DR PETER A. ROBB
Doctor of Chiropractic (Palmer, Iowa

14 Cards Lane
Olinda Vic. 3788
Telephone (03) 9751 0321
Facsimile (03) 9751 0321
robb.pa@gmail.com

17th May 2010

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

Dear Dr Donato

Re: Necessary changes required to the *Revised Code of Conduct Guideline*

I commend the Chiropractic Board of Australia and its staff for the effort put in making changes to its initial Code of Conduct Guidelines.

There are however many issues still to be resolved. I have listed these in table form to make it easier to discern.

Other issues not addressed in the Revised Code of Conduct Guidelines include:

A) Why is it necessary to have a Board/Tribunal to safeguard the public. The public is well served with Common Law precedents to right any wrongs and make suitable punishments for all wrong doing.

If someone is to accuse anyone else of wrong doing then that person should stand before the accused and act directly in their own cause. The Board could act as an "expert witness" or community sounding board. I doubt very much that the members of the Board with the possible exception of a legal professional member would have the expertises at law to act as prosecution, jury and penalty imposer based on the professional qualifications that Board members presently hold.

To state that the Board is merely making the legal process easier/smoother/less costly is understating the legal expenses incurred either by the accused or their insurer as well as the angst experienced. It is my opinion that as soon as a case is to be answered for, the matter should go before a magistrate or judge.

B) Throughout the Revised Guideline, reference is made to state and territory statutes or guidelines or similar regulation. I was under the impression that all healthcare matters were to be brought under Federal jurisdiction. If that is the case it is the Board's job to write the law/regulation it wishes to have the chiropractic profession follow. Stop passing the buck to the states and territories to do the regulating. Stop making it necessary to lookup 6 laws rather than one to get a notion of what is required to practice chiropractic in Australia. After all the profession was sold the notion that a federally based law would

smooth the legal idiosyncrasies and bring all of the profession under one legal umbrella. It is bad enough to have to make sense of what the Chiropractic Board of Australia wants.

C) As mentioned in the table below, in a number of places in the Revised Code of Conduct Guidelines, reference is made to the existence of guidelines such as the Advertising Guidelines, The Board's Mandatory Reporting Guidelines. A careful scrutiny of the Board's web site, http://www.chiropracticboard.gov.au/index.php#, especially under Codes and Guidelines did not manage to locate these stated Guidelines anywhere.

It is totally unacceptable for the Board to state in its "*Revised Code of Conduct Guideline*" that a matter is dealt with in a Guideline on its site and then not make that document available for comment.

When is the Board going to make these 2 Guidelines available? And what provision is the Board going to make for comment by the profession prior to implementation/enforcement.?
The matters of concern in the "*Revised Code of Conduct Guideline*" are":

1.2 Whole first paragraph	Superfluous, adds nothing to the intent of this clause it is demeaning and chastising in tone and needs to be removed
2.1 a) and b) "relevant"	If the patient has a problem that a chiropractor unearths by case history, observation, examination, imaging or other modes, then it is relevant regardless of the symptom presentation or the patient's desires. This may be a patient health/safety issue. It is certainly something that the patient would need to know, It matters not if the patient had this as a part of the presenting symptom picture or not. Not all problems originate at the site of symptoms. Chiropractors need to be encouraged to unearth the cause of symptoms and not arbitrarily limited to the region of pain. This imposed limit is dangerous to the patient!
2.2 o). practising in accordance with the current and accepted evidence base of the chiropractic profession, including clinical outcomes.	This limits the use of one's training and intellect to only "evidence based" (peer reviewed, published etc.) does not allow for applying one's knowledge of anatomy, physiology and logic. It limits patient outcomes to the published. There are some very effective chiropractic techniques that don't have lots of "published evidence". That does not make them faulty or fraudulent and of no practical clinical use. Remember a peer in these circumstances is one who has intimate knowledge of the practice method in

