Advertising chiropractic services

Lessons learnt from claims reported to Guild Insurance
Partnerships like the one we at CAA National have with Guild Insurance are as rare as they are strong. For over 18 years, we have worked together to protect, promote and progress the Australian Chiropractic profession.

This Risk Managed Offer package is the result of the insights and experience gained by these years of partnership. We are proud to not only offer the knowledge we’ve gained over the journey to our members, but to provide the additional member benefit of substantial savings on your insurance, just by reading this package.

By reading this information, and confirming your understanding of it by renewing your Guild Insurance contract, we hope that not only will your business benefit from the premium savings you make, but also from the improvement in patient outcomes you may obtain by implementing some of these learnings.

Thank you for making the most out of your CAA National membership, we look forward to continuing to support you over the entire journey of your career in the chiropractic profession.

Kind Regards

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Chief Executive Officer, CAA National
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Introduction

The purpose of this package is to share with CAA members key learnings from advertising claims reported to Guild Insurance

Four key issues led to the development of this package.

1. Guild Insurance is experiencing an increase in claims about advertising chiropractic services.
2. It seems some chiropractors either don’t know their advertising obligations, or are not aware of the risk they’re taking by not complying.
3. We know AHPRA is becoming less tolerant of practitioners who are either oblivious to, or flouting the advertising rules.
4. Finally, don’t underestimate the personal toll of a formal complaint against you. Some matters take many months to resolve and practitioners often feel considerable duress, believing their good reputation has been tarnished.

Managing risk

When a complaint is made against a chiropractor, two questions come to mind:

a. Was what happened foreseeable?

That is, to what extent was the situation preventable? Had the chiropractor stopped to think about what could go wrong? And had they been proactive about putting preventive measures in place?

b. Were the chiropractor’s actions reasonable under the circumstances?

That is, did he or she behave in the way expected of a professional chiropractor – were their decisions and actions appropriate?

Prevention really is better than cure. While hindsight’s a wonderful thing, everyone knows it’s better to prevent bad situations from happening in the first place. That’s where managing risk comes into play.

Don’t be put off by the words ‘managing risk’! It simply means stopping to think about what could happen, before it does, and then putting preventive measures in place.
This package focuses on ...

1. Rules for advertising health services
2. Is my advertising okay?
3. Ten quick tips to avoid trouble
4. False, deceptive or misleading advertising
5. Offers of gifts, discounts or other inducements
6. Use of testimonials in advertising
7. Unreasonable expectations of beneficial treatment
8. Indiscriminate or unnecessary use of health services
1. Rules for advertising health services

While there are laws for advertising all businesses, there are additional requirements for health services

At first glance it may seem unfair to have different rules. After all, chiropractors have business pressures too.

But health services are viewed differently. The stakes are generally higher when consumers make choices about their healthcare. Patients place enormous trust in practitioners to always act in their best interests.

The Health Practitioner Regulation National Law sets limits on advertising all regulated health services, not just chiropractic. The aim is to help consumers to make better-informed choices and to avoid the unnecessary or indiscriminate use of health resources. Even if patients are willing to pay, they shouldn’t be encouraged to use chiropractic services without a justifiable clinical need.

Please don’t think chiropractors are being singled out here, they’re not. The obligations outlined in this package apply to all AHPRA professions including medical practitioners, dentists and physios etc.

AHPRA and the Chiropractic Board of Australia have issued guidelines to help further explain the limits.

It’s important to emphasise that chiropractors and anyone advertising their services, must adhere to AHPRA’s Guidelines for advertising regulated health services (May 2014) along with other relevant laws.

Some people mistakenly believe that because the term Guidelines is used, compliance is optional. But it isn’t.

Penalties

- As breaches of the National Law (of which the Guidelines are based) are a criminal offence, courts may impose penalties of up to $5,000 for an individual and $10,000 for a body corporate.

- Chiropractors also risk reputational damage and sanctions for professional misconduct. And of course no one wants to be thought of as dishonest.
There are five specific requirements for advertising health services

Health Practitioner Regulation National Law – Section 133

You must not advertise a regulated health service, or a business that provides a regulated health service, in a way that –

1. is false, misleading or deceptive or is likely to be ...; or

2. offers a gift, discount or other inducement ..., unless the advertisement also states the terms and conditions of the offer; or

3. uses testimonials or purported testimonials about the service or business; or

4. creates an unreasonable expectation of beneficial treatment; or

5. directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services

Don’t apply a rule in isolation. Your advertising must reflect the relationship between all five rules.

