary action against practitioners.

### Issue 1: Failure to notify of criminal charges

#### Background

All registered health practitioners have obligations under the law to advise the National Board of certain events if they occur, within seven days of them occurring. This requirement exists in the law so that the Board has early notice of events that might require the Board to take action to ensure the public are protected and the public have confidence in the profession.

A failure to advise the Board of these events can compound issues for a practitioner, so practitioners should not wait until registration renewal time to inform the Board.

#### Requirements

Section 130 of the National Law requires practitioners to advise the Board within seven days about a number of matters; the more common ones are if:

- the practitioner is charged, whether in a participating jurisdiction or elsewhere, with an offence punishable by 12 months imprisonment or more
- the practitioner is convicted of or the subject of a finding of guilt for an offence, whether in a participating jurisdiction or elsewhere, punishable by imprisonment
- appropriate professional indemnity insurance arrangements are no longer in place in relation to the practitioner's practice of the profession
- the practitioner's billing privileges are withdrawn or restricted under the *Medicare Australia Act 1973* of the Commonwealth because of the practitioner's conduct, professional performance or health, and/or
- the practitioner's registration under the law of another country that provides for the registration of health practitioners is suspended or cancelled or made subject to a condition or another restriction.

#### Things to note

If a practitioner was charged with a criminal offence where one of the potential punishments under the criminal law could be a custodial sentence of one year or more, the practitioner must inform the Board within seven days. If the practitioner failed to notify the Board of these charges at the time but instead declared the charges several months later, then the practitioner has failed to comply with their obligations under the National Law.

Failure to comply with the requirements of the National Law is a serious matter that can become a *ground for a notification about the practitioner*. There are a number of possible outcomes in such cases, ranging from cautions to the practitioner or imposing conditions on the practitioner's registration right up to referral to a tribunal for disciplinary proceedings where the practitioner, among other things, may be suspended or have their registration cancelled.

The Board may also take immediate action to ensure the health and safety of the public while a matter is being investigated, which may result in temporary suspension or conditions upon the practice of a practitioner.

Some of the things the Board has considered relevant in its management of cases like this have included:

- the extent to which the practitioner deliberately set out to deceive the Board
- the nature of the criminal charges themselves
- admissions of guilt and early cooperation in any investigation by the practitioner by the police or by the Board, and
- any risk this practitioner poses to the health and safety of the public or any concern that the allegation might cause the public to lose confidence in the profession.

Both the charge itself and the failure of a practitioner to inform the Board of the charge early could result in a finding that the practitioner is not a suitable person to hold registration in the profession.

## Issue 2: Communication

### Background

Good practice includes good communication. The National Health and Medical Research Council[2] has published advice for practitioners about good communication with patients. It includes advice that good communication:

- builds trust between patient and health practitioner
- may help the patient disclose information
- enhances patient satisfaction
- involves the patient more fully in health decision-making
- helps the patient make better health decisions
- leads to more realistic patient expectations
- produces more effective practice, and
- reduces the risk of errors and mishaps.

These benefits in turn strengthen the professional relationship between patient and practitioner and can contribute to better health outcomes for the patient.

### Requirements

The Code of conduct for chiropractors highlights the importance of good communication in several areas. It states generally that relationships based on openness, trust and good communication (in person, written and electronic) will enable health practitioners to work in partnership with their patients and that effective communication in all forms underpins every aspect of good practice.

In section 3.3 it specially illustrates what are the expected professional behaviours in relation to effective communication. Effective communication involves:

a) listening to patients, asking for and respecting their views about their health and responding to their concerns and preferences

b) awareness of health literacy issues and taking the health literacy of a patient into account and adjusting their communication accordingly

c) encouraging patients to tell the chiropractor about their condition and how it has been managed including any other health advice they have received, any prescription or other medications they have been prescribed and any other therapies they are using

d) informing patients of the nature and relevance of all aspects of their clinical care, including examination and investigations, giving them adequate opportunity to question or refuse interventions and treatment/care

e) discussing with patients their condition and other available healthcare options, including their nature, purpose, possible positive and adverse consequences and limitations and reasonable alternatives wherever they exist

f) endeavouring to confirm that a patient understands what the chiropractor has said

g) ensuring that patients are informed of the material risks associated with any part of a proposed management plan

h) responding to questions from patients and keeping them informed about their clinical progress

i) making sure, wherever practical, that arrangements are made to meet the specific language, cultural and communication needs of patients and being aware of how these needs affect understanding

j) becoming familiar with, and using wherever necessary, appropriately qualified people to help meet the communication needs of patients, including those who require assistance because of their language skills, mental health, or because they are speech, hearing or sight impaired (in such cases practitioners should use trained translators and interpreters rather than family members or staff wherever possible)

k) obtaining consent from the patient to use a person to interpret

l) using social media, e-health and personally controlled electronic health records appropriately, and

m) communicating appropriately with, and providing relevant information to, other stakeholders including members of the treating team where necessary and appropriate, in accordance with applicable privacy requirements.

[2] Available on the National Health and Medical Research Council website.

### Things to note

Poor or inadequate communication appears as an issue in many notifications made to the Board. In some cases it can be the primary cause for a notification because a practitioner did not properly explain something or the practitioner was rude or used inappropriate language. In some cases it can be a secondary issue that becomes apparent during an investigation.

Poor communication not only impacts on the quality and effectiveness of a therapeutic relationship, it has the potential to cause harm and adverse treatment outcomes. Practitioners should be particularly conscious of ensuring there is respectful and appropriate communication with all patients, even those with whom they have good relationships and understanding.

Some of the things commonly taken into consideration in these types of issues include:

- the needs of the patient
- the nature of the outcome or effect of the poor communication
- the likelihood of the poor communication recurring
- past history of similar poor communication
- any underlying reason for the poor communication, and
- insight and understanding by the practitioner.

There are a number of outcomes possible when a notification about poor communication is received by the Board, ranging from cautioning the practitioner to imposing conditions on their registration (including conditions requiring further education).

In some cases a notification might result in a referral to a tribunal where the practitioner, among other things, may be suspended or have their registration cancelled. It is open to the Board to take immediate action to ensure the health and safety of the public while a matter is being investigated, which may result in temporary suspension or conditions upon the practice of a practitioner.

## Snapshot of the profession

The Board publishes quarterly updates of its registration data. The latest update was released in October and covers the period April to June 2016.

There are currently 5,167 registered chiropractors in Australia. Of these, 4,875 have general registration and 292 have non-practising registration. See the table over page for more details.

There are 32 chiropractors endorsed to perform acupuncture, all in Victoria.

For more information, visit the Statistics page on the Board's website.

### Table 1 – Registration type and subtype by principal place of practice (PPP)

| Registration Type | General | Limited (Public Interest) | Non-practising | Total |
|---|---|---|---|---|
| ACT | 64 | 0 | 3 | 67 |
| NSW | 1,669 | 0 | 67 | 1,736 |
| NT | 21 | 0 | 2 | 23 |
| QLD | 795 | 0 | 23 | 818 |
| SA | 357 | 0 | 16 | 373 |
| TAS | 55 | 0 | 2 | 57 |
| VIC | 1,260 | 0 | 68 | 1,328 |
| WA | 588 | 0 | 14 | 602 |
| No PPP | 66 | 0 | 97 | 163 |
| Total | 4,875 | 0 | 292 | 5,167 |

## National Scheme news

### 2015/16 Annual Report now published

The AHPRA and National Boards' Annual Report covering the financial year to 30 June 2016 was tabled in Parliament on Friday 11 November.

The report provides a nationwide snapshot of the work of AHPRA and the National Boards, including the Chiropractic Board of Australia, in implementing the National Registration and Accreditation Scheme (the National Scheme). It also includes board-specific data and highlights a multi-profession approach to risk-based regulation with a clear focus on ensuring that Australians have a safe and competent health workforce.

To view the 2015/16 annual report in full see the 2015/16 annual report website.

### Our recommendations to improve the health complaints management system in Queensland

AHPRA and the National Boards' joint submission to the Queensland Parliamentary Committee's inquiry into the performance of the Queensland Health Ombudsman's (OHO) functions has been published.

The current health service complaints management system has now been in operation in Queensland for just over two years. It was intended to introduce a better system for health complaints management with greater transparency and accountability and improved timeliness in achieving an outcome.

While there are strengths to be found in the current model, there are significant areas that require urgent attention and improvements that cannot be achieved without change.

The Boards and AHPRA have identified key concerns supported by data and case studies:

- serious matters that pose a risk to the public are not being dealt with in a timely or appropriate way by the OHO
- matters that are considered minor by the OHO are closed or not accepted without any consideration by or referral to the Boards and AHPRA
- the current model and its implementation is costing more, using more resources, and is likely to result in increased registration fees for Queensland-based registered health practitioners, and
- the current model presents a conflict of interest for the OHO being both a partner in regulation and having oversight of AHPRA and Boards' performance.

Therefore, in our joint submission, AHPRA and the National Boards recommend that specific changes be made to the model in Queensland.

If our recommendations are acted on, Queenslanders, through the health minister and Queensland Parliament, would be assured that our regulatory expertise and that of the OHO as an ombudsman and health complaints authority, is applied in the best possible way to protect the Queensland public. Our respective resources would be used more effectively as the unnecessary delays and duplication in our roles would be addressed.

To read the full statement including the recommendations, visit AHPRA's website, where you can also download it in PDF.

## AHPRA and National Boards host research summit

AHPRA and the National Boards hosted more than 220 delegates at the 2016 Research Summit when everyone came together in August to talk about the next frontier for developing our partnership's evidence base to improve the way we regulate.

The theme of the summit was *patient safety through risk-based regulation*, and presenters discussed a range of topics. At the heart of the discussion was how to contribute to safer care for patients and health consumers. Also discussed was how data collection and evaluation can help find new and innovative ways to improve regulatory processes for health practitioners and the public.

The inaugural summit provided an opportunity for the exchange of expertise and ideas between regulatory staff, experts in safety and quality in healthcare, health practitioners and leading health and medical researchers.

Mr Paul Shinkfield, AHPRA National Director of Strategy and Research, said there was broad consensus at the end of the summit on key themes and areas for future work. 'The clear desire to form strong partnerships is critical to achieving sustainable and effective outcomes; in how we work in regulation, and how they work in the health service delivery and a range of related sectors,' he said.

Read more in the media release.

## New Service charter published

An updated *Service charter* has been published by AHPRA on its website. The charter sets out the standard of service health practitioners, employers and the public can expect from the work of AHPRA in delivering the National Scheme.

Now a concise one-page document, the updated charter lists the 10 key objectives of AHPRA in providing a professional service while helping to regulate the health professions in the public interest.

# Keep in touch with the Board

- Visit our website for news about the profession and for registration standards, codes, guidelines, policies and fact sheets.
- Lodge an online enquiry form.
- For registration enquiries call 1300 419 495 (from within Australia).
- Address mail correspondence to: Dr Wayne Minter, Chair, Chiropractic Board of Australia, GPO Box 9958, Melbourne VIC 3001.

Chiropractic Board of Australia