	question. A person who does not have that training and practical skill is not a peer and should not therefore sit in judgement. As Isaac Newton is reported to have said of of such 'scientists', *"Sir sit down. On this matter you have no opinion".* This clause also puts the blinders on science and the furthering of knowledge. This clause should be deleted as is is counter the the best interests of any particular patient and the community as a whole.
Numbering of clauses not consistent	You jump form 2.2 to 2.5 etc.
2.6 d) not providing unnecessary services	Non symptomatic care and unnecessary care are not the same thing. I would think that provided the patient is made aware of the need/value and agrees to that care then all is good.
2.6 f) if relevant, colleagues of the objection,	Colleagues have nothing to do with this patient. Informing them is out of order. This violates the Laws relating to privacy. Information in a letter of referral however is another matter.
3.3 b) including any alternative or complementary therapies they are using.	Delete. This is redundant as this is part of how they are managing "it". It is more relevant to the medical practitioners.
3.3 f)	Delete. This clause is redundant as it is covered in 3.3 d)
3.4 c)	Is redundant since this is now a federal matter not a state or territory matter. If the Board is writing regulations for the profession, then do so and know the jurisdiction you hold and don't abrogate responsibilities.
3.6 h) 3 months or 12 visits	Arbitrary numbers - seem to be plucked out of thin air.
3.7 a)	Already covered in 2.2
3.7	Delete all except 3.7 e) bullet point which states: *"remain alert to children and young people who may be at risk and notify appropriate child protection authorities as required by law. This may include where a parent is refusing treatment for his or her child or young person and this decision may not be in the best interests of the child or young person"*

	All other clauses are covered elsewhere (1.4 and general clause 2) in the general topic of patients. Children are patients like all other patients they just lack judgement and experience hence the need for clause 1.4. the rest this clause is padding. Omitted is the notion of a "emancipated minor" if anything needed to be included it is this. It should be stated that "emancipated minors" should be able to be adjusted on their authority and agreement on the understanding that parents shall be informed of the event.
3.8	These items are for educators in Chiropractic Schools not in a regulatory guideline.
3.9	As for 3.8
3.10 a)	As for 3.8
3.10 b)	Should read: Prior to divulging information to relatives, carers or partners, patient consent should be obtained and recorded.
3.11	Much of what I read in this clause and its various sub-clauses, I feel were lifted from another profession's guidelines and seem more appropriate for drug reactions etc. This whole clause and its parts needs re-wording to make it pertinent to chiropractic practice.
3.12 e)	Does this clause give tacit approval to the Board taking over the role of the court system as prosecutor, jury and judge. There seem to be no "natural justice" safeguards for the practitioner. Patients can complain to the courts if need be. Current experience from various states to date indicates there is very little cost saving in this process and very little arms length non – emotion ridden justice.
4.1 Use of modalities in chiropractic practice	These "non-chiropractic" modalities are just that, NON-chiropractic. They have no place in a chiropractic guideline. State law may indeed apply. That is a state matter not

	a federal chiropractic one. Clause 4.1 should be deleted.
4.2	On their own very few tests, procedures and diagnostic tools could be deemed "necessary". But put together they all go to form a picture of patient function/dysfunction and does contribute to a more accurate diagnosis. All of the attempts at safeguards mentioned in the various sub-clauses of 4.2 are already covered in the finger waving clauses that say that chiropractors better act ethically. As if the vast majority wouldn't anyhow. Those that don't have the Common Law to face.
4.2 d) acceptable levels of reliability and validity	Acceptable to whom? As mentioned in my previous submission: *"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 are needed then?* *If I am trained to use a test but my neighbour 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?"* None of these concerns have been satisfactorily dealt with.
4.2 e)	Delete. Covered in 4.2 above.
5.1	Delete. The content described belongs in the class room not in a professional registration guideline.
5.3	Delete. The content described belongs in the class room not in a professional registration guideline.
5.4	Delete. The content described belongs in the class room not in a professional registration guideline.
6.2	Delete as irrelevant to a Chiropractic Guideline. The best place for this clause in the *Guidelines for Medical Practitioners*. We are not the gate keepers we do not allocate services they do. Those chiropractors who are consultants to insurance or statutory authorities will have their own guidelines to follow and this clause