For example,

When offering patients a discount or inducement, it’s not enough to simply satisfy ‘rule 2’ by including the terms and conditions of the offer ... you must also make sure it:

- isn’t false, misleading or deceptive;

- doesn’t create unreasonable expectation of beneficial treatment;

- doesn’t include testimonials;

- doesn’t encourage the indiscriminant or unnecessary use of health services etc.
2. Is my advertising okay?

Chiropractors often look for advice or reassurance that their advertising complies with the law

They want to know plain and simple whether something’s legal or not. Unfortunately, it isn’t always that easy!

Consider the mock website below.

While the five prohibited areas of advertising seem fairly straightforward; it may still boil down to interpretation of the law.

That’s because it can be difficult to say categorically that something is or isn’t ‘deceptive or misleading’. Likewise, it’s not always cut and dry as to whether special offers are ‘encouraging the indiscriminant or unnecessary use of health services’. And there’s no list of what constitutes ‘unreasonable expectations of beneficial treatment’.

So in many ways, each case must be judged on its merits. It’s ultimately up to the authority reviewing the specific allegations against you to decide.

We urge you to take the time to understand your obligations and exercise judgment when making decisions about your advertising. Not knowing the rules is no defence. It won’t protect you from fines or disciplinary action.
3. Ten quick tips to avoid trouble

- The Guidelines apply to all forms of advertising, social media included.

- You’re responsible for advertising that’s considered to be within your control. This includes links from your website or social media pages to other sites that don’t comply with the Guidelines.

- You still have responsibility for any advertising you outsource or delegate to your staff to manage. Not only should you make them aware of the Guidelines, you should also carefully review the finished product. You’ll still be held to account if a breach occurs.

- Anyone can make a complaint to AHPRA about breaches of the advertising Guidelines, including patients and other health practitioners. Increasingly, complaints are being made by the individual’s colleagues, or competitors.
  
  And you may be surprised to know that AHPRA can investigate whenever they become aware of a possible breach. That is, they don’t need to wait for a complaint by a third party.

- The Guidelines list a number of examples that may be considered false or misleading, including advertising implying “that the regulated health services can be a substitute for public health vaccination or immunisation”.

- The National Law expressly prohibits the use of testimonials in the advertising of regulated health services. The ban covers all types of advertising, including websites and social media pages.

- The National Law also prohibits health practitioners from using the term ‘specialist’ in advertising, unless they hold specialist registration with their national board. As the chiropractic board doesn’t currently have any categories of specialist registration, you are prohibited from using the term.

- The Guidelines also caution against using phrases such as ‘specialising in’, as this too may be seen as deceptive or misleading. Likewise, think very carefully about the terminology you use to drive patients to your website. Comments that can’t be adequately substantiated by evidence based practice can lead to allegations that you’re deceiving people by claiming a level of expertise beyond your scope of practice.

- Similarly, advertising must not create an unreasonable expectation of beneficial treatment. Implying certain health outcomes are assured, or that everyone can benefit from a particular chiropractic treatment may lead to allegations that you’re over servicing or getting patients through the door under false pretences.

- Some practitioners mistakenly believe it’s worth risking a fine for the benefits they may gain from using testimonials and the like in their advertising. But you can also be sanctioned for professional misconduct, which can have far reaching ramifications for your standing in the community. Unfortunately, such wilful actions shine an unwanted spotlight on the entire profession.
4. False, misleading or deceptive advertising

You can’t advertise your services in a manner that could be seen as false, deceptive or misleading

Consider ABCD chiropractic’s website below. Can you identify any areas that may be called into question?

Lessons learnt from claims

a) The statement **over 20 years’ experience fixing pain** may be considered misleading, even though Dr Boe has loads of experience and is widely recognised as an expert by his peers.

