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6 April 2010

Attention: Dr Donato, (Chair)
Chiropractic Board of Australia
natboards@dhs.vic.gov.au

Dear Dr Donato,

I wish to draw your attention to my concerns about the proposed "Code of Professional Practice" document as circulated by you.

This document contains many areas of concerns, which can be summed up by saying that the code is patronising to the profession as a whole and to individual chiropractors, without adding to safety issues for the public in any meaningful way. It also limits the natural human rights we are guaranteed by virtue of Australia's ratification of the United Nations "Declaration of Human Rights" and also by the Constitution of Australia. The main concerns here are the right to freedom of expression and the right to conduct commercial activity. That is to hold views and to be able to freely express them. That right does NOT allow for untruths to be transmitted in any form, uttered or written, but it does allow truthful ones to be expressed. Your proposed "Code of Professional Practice" violates my right to communicate those things which I and others in the profession know through experience and the published works of others as truths and are dear to our hearts. Some of these "truths" are at the core of not only what the profession says but the core of how it behaves toward the public. These can be found in the CAA's Core Values.

The proposed "Code of Professional Practice" is also scattered with contradictions and double standards that appear to unnecessarily limit the chiropractic profession and suppress the public's access to complete information of the generally held views of the chiropractic profession as opposed to a sanitised version. It is in the public's interest to have the full facts. This proposed Code sets out to hinder chiropractic healthcare.

The proposed "Code of Professional Practice" is a gift to any lawyer hell bent on doing the Chiropractic Profession or an individual chiropractor harm. Such a lawyer only has to pick one of the many inconsistencies and ride off to court knowing that even if he doesn't win, will cause some havoc to the profession regardless of the outcome.

I draw your attention in particular to the following:

Section of the Proposed Code	**My comments**
Advertising of regulated health services *(c) uses testimonials or purported testimonials about the service or business;*	Testimonials are not defined with sufficient clarity as to be able to determine what is or is not a testimonial let alone what is purported to be one. For instance, what is the difference between a case history or case report and a testimonial? This is not defined. It should be.

	It is not good enough to say "get a lawyer to explain the difference" or that "the Board is not in the business of giving legal advice". The Board is going to interpret the Code and lay charges against individuals on the basis of that Code. If there is a working definition of testimonials it should be put forward and not shrouded in secrecy. It would appear that word of mouth "testimonial" would get by because there is no tangible proof of the testimonial or recommendation, but a written or broadcast one is banned even though the effect is exactly the same, that is, patient X recommends the services of chiropractor Y because of satisfaction with the service provided. This is a double standard that is hard to justify.
2.3 Advertising *For the purpose of this code of practice, advertising includes any form of public or private communication that could reasonably be seen as an intention to promote the profession, the individual practitioner or chiropractic practices.*	So what is wrong with promoting the profession? "Promote" would also mean that a chiropractor could not hold a public lecture about the generally held tenets of chiropractic to enable the public or a even a single member of the public to learn what we are about. If we chiropractors cannot do this public service then who will do it? The Board? Besides, much of what we chiropractors have been on about since the Palmers started the profession, has in recent years been given credence in the light of new findings in neurology. The way this clause is worded, <u>any</u> communication to <u>any</u> person or persons either particular or general could not be engaged in, regardless of the correctness of the content, regardless of the form of that communication. And it would include patients! What is wrong with a different paradigm? Our profession acknowledges the individual. Not everyone responds to a single modality. If they did, chiropractic would be redundant. And it certainly is not that. We also do not work in the medical arena where the body has lost its capacity to maintain homeostasis. We are different. That difference needs to be able to be communicated far and wide. Section 2.3 is not acceptable in any way . It contravenes International Human Rights conventions, to which Australia is a signatory. <u>It violates my right to communicate. It is a right I am not willing to allow to be either legislated away and especially not regulated away.</u> To say that an non chiropractor who is not a party to this "Code of Professional Practice" may say or do as they please in matters chiropractic, however, chiropractors may not do the same, effectively discriminates against chiropractors (who are the only

	members of the public who are trained to know and therefore) accurately pass on a knowledge of chiropractic to the public. This clause is a violation of my Right and a discrimination against my person. I am sure there is a federal laws that this clause contravenes. It is not acceptable.
"this definition is not intended to apply to material issued by a person or organisation for the purpose of public health information or as part of a public health program"	"Public" is not defined. Does not a member of the public include any individual members as well as collective members? If that is the case then this portion of the code is meaningless. "Public health program" is also not defined. Who or what "person" is to run these programs? Are they to have chiropractic qualifications and what oversight will the profession have with regard to what it has to say. Notice I said "profession" not a selected special interest group within it. It could be demonstrated that any communication by a chiropractor to <u>any</u> "person", patient or not, is part of that chiropractor's "public health program". This also makes the "advertising" portion of the code meaningless. Whose program does qualify? Government? Association? Public interest group? Special Group of Chiropractors? Individual Chiropractor? Anyone else? What is the difference? There is no logic in this and if there is then it is so cryptic as to be lost on me and probably everyone else.
1 Introduction 1.1 Use of the Code *Practitioners have a responsibility to protect and promote the health of individuals and the community.*	How is this done without communication which could be "purported" to be advertising? Promote health, (through chiropractic which we are qualified to do) but not what the profession <u>uniquely</u> does as part of that healthcare That would be a promotion of the profession. That is a no-no as part of Clause 2.3. I'm getting confused here. What can I or can I not communicate?
3. Professional obligations *Persons who advertise services should always consider how members of the public will receive their advertising and be mindful that some consumers may have particular vulnerabilities in relation to the advertising and the provision of services.*	What particular vulnerabilities? No examples, no definitions are offered for clarity. Do the vast majority of the public not have a right to freely be given information to deliberate and decide upon as they choose? People with sufficient "vulnerabilities" to provide concern enough for this clause would no doubt already be under the protection or guidance of their family or government agencies. If not, then they should be. That way those with vulnerabilities will be protected and the rest of the community should be able to get on with life, as they do in every other area.

	We chiropractors do want to change what the public thinks. I make no excuse for that. That is part of the mission of the CAA as well. We have stood on the fringes for too long.
5. What is unacceptable advertising? *f). claim that the services provided by a particular regulated health profession are better or safer than others.*	What if it is true and is merely a reporting of facts based on studies or based on physics or logic? Does not the public have the <u>right and need</u> to know the real state of play? Would that not add to public safety? Surely that would be in the public's interest to know. Why the censorship? The more factual information before the public, the greater the chances of health providers raising their standards.
8.12 Financial and commercial dealings ***c)***. *not accepting gifts from patients or clients other than tokens of minimal value such as flowers or chocolates and if token gifts are accepted, making a file note or informing a colleague where possible.*	I think bureaucracy has finally got its chance to revel in more paperwork. *"File note or inform a colleague"* for what purpose? Chocolates? Really? In 35 years of practice no patient no matter how well off has ever offered to gift me with a Porsche or a "sheep station" and I presume is unlikely to. If one does, I would be happy to make a file note of it, but flowers & chocolates? I don't think so. What's the point? Happy with care enough to offer a token? So what?
d). not becoming involved financially with patients or clients; for example, through loans and investment schemes.	There are ways around this through companies, trusts, and family members, the list goes on as far as the imagination allows. This is going to be one of those unenforceables. It beats me why anyone thought it was a good idea to even put this in. The Board forgets we are in a financial relationship with our patients. We may give credit (a financial arrangement or temporary loan) to patients who have a difficulty to pay. We are involved. What level of financial arrangement are we trying to stop with this clause? The wording needs to be better defined. As it stands, every chiropractor in private practice could be accused of being guilty of breaching this clause. I may not take part in an investment scheme as a chiropractor but can I as a member of the public? I do wear different hats as do most of the public. At what point is it "distant" enough to be OK? We are also more or less in a social relationship with patients. Friendships do form. Friends do sometimes employ friends to do work on a financial basis, e.g. carpenter putting up partitions in a clinic or babysitting. The list could go on and on. Are these also on

	a banned list? Does it matter to the Board who initiates the business proposal? Surely one would presume that adults are sufficiently endowed with their own judgment and free will to make up their own mind as to what arrangements suit them. Folks can always walk away if arrangements don't suit them. And that is OK. Freedom of commerce is an Australian Constitutional Right. It is a right that binds not individuals, but it does bind the governments of Australia and their agencies from preventing it. I am not aware that a chiropractor is one of those agencies.
9.2 Practitioner health *Good practice involves:* ***a)**.attending a general practitioner or other appropriate practitioner to meet health needs*	The wording: "*attending an appropriate practitioner to meet health needs"* would be much more balanced. I can accept that we need to be "fit to practice". As well meaning as the initial intent may have been, this clause needs to be reworded.
***c)** .understanding the principles of immunisation against communicable diseases and being immunised against relevant communicable diseases*	It is precisely because we have an " *understanding of the principles of immunisation"* that we may chose NOT to get vaccinated. Where is the evidence-based data that vaccination is an <u>effective and safe</u> strategy for the prevention of communicable disease? I'll give you one that says the opposite. *Thomas RE, Jefferson T, Lasserson TJ. Influenza vaccination for healthcare workers who work with the elderly. Cochrane Database Syst Rev 2010; 2 (): CD005187. PMID: 20166073* This study contradicts the generally held medical view of vaccination's effectiveness. I think I know when I am communicably sick. I may even see a medical person to confirm my suspicion. I also know the value of quarantine, rest, nutrition and even some medications. I know the choices and I chose to exercise those choices. It is not for the Chiropractic Board of Australia, the "Sickness" Department or anyone else to dictate to me that I should be medicated in any particular way. This again is one of those United Nations "Human Rights". Should I choose to do so is another matter. Section c) has no place in this Code.
2.7 Diagnostic Tools, Tests & Processes *2.7.3 The findings of diagnostic tools/ tests should not be used in marketing and advertising, as members of the public may be misled as to the value of those findings in relation to their own situation.*	And yet it is OK for the medical industry to promote loudly the benefits of various tests (e.g. pap smear tests, breast cancer screenings etc) this list could go on and on. This in face of the literature stating that they are not conclusive. The public is being misled to accept that these are always valid in their findings. *"For the purpose of this code of practice, advertising includes any form of public <u>or private communication</u>".*This effectively says that we can not discuss the findings of diagnostic tests with anyone including direct patients. Isn't this ridiculous?

	Disclaimers can easily be put in place to let people know that the information provided is general only. Those interested can follow up with the practitioner of their choice to see if it is relevant to them as individuals. What is so special about tests done by chiropractors that is so different to that of the medical sphere that warrants such caution. The public is constantly making its decisions. Generally the public are not fools. They are survivors. They are for the most part smart. That is why they (we) have survived on this planet for this long. We learn (get smart) and we adapt.
2.7.4 *In the use of examination tools, tests, and processes for diagnostic and prognostic purposes these should be for conditions where there are demonstrated acceptable levels of reliability and validity.*	What is "acceptable"? By what criteria are these determined? Is acceptability overseas good enough to be acceptable here. If not why not? How many papers are needed to indicate reliability and validity? If the tool is new how many papers are needed then? If I am trained to use a test but my neighbor chiropractor is not, why am I prevented from using a test because of my neighbour's ignorance? Where are the guidelines for acceptable levels of reliability and validity and the necessity for training in the use of these examination tools?
2.10.7 *..... Should a parent elect to have their child undergo regular chiropractic examination or treatment in the absence of any clinical justification then it is the responsibility of the practitioner to provide the parent with a balanced view of the factual evidence relating to such examination or treatment as part of the informed consent process*	Why single out children here. A spine is a spine no matter what the age. They all deserve "optimal" care regardless of age. What type of " *factual evidence relating to such examination or treatment"* is required to be imparted? How often? What level of evidence-based material is required? Whose evidence-base are we talking about? Examination means that. To examine, to test for, etc. to see if there is a problem. If there is a problem, then a discussion can take place and informed consent can be obtained. Some children have spines such that they require supportive care if they are to lead anything like a "normal" life similar to their peers. Some of these children may not be consciously symptomatic. But nevertheless trained chiropractic examination may reveal spinal problems that would benefit from attention. **2.11.1 states**: *"The primary goal of chiropractic care is to promote and optimise good health and function, maintain it, and prevent the recurrence of injury and dysfunction."* I don't see the word symptom here, and neither should I.

	Is this not the goal of regular checks of the spine for the purpose of maintenance of health and the provision of information upon which to make a healthcare choice? But I forget. The provision of information is to be banned since it may be purported to be advertising. Dentists recommend dental (asymptomatic) checkups. What is so different about chiropractic spinal checkups? We are "healthcare" practitioners. Our job is to maintain "health". It also just happens that we are also good at symptom care. Symptom care is sickness care. It is provided when "health" has failed in some way.
practitioners should be aware that 'screening' for health problems may be associated with harms such as false positives which may generate anxiety and unnecessary treatment.	This is true of any test or procedure e.g. breast cancer screening, so are we to assume that from now on breast cancer screenings will cease? I think not. This panders to folks who put the old head in the sand and "lets not think about what has just been found. Lets not get information about it because we might get anxious. Lets just not have proper nerve function and proper control of the body instead." If the screening test is positive <u>it prompts action to investigate further</u> not from the view point of fear but from the view point of what needs to be done to help the situation get better. The harms in chiropractic are NOT the same as for example surgery. The patient will usually get a better functioning spine and nervous system from a chiropractic encounter.
4.1 Reporting other practitioners ***4.1.2*** *When a practitioner is informed by a health consumer that another practitioner may have violated professional boundaries, he or she has an obligation to encourage the health consumer to make a notification to the relevant State Health Services Commissioner or the Chiropractic Board of Australia.*	What safeguards are there in place to weed out frivolous accusations? Is the practitioner to be assumed innocent till proven guilty or shall the burden of proof be on the practitioner to prove innocence. <u>There is a difference here and it is not subtle</u>. Many of the present Chiropractic Acts in the various States do presume guilt. This error in law and natural justice should not be repeated here. I demand that chiropractors be treated as innocent till proven guilty. Otherwise the lives of chiropractors could suffer untold harm as well. There needs to be fairness to both parties and not a weighting of credence to one or the other I have seen chiropractors accused by other chiropractors based on incorrect assumptions. I have seen the trauma and harm it produces. There need to be safeguards in place to prevent this sort of

	perversion of facts and self serving do-goodism.
5.1 Spinal postural assessment and public place marketing *5.1.4 No fee is permitted to be charged for such assessments;*	What is your justification for saying that chiropractors must work for nothing by making the charging of a fee unprofessional conduct? What is unprofessional about providing a bona fide test in a professional manner and charging for it? The assumption here is that such an assessment is of no value to the public and is in some way inferior to the same test process being carried out elsewhere. Where is the evidence for this assumption?

Dr Donato, as you can see I think there are a conflicts within the Board's proposed "Code of Professional Practice" document especially with regards to generally accepted personal freedoms.

Some clauses need to be clarified and some need to be scrapped all together.

I would be more than happy to enter into discussions to clarify the Board's stance on the various clauses raised.

Yours faithfully,

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