NSW HEALTH

Chiropractors Registration Board of NSW

Dr Philip Donato
Chairman
Chiropractors Board of Australia

Dear Dr Donato

The NSW Chiropractors Board thanks you for giving the Board the opportunity to provide comments on the consultation paper on codes and guidelines, comprising Guidelines on advertising, Guidelines on mandatory notification, Board Code of Conduct, Board Code of practice for chiropractors in Australia and Guidelines on continuing professional development.

The NSW Board supports the draft guidelines on advertising, mandatory notification and continuing professional development.

The NSW Board commends the draft professional code of conduct for all nationally registered health professional. It is fair, broad in its scope and respectful to the professions. It provides the National Board with a broad brush to deal with complaints that might arise from the public in relation to care provided by Australian chiropractors.

Chiropractors in NSW have practiced under a similar simple code of conduct for 30 years; however the proposed code specific to chiropractors is extremely proscriptive in many areas of practice.

As such, registrants in NSW are the most impacted by such a code and the Board is disappointed that the National Board has effectively failed to provide over 40% of Australian Chiropractors with an opportunity to comment. It has achieved this by restricting distribution of the draft guidelines and imposing a timeframe so tight as to effectively stifle the possibility of discussion amongst the profession and the feedback that would result.

The NSW Board feels that such consultation and the feedback that it would provide is essential if the National Board is to comply with the following legislation.

Part 5, Division 3 Registration standards and codes and guidelines

A National Board may develop and approve codes and guidelines—
(a) to provide guidance to the health practitioners it registers; and
(b) about other matters relevant to the exercise of its functions.

PO Box K599
HAYMARKET NSW 1238
Internet: http://www.chiroreg.health.nsw.gov.au

Telephone: 02 9219 0277
Facsimile: 02 9211 9318
Email: chiroreg@hprb.health.nsw.gov.au

40 Consultation about registration standards, codes and guidelines

(1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide ranging consultation about its content.

With respect, the NSW Board suggests that tight timeframes are no excuse for the National Board to fail to comply with the legislation.

The NSW Chiropractors Registration Board respectfully submits that the guidelines the National Board has developed specifically for the chiropractic profession are not necessary for the implementation of National Registration on 1st July 2010.

The Board notes that the national osteopathy and pharmacy boards have not adopted guidelines; the medical and nursing boards have adopted guidelines and codes developed with extensive consultation and input. The NSW Board also notes that other National Boards have adopted specific guidelines in such areas of recency, infection control, infected practitioners, supervision etc.

The Board notes that no other National Board has sought to impose such restrictive guidelines across so many areas of practice on any of the National registered health professions and that implementation for those professions will proceed on 1st July 2010 without specific guidelines of the nature proposed for chiropractors.

The Board understands that there may be some apprehension in the minds of national board members who have only practiced under restrictive guidelines. They may be concerned that an explosion of complaints would occur if they were removed. The NSW Chiropractors Board's experience over the last thirty years is that it is not the case and that 40% of Australian chiropractors have practiced with remarkably few complaints under a broad code of conduct similar to that proposed for all professions.

The NSW Board commends Dr Geoff Irvine, who has been a member of the NSW Board's complaints committee for ten years, who would be able to provide direction to the National Board in this approach.

Given that the Board, on preliminary examination and without the input of the profession as a whole, has serious concerns about the nature, quality and scope of the guidelines, it rejects the draft guidelines for chiropractors and strongly endorses the use of the cross professional code that will apply to all nationally registered health professionals.

A summary of the specific concerns of the board would include:

1. Unnecessary duplication of items covered in the cross professional code
2. Unnecessary inclusion of items covered in other legislation
3. The demeaning tone of the document towards the profession
4. The proscription of a wide range of components of professional practice in an attempt to prevent activities that are seen as undesirable rather than relying on robust complaints handling mechanisms.
5. Stifling the development of procedures and techniques that may ultimately benefit the public by restricting the use of procedures to only those approved.

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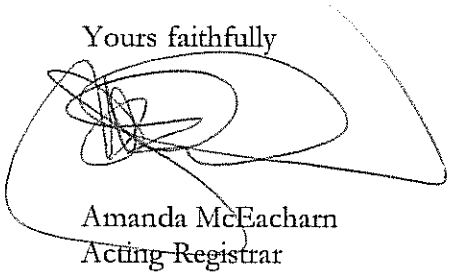
In relation to point 4 above the Board rejects the proscriptive nature of the proposed code on the following grounds

1. A lack of strong evidence that detailed prescriptive codes of practice result in better and safer health outcomes for the general public;
2. A confidence in the current legal protocols to determine professional misconduct:
   (i) The test to determine whether there has been "misconduct in a professional respect" requires proof that there have been departures from accepted procedures and that those departures have been subject to professional reprobation by fellow practitioners of good repute and competence.
   (ii) Departure from accepted procedures may be unusual and may be the subject of doubt or difference of opinion in the profession without necessarily amounting to misconduct in a professional respect. Upheld in *Qidwai V Brown 1984 NSW Court of Appeal*

The Board is happy to elaborate on these issues should it be necessary.

Yours faithfully



Amanda McEacharn
Acting Registrar

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HAYMARKET NSW 1238
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