   Patients may wrongly assume everyone in the practice has at least 20 years of experience and then feel aggrieved when Jane, who only graduated 2 years ago, treats them. What’s more, they may think everyone’s a chiropractor, even though Jai is a naturopath.

b) **We get the results other don’t** could be seen as comparative advertising. It may suggest treatment at ABCD chiropractic is better, or preferable to other services. With thousands of chiropractors, physiotherapists and osteopaths all treating back and musculoskeletal conditions across Australia, it’s near impossible to substantiate that one business is better than another.

   Okay, while you may well ‘get results others don’t’, including such claims in your advertising makes you an easy target for complaints to AHPRA. Others may feel you’ve damaged their business by discrediting the efficacy of the services they provide.
Doctor of chiropractic

c) Ben uses the title Dr. Boe (DC) on the ABCD chiropractic website. Even though he’s included his qualification (DC), he may still have breached his obligations as a registered chiropractor.

Although he has earned the title ‘doctor’, there’s still potential to mislead or deceive if the title isn’t applied clearly. In this case, patients might wrongly assume the heading Our Doctors is referring to medical practitioners. Furthermore, while you know DC means Doctor of Chiropractic, it’s not always obvious to others.

Therefore, reference to the profession (unabbreviated) should be included whenever a chiropractor uses their ‘Dr’ title in advertising.

Specialty practice

d) Ben and his colleagues know the National Law prohibits use of the term ‘specialist’ in advertising, as the Chiropractic Board of Australia doesn’t currently offer specialist categories of registration.

But is the phrase Specialising in SOT okay because it deliberately avoids use of the word specialist?

Unfortunately not! The Guidelines also caution against using phrases such as ‘specialising in’, as this too could be seen as misleading or deceptive.

But why … what’s the thinking behind the rule?

All chiropractors have areas of clinical practice they’re particularly interested in and passionate about. It’s often the focus of their ongoing learning and development. Therefore, it seems reasonable to want to advertise this to patients, so they may benefit from the extra knowledge, skills and focus you have. But in the absence of clear boundaries around the use of the title ‘specialist’ and phrases like ‘specialising in’, all experienced practitioners could probably argue they are specialists of some kind. And that’s where it can get difficult for consumers when choosing health services. How can they possibly distinguish degrees of specialty if everyone uses these terms.

Therefore, protected titles means that when terms like ‘specialist’ are used correctly, you can be confident it represents an area of specialist registration with AHPRA.

But don’t despair! You can still highlight areas you’re highly skilled in or passionate about. The Guidelines suggest phrases such as ‘substantial experience in’ or ‘working primarily in’ may be less problematic.
5. Offers of gifts, discounts or other inducements

Are not expressly prohibited, provided advertisements clearly state the terms and conditions and do not breach other rules

Consider ABCD chiropractic’s website below. Can you identify any areas that may be called into question?

Lessons learnt from claims

By including x-rays in the package deal, ABCD chiropractic certainly opens themselves up to an investigation about encouraging indiscriminate or unnecessary use of health services.

Patients may expect or even demand x-rays because they believe they’ve paid for them as part of their package. But of course, x-rays should only be performed if there’s a clinical need. They shouldn’t be used unnecessarily or indiscriminately.

Hence it’s a pretty obvious case for someone to lodge a formal complaint about.

The Total Chiropractic Package offer and the Free 30 min massage deal may also breach another advertising rule ... but more on that later.
6. Use of testimonials in advertising

This rule is black and white because the *National Law* expressly prohibits the use of testimonials in the advertising of regulated health services.

The ban covers all types of advertising, including websites and social media pages. The *Guidelines* describe a ‘testimonial’ as including recommendations or positive statements about the clinical aspects of a regulated health service.

Chiropractors are obliged to remove any unsolicited testimonials posted on sites they control.

Perhaps the simplest approach is to include an alert in your patient information brochures explaining that unfortunately you are prohibited from displaying any testimonials or patient endorsements on your websites and social media pages. Arguably, it’s simpler to avoid patients leaving testimonials in the first place, than it is to get them removed.

However, it’s important to point out that the *Guidelines* aren’t intended to stop people from discussing their experiences of health services, either online or in person. The *Guidelines* only apply when a regulated health service is being advertised. Patients can still share their views through their own social media accounts or on information sharing websites that don’t involve advertising of regulated health services.