	will generally be ignored by them in their view of "the greater good" that they get paid by.
7.2 b)	Delete. This would be a voluntary participation based on personal interest and expertise. It is hence irrelevant here.
7.2 c)	Seems like this was lifted from a *medical guideline.* Just how relevant is it for chiropractors?
7.3 a) the Board's guideline on mandatory reporting at: www.chiropracticboard.gov.au	I had a look in all of the obvious places for further clarification. **I couldn't find any**. This seems to be a circular reference. Needs re-wording or deleting.
7.3 b)	References to State /Territory jurisdictions are superfluous. Either refer to a federal statute or just delete the references that are not Federal. Or write what it is you really want to say on this matter without referring to "inferior" jurisdictions.
7.3 c)	What ever do you wish to say here. This needs major rewording.
7.3 e) and f)	Better suited to inclusion in Clause 10
8.2 " The National Law requires that chiropractors (and all of the regulated health professions)"	Better to re state as: *Chiropractors are required to.....*
9.2 b), c) and d)	These are all sub-clauses of a)
9.3 "the Board's guideline on mandatory reporting at: www.chiropracticboard.gov.au."	Where are these? It is unreasonable for the profession to comment and commit on the totality of these guidelines if all of the documents referenced are not made available. Make the documentation available in time for comments to be made.
9.4 a) "medication"	? I thought our profession was a <u>drug free</u> one. Does the Board know something the rest of us don't know? Delete all reference/s to medication.
9.6 a) Advertising	Looks good as far as it goes. But the Board has side stepped the issue of defining a "testimonial" for the Board's purposes. No doubt the Board will form a view of what are or are not "*testimonials or purported testimonials about the service or business*" when it finds it must "regulate" with regard to a member of the profession. It is reasonable for the Board to make these declarations. See Clause 133 (3) of the *Health Practitioner Regulation*

	National Law Bill 2009 and section 39 *Codes and Guidelines* of the same Bill. It would be in the interests of the profession to have the distinction between a "*testimonial*" and a "*case example*" defined. Since it is likely that it is the Board that would instigate proceedings based on its judgement of whether what is written is a "*testimonials or purported testimonials*". I still have yet to be convinced that a testimonial is any different to a personal recommendation of a patient to a friend, except for the fact that one is written and the other is verbal. Furthermore, where are *"the Board's Guidelines on Advertising which can be found at: www.chiropracticboard.gov.au"* as stated. It is unreasonable for the profession to comment on the totality of these guidelines if all of the documents referenced are not made available.
9.6.c) using a title	Is the Board going to write to the Medical Board and insist that "medical doctors" also designate themselves as *Dr. J. Smith (Medical Practitioner)*? I think it only fair that the public not confuse a medical practitioner for a Doctor of Chiropractic or Dentistry.
9.10 "responsibilities and rights"	The *responsibilities* are well defined but the *rights* are not. What "rights" does a chiropractor have in these situations? Please inform me so that I may give an informed consent to this guideline.
9.11 e) "sell or market drugs"	Delete these words. Chiropractic is a "drug free" profession.
9.12 c)	You are still on about "flowers and chocolates". Remember it is a <u>token</u>, nothing else. If there is more to this clause? Maybe the Board needs to educate the profession as to the reason the "flowers and chocolates" may be such an important issue. The words "other than" could be place before "flowers and chocolates" and "the like" place after.

9.12 d) "not becoming involved financially with patients; for example, through loans and investment schemes	The Board here is still insisting interfering with the an inalienable right that all living, adult, free, men and women have. That is too chose to do what they want, so long as it does no harm to others. Who is it that the Board feels compelled to save from a commercial transaction that may have nothing to do with chiropractic practice what so ever. This is a Right I shall not be giving up even though for the most part I will chose not to exercise that right. I shall reserve that right regardless. This clause presupposes that such agreements and transactions will be unfavourable to the patient, whereas it may provide better than generally available commercial rates of loans This clause also contravenes the following articles of the "*Declaration of Human Rights (UN)*" (emphasis added): Article 2 *"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth <u>or other status</u>. …....* Article 3 *"Everyone has the right to life, <u>liberty</u> and security of person."* Liberty also means free to do what is desired. Article 17 (1) *"Everyone has the right to own property alone <u>as well as in association with others</u>."* Article 30: *"Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act <u>aimed at the destruction of any of the rights and freedoms set forth herein</u>."* Australia is a signatory to this Declaration. Everyone has the right to own property alone as well as in association with others. The right to liberty which includes the freedom to do what pleases the individual. Hence all Laws made by Australia, State or Federal must comply with this Declaration. Clause 9.2 a) could cover all that could possibly ever happen between a practitioner and patient. Singling

	out financial arrangements/investments goes far beyond the role the Board would "naturally" be expected to have. While writing a regulatory document, the Board must keep in mind the Declaration of Human Rights (UN) and not negate any Rights while trying to defend some possible patient who may at some point in time be hurt. All the while hurting chiropractors and their patients without cause by limiting the Rights of chiropractors do have by virtue of being a living man or woman.
9.12 f)	I can understand the "directly" in this clause but how "indirect" does it have to be before it is OK to share/agree to share fees? This clause needs rewording before it is clear as to what its intent is.
10.2 c). understanding the principles of immunisation against communicable diseases	Why single our vaccination from all of the other health promoting modalities in existence. To do so pushes the barrow of CSL. Is there a vested interest that the Board has in this matter? Does the Board have something to disclose? (joke) If not, then just (no joke) delete this clause .
10.3. a)	Totally demeaning to all practising chiropractors to even think of having to write this into a guideline of this sort. Do us all the courtesy of deleting this clause.
10.3 b) boards?	Which boards. It would be helpful to have the "boards" named so that chiropractors can know which boards they have an obligation towards. Better yet just delete this clause as the definition is too vague to have anyone agree to it in its present form.
10.3 c)	If you are NOT the treating/examining practitioner, making a snap judgement as to the ability of another chiropractor is a legal minefield that most will not cross easily. There has to be some intervening steps introduced in this "best practice Guideline" before a report should be made. These extra steps need to be stated for clarity and fairness to the practitioner concerned as well. It is <u>not only</u> the public that has rights here.
12.3 a)	Delete. Already covered in 12.2 k)
Appendix 2: Guideline in relation to Radiology/Radiography	All could be removed except: Justification – No practice involving exposure to radiation should be adopted unless it produces sufficient benefit to the exposed

	individuals. The procedure must be justified for that patient. Chiropractors use radiography for several purposes following the identification of various history and examination findings, including but not limited to: confirmation of diagnosis/pathology; determining appropriateness of care; identifying contraindications or factors that would affect or modify the type of treatment proposed, as well as documentation for legal purposes. All other wordage is redundant and would be covered elsewhere, as in x-ray licence limits.

I encourage the Board to take these concerns I have with the "*Revised Code of Conduct Guideline*" and make changes as suggested to make for a better working document and a better working relationship with practitioners without diminishing any concerns the Board may have for the public's safety.

Much of the "*Revised Code of Conduct Guideline*"is full of motherhood statements and much of its contents is worded as though one were sitting in Ethics 101 class, which I might add is really the place for the vast majority of what is written in this Guideline. This probably accounts for most of the comments I have read about the document being demeaning to the profession.

I look forward to my remaining concerns being rectified before implementation of a final Guideline.

Thank you for the opportunity to make comments on the "*Revised Code of Conduct Guideline*".

Yours faithfully,

Peter Robb D.C.