Video transcript

**November 2017**

Chiropractic and advertising

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Hello I’m Wayne Minter and I’m Chair of the Chiropractic Board of Australia and would like to share with you the information that we presented on advertising in our roadshow around Australia, over the last couple of months.

We are all very well aware of the controversy and media scrutiny that the profession has been subject to over the past 19 months – largely due to non-compliant advertising, and I have to say that despite the hardship this has created it has served to raise awareness of and improve advertising by the profession.

The momentum has shifted but there is still a significant amount of confusion and misunderstanding in the profession about this and as a result we are seeing some examples of really poor advertising and some examples of good advertising.

The objective of this presentation is to focus in on some of the key themes about your advertising obligations and by the end of this presentation I am hopeful that you will have a better understanding of your advertising requirements and what you can or cannot do.

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The big issue...I should note up front that non–compliant advertising is first and foremost an offence under the National Law and is managed by AHPRA in the first instance.

A breach of the advertising requirements is a criminal offence and may be prosecuted. However this approach is only used in cases of high-risk advertising.

As many of you will be aware all National Boards including the Chiropractic Board and AHPRA have launched a new approach to advertising compliance and enforcement this year, which extends the Board’s role in managing advertising complaints.

In addition to supporting AHPRA in their work of engaging and communicating with the profession about their advertising requirements, the Board will also now deal with some advertising complaints as a conduct issue where disciplinary action may be taken.

In circumstances where a chiropractor has been provided two opportunities to amend their advertising and continue to be non-compliant, the Board may impose conditions upon the chiropractor’s advertising which restricts the way they advertise.

Remember, people with healthcare needs can be very vulnerable and advertising can influence a person’s decision-making about their healthcare needs.

Given that the purpose of regulation is to protect the public, you can see why these provisions exist under the National Law.

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Remember your advertising obligations are detailed under the National Law.

The Law is very clear on what is and what isn’t acceptable advertising.

Your advertising mustn’t be false, misleading or deceptive. It mustn’t offer a discount, gift or other inducement. Testimonials are not permitted. Advertising must not create an unreasonable expectation of beneficial treatment, or directly or indirectly encourage the indiscriminate or unnecessary use of regulated health services.

It is important to note that these rules are not made by the Board. They are rules placed in the law by the law makers and they are very similar to those that exist in Australian consumer law.

So the advertising issues in the profession don’t exist because of the Board or because of the National Law, they exist to protect the public and to ensure that the public have the right information to make informed decisions about their healthcare.

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Today I am going to focus on false and misleading or deceptive advertising.

Not only because it is the most common it is the golden thread that weaves through the advertising provisions of the National Law.

Remember, when assessing if a claim made in advertising could be false, misleading or deceptive, it’s the consumer’s perception and understanding of what is published that counts. Would a reasonable person be mislead or deceived by it?

Whilst claims made in advertising by a health practitioner may be clear to them because they have all the information and context, there is a risk of advertising being read or understood differently by consumers.

There are many ways advertisements can be false, misleading or deceptive and some common examples include, advertising that makes therapeutic claims that are not supported by acceptable evidence, advertising that lists health conditions a practitioner can ‘assist with’ or ‘treat’ but does not clearly specify what aspect of the health condition or associated symptoms the treatment will focus on or help, statements about the effectiveness of the treatment that are not supported by acceptable evidence and offer the treatment as an alternative to other treatment options and/or the misleading use of titles, in particular when specialist titles are used or words that imply the practitioner is a registered specialist when they are not.

You can see here from these examples how advertising can be misleading.

Evidence is important especially in relation to treatment claims.

Advertising often does not provide good context for health claims, and is received by people with a wide variety of understandings and health literacy levels.

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Hence the board expects claims in advertising must be supported by good evidence and not refuted by high level evidence.

All National Boards have published guidance about what is acceptable evidence to support therapeutic claims in advertising, and the Board’s position statement on advertising calls out some areas where it is concerned chiropractors have been making inappropriate therapeutic claims that are not supported by acceptable evidence.

Please remember, access the Board and the AHPRA website in relation to these matters, because there is a tremendous source and amount of information that can help you navigate your way through these issues.

A lot of practitioners have tried to defend their claims with poor quality evidence, for small or single example case studies or poorly constructed trials that have been refuted by higher level studies and systematic reviews.

There is also some confusion about....between advertising practice and clinical practice.

Remember these two issues are dealt with differently under the National Law and accordingly different standards and approaches apply.

The requirements around advertising are set out in the National Law and because this section is clear about what is not allowed in advertising, it means a higher level or higher standards apply to advertising claims.

The requirements around clinical practice however are defined by the *Codes of conduct* set down by the Board.

The *Code of conduct* expects all practitioners to practice in an evidence based and patient centered manner, to obtain valid informed consent, to provide balanced and unbiased information and all of this means that what is said to a patient in a clinical encounter, takes into account the specific needs and circumstances of an individual patient, which is different to what can be said in advertising.

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Remember ‘what’s in and what’s out’ under the revised compliance framework that is now being used it is important to check your advertising, well it’s important to check your advertising in all circumstances and make sure it’s consistent with the...your obligations under the National Law.

But if you are...if it is found that you receive a letter from AHPRA asking you to check your advertising, that you reflect and review your advertising and try and determine...or determine what is in breach of the law – what aspects of your advertising, you correct your advertising of course then, there is compliance.

In low to moderate risk cases when a complaint is received about a practitioner advertising they will be requested to check and amend their advertising so it complies and you actually have 60 days to do that.

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Failure to do so or repeat offences will be escalated for possible disciplinary action.

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To support this whole entire process the Board and AHPRA have worked closely to tabulate a list of examples to assist you, these examples are published on the AHPRA website.

So please remember to check your advertising.

We’ve had in some of our road shows, practitioners say that they thought they had amended their advertising, and yet received another letter to say that their advertising was not compliant.

Please, when you are… if you are required to check your advertising, take full advantage of the resources that are on the Board and the AHPRA website and if necessary discuss these issues with colleagues and ask them to check your advertising because sometimes a new set of eyes can help identify issues that you may have overlooked yourself.

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To date, as of 31st of August, 592 advertising complaints have been received or were received by the Scheme and these chiropractors have had appropriate correspondence sent to them asking them to check, correct and comply.

So far, of these chiropractors that have been written to, approximately 52 per cent are now compliant with their advertising obligations, requiring no further action.

This is a very high percentage, so congratulations and thanks to those chiropractors who actually have amended their advertising.

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Remember: You are responsible for your advertising and you must be able to substantiate any claim you make that your treatment benefit patients.

If you do not understand your advertising obligations, then please refer to the information on the Board’s website.

You may also wish to seek appropriate advice from other groups, for example, your legal advisor or access some of the information that is published on the websites of the professional associations.

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Remember AHPRA is responsible for prosecuting advertising breaches under the National Law.

If you do not understand whether the claims you have made can be substantiated based upon acceptable evidence, then please remove them from your advertising.

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Remember if in doubt about a claim; leave it out of your advertising.

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Thank you for your attention and it is hoped that this information will be of benefit to you and we all look forward to working in an environment where these advertising issues are dealt with promptly and satisfactorily and that the public of Australia...

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...are very clear in receiving information that relates to the services offered by chiropractors.

**- ENDS-**