Consider **ABCD chiropractic**’s website below. Can you identify any areas that may be called into question?
Lessons learnt from claims

a) **ABCD chiropractic** shouldn’t encourage patients to ‘like’ them on Facebook, as this is a form of testimonial.

b) Some practitioners mistakenly believe they can get around the ban on testimonials by providing links from their website or social media pages to other sites such as WOMO. However, our experience shows that AHPRA is increasingly intolerant of practitioners who are either oblivious to, or flouting the advertising rules.

It is important to ensure that if you maintain a social media website, such as Facebook, you are watchful of patient testimonials provided elsewhere (such as on the patient’s own Facebook) which are linked back to your, or your business’, Facebook page.

Whilst this is not always within your control, recent claims experiences have revealed that AHPRA will raise concerns where it considers a testimonial has been endorsed by the health practitioner through being linked to, or ‘shared’ on, their page.
7. Unreasonable expectations of beneficial treatment

The *National Law* also prohibits any form of advertising that creates an unreasonable expectation of beneficial treatment.

Consider **ABCD chiropractic**’s website below. Can you identify any areas that may be called into question?

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**Lessons learnt from claims**

In this instance, **ABCD chiropractic** may be seen as exaggerating the effectiveness of SOT by claiming to ‘cure’ back pain.

To that end, consumers may present for treatment expecting SOT to resolve their condition regardless of the underlying aetiology. They may feel they’ve wasted money on an initial visit only to be told SOT alone isn’t the best treatment for their condition. Or worse still, they may allege they’ve had an entire course of ineffective treatment because SOT didn’t cure their pain.

Likewise, some practitioners are tempted to use shock tactics to promote the need for wellness or preventive care. Statements like *chiropractic is a must for preventing irreversible spinal damage*, may lead people to believe that serious spinal damage is inevitable without regular chiropractic care. As such, services shouldn’t be advertised in a manner that’s likely to make someone believe their health or wellbeing may suffer if they don’t undertake a particular treatment or health service. Again, you need to be able to substantiate all statements made in advertising material.
8. Indiscriminate or unnecessary use of health services

Regulated health services are prohibited from advertising in a way that directly or indirectly encourages the indiscriminate or unnecessary use of their services.

Consider the sample website below.

Dr Jane Coe recently attended a workshop where offering consumers prizes or loyalty bonuses was seen as an ideal way to grow business. After all, coffee shops and supermarkets have been doing it for years. So ABCD chiropractic decided to offer ‘FREE massages’ as a loyalty bonus.

Because they’ve stated conditions of the offer, and haven’t included anything that’s misleading or deceptive, ABCD chiropractic believes they’ve met all of their obligations under the National Law. But unfortunately, they haven’t.

Lessons learnt from claims

In this scenario, it could be alleged that ABCD chiropractic are encouraging people to undergo more treatment sessions than they really need, just to be eligible for the free massage offer. While you know that the number of sessions is always tailored to the clinical need, many patients have little idea of what to expect when making their first appointment. The advertisement may drive an assumption that all new patients will need at least 8 sessions. And of course, they may not – it depends on their condition.

Furthermore, although Jane believes she’s doing the right thing by advertising an end date to the offer, like supermarkets do with their petrol dockets, again this may be viewed as encouraging consumers to agree to treatment for reasons other than clinical need. They don’t want to miss out! Again, this highlights the importance of the relationship between all 5 rules.
Conclusion

Other risk issues ...

While the aim of this package is to share key learnings from advertising claims reported to Guild Insurance, there are many other risk issues for chiropractors to think about and actively manage. These include, but are not limited to:

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<td>Security</td>
<td>Sale &amp; supply of products</td>
<td>Equipment safety</td>
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At Guild Insurance we remain committed to working in partnership with the CAA to support chiropractors in managing their professional practice risks.
Final word!

Please use the learnings outlined in this package to evaluate your current practice and identify ways you can further reduce the risk of something going wrong for you or your patients.

Finally, there's lots of additional information available to help you. Try to allocate time in your diary to regularly visit the following websites:

- Chiropractors’ Association of Australia
- Chiropractic Board of Australia
- Guild Insurance

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