



BOARD POLICY

Advertising Policy

1. Introduction

This Policy has been developed to help practitioners in making decisions about advertising their professional services. It is part of the framework that the Chiropractic Board (the Board) uses in considering complaints it receives in the area of advertising.

The Medicines Act 1981, which applies to all registered health practitioners. Section 56 defines “Advertising” as:

“any words whether written, printed or spoken and any pictorial representation or design used or appearing to be used to promote the sale of medicines or medical devices or the use of any method of treatment; and includes any trade circular, any label, and any advertisement in a trade journal.”

Forms of advertising may include but are not limited to:

- All forms of printed, electronic, social and digital media such as online advertising, websites, emails and SMS messaging that are selling or promoting a product or service;
- Public communication using television, radio, motion pictures, newspapers, billboards, books, lists, pictorial representations, designs, mobile communications or displays, the internet or directories and includes business cards, announcement cards, office signs, letterhead, telephone directory listings, professional lists, professional directory listings, and similar professional notices. This would include where chiropractors make comment or provide information on particular products or services such as in media reports, magazine articles or advertorials;
- Material not considered advertising is that which is issued to patients during consultations where such material is designed to provide the patient with clinical or technical information about health conditions or procedures and where the person is afforded sufficient opportunity to discuss and ask questions about the material.
- Medical or therapeutic advertisements are regulated through the Medicines Act and the codes of practice set out by the Advertising Standard Authority (ASA), as well as the Chiropractic Board Code of Ethics (the Code). Both the Medicines Act and the Code place strict limits on medical and therapeutic advertisements by all health practitioners. Chiropractors should make themselves familiar with the Medicines Act, particularly section 58 and the relevant codes.

2. Chiropractic Advertising

All advertising must:

- be presented in a manner that is accurate, balanced and not misleading;
- use plain language;

- facts and statistics must be from a reputable and verifiable source; and
- comply with legislative requirements.

Chiropractors are ultimately responsible for the style and content of all advertising material, and cannot devolve responsibility for the advertising of their services and or products to another party.

A chiropractor shall not advertise any material which relates to the chiropractor's qualifications, practices, treatment or the premises where they practice chiropractic if the material:

- a) potentially breaches the Fair Trading Act 1986. In that the practitioner:
 - i. engages in conduct that is false, misleading or deceptive, or likely to mislead or deceive;
 - ii. claims or implies that any particular chiropractor is superior to any other chiropractor or other health professional or compares the chiropractor's practice with that of any other chiropractor;
 - iii. claims to hold expertise in a field of practice for which the chiropractor does not possess the required skills, knowledge, training or qualifications necessary to practice in that field;
 - iv. claims to be a specialist for example 'Dr John Doe, chiropractor, pediatric specialist';
 - v. falsely claims that they have personal prominence in the practice of chiropractic or the profession; and
 - vi. publishes or causes to be published an advertisement for chiropractic services which indicates that a chiropractor practices at a location unless the chiropractor regularly attends that location in the course of their practice.
- b) is vulgar or sensational;
- c) creates an unjustified expectation of beneficial treatment or unrealistic treatment outcomes;
- d) relates to outcomes without stating that individual results may vary;
- e) is unprofessional or likely to bring the profession into disrepute;
- f) uses testimonials whether from patients or any other person (see section on Medicines Act); and
- g) uses the title "Doctor" or "Dr" without clearly specifying "Doctor of Chiropractic" or "Chiropractor" after his or her name to indicate his or her qualification, if not otherwise immediately and obviously reflected within the context of the advertising.

3. Medicines Act 1981

Regulations relating to the advertisement of all therapeutic services and products in New Zealand are contained in the Medicines Act.

Section 58(1)(a) restricts the publication of advertisements for medical treatment, devices or medicines which are claimed to prevent, cure or

alleviate any disease, or prevent, reduce or terminate any physiological condition listed in Schedule 1, Part 1. Section 58(1)(b) is similar, and restricts the publication of advertisements for medical treatment, devices or medicines which are claimed to prevent, or cure any disease, or prevent or terminate any physiological condition listed in Schedule 1, Part 2 (for full text and Schedules see www.legislation.govt.nz).

This section provides further at Section 58(1)(c) that it is an offence to imply, claim, indicate or suggest that a medicine, treatment or device is a panacea or infallible for any condition or is recommended by an appropriately qualified person or had beneficially affected the health of a particular person or class of persons, whether real or fictitious.

This wording clearly prevents a health practitioner publishing testimonials. However, this does not prohibit “word-of-mouth” recommendations. Section 58(2) provides that breaches of section 58(1)(a), (b), (c) and (d) are offences, but section 58(3) provides that it will be a good defence if claims made under section 58(1)(a) and (b) are true.

In addition to the sanctions under the Medicines Act and the Advertising Standards Codes for breaches of their provisions, the Chiropractic Board would regard a breach of the relevant provisions of the Act and/or the Codes as having the potential to attract disciplinary proceedings under the Health Practitioners Competence Assurance Act 2003.

4. Social Media

Practitioners are increasingly participating in online social media, and this may be perceived as a form of advertising. The use of social media is expanding rapidly. Individuals and organisations are embracing user-generated content, such as social networking, personal websites, discussion forums and message boards, blogs and microblogs. Whether an online activity is able to be viewed by the public or is limited to a specific group of people, chiropractors need to maintain professional standards and be aware of the implications of their actions, as in all professional circumstances. Chiropractors need to be aware that information circulated on social media may end up in the public domain, and remain there, irrespective of the intent at the time of posting. This form of media does have the potential of risk for chiropractors.

Practitioners must be aware of the need to maintain patient confidentiality, the potential for allegations of defamation and the need to maintain appropriate professional boundaries.

Practitioners must:

- Routinely monitor their own social media presence to ensure that the personal and professional information on their own is accurate and appropriate.
- Maintain appropriate boundaries of the patient-chiropractor relationship when interacting with patients online and ensure patient privacy and confidentiality is maintained.
- Consider separating personal and professional content online.
- Recognise that actions online and content posted can negatively affect their reputations among patients and colleagues, and may even have consequences for their chiropractic careers.

- Ensure no online testimonials are posted on their social media sites.
- Obtain patient approval in writing for the use of any personal images or information related to their patients on their social media sites.

5. Use of Images in Advertising

Chiropractors should use any images in their advertising with caution. Images, particularly “before and after” photos, have a significant potential to mislead or deceive, to convey to a member of the public inappropriately high expectations of a successful outcome and to encourage the unnecessary use of services or products. If a chiropractor chooses to use images they must ensure that they:

- Are solely for the purpose of providing accurate and useful information;
- Are used only when the patient has given his or her fully informed written consent; and
- If they are “before and after” images they must also:
 - Have not been altered in any way;
 - Show a realistic portrayal of the outcome that can reasonably and typically be expected;
 - Are consistent with regard to positioning, lighting, camera angle and posture.

6. Promotion of Therapeutic Products

Chiropractors should be aware of and comply with their obligations under the Consumer Guarantees Act 1993, the Fair Trading Act 1986, Medicines Act 1981 and the Codes.

7. Promotion by Inducement

Chiropractors may offer an inducement or similar to health consumers, only when:

- a) the terms and conditions of that offer are clearly and understandably set out; and
- b) the best interests of health consumers are considered when making such an offer; and
- c) any offer does not contravene the Code of Health and Disability Services Consumers’ Rights; and
- d) in offering goods or services, the Chiropractor ensures that the product or service is appropriate for that individual and not based on other considerations;
- e) although strongly discouraged, if Chiropractor’s advertise by means of discount coupons or gift certificates, the Chiropractor must ensure that these do not undermine their relationship with the patient and the informed consent process. In particular, Chiropractor’s must ensure that their coupon or certificate is clear that:

- purchase of the certificate or coupon does not equate to granting informed consent;
- prior to treatment the patient will have an opportunity to discuss treatment with the chiropractor, to ask questions and to provide their informed consent;
- the patient has the right to opt out of treatment at any time;
- the chiropractor will not provide the requested treatment if your assessment indicates that the patient is not a suitable candidate;

8. Media Contact

Chiropractors may be interviewed by name or prepare articles for the lay press on issues of general interest provided that:

- a) it is made clear that the opinion voiced is that of the practitioner only, if this is the case. If the opinion is that of the profession or part of the profession, this should be stated;
- b) they do not allow the name, address or phone number of their practice to be used in an unreasonable manner or be the primary focus of the media contact;
- c) they do not make any self-laudatory, misleading or sensational statements or deprecate the achievements of others (see Fair Trading Act and Medicines Act);
- d) they do not use their involvement solely to attract or gain new patients;
- e) testimonials of their patients or other persons are not used.

9. Chiropractic Public Place Marketing

Chiropractic public place marketing is to promote the profession and to increase the awareness of the public regarding the benefits of chiropractic management, and not primarily for the sole purpose of practice building. If it is the chiropractor's intention to utilise public place marketing for the purpose of practice building, then this must be clearly communicated.

The term "screening" should not be used, as it carries a particular meaning within the New Zealand health environment. "Screening" is defined by the National Health Committee as: *"a health service in which members of a defined population, who do not necessarily perceive they are at risk of, or who are already affected by, a disease or its complications, are asked a question or offered a test to identify those individuals who are more likely to be helped than harmed by further tests or treatments to reduce the risk of disease or its complications."*

The Board instead suggests use of terms such as "spinal or chiropractic checks" or "chiropractic evaluations".

It is the responsibility of the organiser to ensure that all necessary documentation (such as consents and permits) and insurances are in place prior to the commencement of the event. No notification to the Board is necessary.

“Chiropractic checks” may be performed, in accordance with Chiropractic Board Code of Ethics section 2.1.1.17, only by:

- a) chiropractors with a current Annual Practising Certificate (APC); and
- b) appropriately qualified chiropractic student interns participating in an approved supervised programme under the direct overview of a chiropractor with a current APC.

Chiropractors who engage in public place marketing must ensure that:

- a) no fee is charged for the “chiropractic check”; however participants may make donations to a charitable organisation nominated by the chiropractor. This must be clearly communicated to any participant or potential participant;
- b) the participant is advised that the “chiropractic check” is not a comprehensive examination and that the purpose of the “chiropractic check” is to give the participant an overview of the general state of health of their neuro-musculo-skeletal system within the Scope of Practice.

In performing “chiropractic checks” in a public place, chiropractors must ensure that:

- a) informed consent is obtained from each participant before commencing any “chiropractic check”; and
- b) they use equipment and/or procedures that have evidence of effectiveness and validity and are generally part of that chiropractor’s practice; and
- c) no attempt is made to:
 - i. treat or provide care to the participant;
 - ii. make a definitive diagnosis;
 - iii. deliberately create a false expectation of the outcome of any suggested chiropractic management;
 - iv. engender fear in the mind of the participant;
 - v. promise or guarantee any cure or particular outcome from treatment;
 - vi. engage in unsolicited contact with the participants after the event.

If, in the course of a “chiropractic check”, a serious health concern is noted that the chiropractor or intern would, in normal practice, refer on for appropriate medical management, then the chiropractor or intern is also obliged to make provision for appropriate management.

10. Questions about Chiropractic advertising

If chiropractors are not sure whether an advertisement meets legal, industry and Board requirements then they should consider making use of the Therapeutic Advertising Pre-Vetting Services (TAPS). TAPS is a commercial service provided under the auspices of the Association of New Zealand Advertisers and is intended to assist advertisers with compliance issues. Contact TAPS at anza@anza.co.nz or on 09 488 7455.

The Board is not responsible to pre-vet advertising for practitioners.

11. Complaints

Due to the fact that advertising by its nature requires that material is in the public domain;

- a) any member of the public or chiropractic profession may make, in writing, a complaint directly to the Board; or
- b) a complainant may choose to contact the Advertising Standards Authority or Broadcasting Standards Authority (BSA) directly to make a complaint.

Contact the ASA and BSA via their respective websites as listed below:

Advertising Standards Authority - www.asa.co.nz

Broadcasting Standards Authority - www.bsa.govt.nz

12. Additional Relevant Documents:

- a. [Chiropractic Board Code of Ethics](#)
- b. [Fair Trading Act 1986](#)
- c. [Privacy Act 1993](#)
- d. [Health Information Privacy Code 1994](#)
- e. [Scope of Practice- Chiropractor](#)
- f. [Medicine Act 1981](#)
- g. [Consumer Guarantees Act 1993](#)
- h. [Code of Health and Disability Services Consumers' Rights](#)
- i. [Chiropractic Board Extended Term Management Plans and Pre Payment Arrangements Policy](#)
- j. [Advertising Standards Authority Codes of Practice](#)
- k. And all other relevant statutes.

Date adopted: 13 November 2015

Date for review: