

Newsletter

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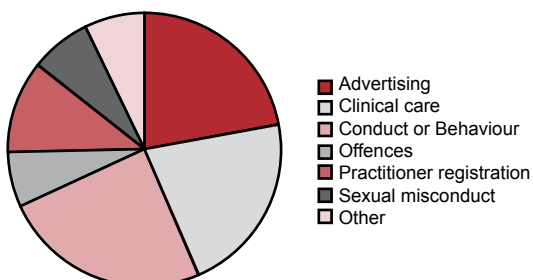
Message from the President

Vivian Lin



The 8th annual report of this Board was tabled in Parliament on 30 October and has now been published on the website and distributed widely – including to every registered Chinese medicine practitioner in the CMRB database. Chinese medicine is still new to Australia and the current members of the profession hold themselves forth to promote and strengthen the Chinese medicine industry. People comment that for such a small Board, the reported activities are plentiful and the Board is very productive.

When the statistics were prepared for the annual report the Board was very disappointed to note that advertising still features strongly at 34% of the total notifications.



The Health Professions Registration Act 2005 (the Act) applies to all the regulated health professions in Victoria, including Chinese medicine. Section 1 which is the “Main purposes” of the Act says that Boards are to regulate the advertising of regulated health services.

This is clear!

The Board’s job is to enforce the law. It is most dissatisfying to the Board that its repeated reminders to the profession have been somewhat unsuccessful and it has become necessary to prosecute registered practitioners for advertising offences. After an initial period of education, guidance and general and individual warnings, continuing to warn and warn and warn can no longer be justified.

This is an ethical issue for the profession. Professional ethics involves commitment to the public good, and a responsibility to serve patients without harming them in any way. Whilst it is acceptable, indeed expected that Chinese medicine practitioners make a living from their practice, managing the financial side of health care has the potential to lead people astray.

A registered health care practitioner must never intentionally mislead or deceive consumers for the sake of money.

The Board has decided to embark on an active campaign to get the message across to registered practitioners about the requirements for legal and ethical advertising. This is a particular focus in this issue of the newsletter.

The CMRB Registrar has recently been able to address members of the profession via the professional association meetings and the general feed-back indicates that this was useful.

The Board has also invited some experienced practitioners to write about the various advertising issues which keep coming up. Four articles about advertising are published in this newsletter. We are always grateful to persons who contribute articles for the support and guidance of their professional peers.

The CMRB Advertising Guidelines which were formally approved and issued by the Government are quite detailed and provide clear information on what to do and what not to do.

We would welcome further comments or suggestions to ensure that advertising complaints become a rarity in Chinese medicine.

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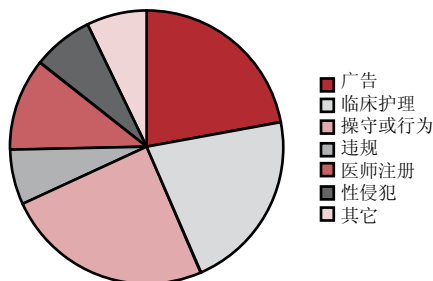
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主席致辞

林光汶

委员会第8份年度报告已在10月30日的议会会议上讨论通过，目前已刊登在网站上并广泛分发，其中包括发放给本委数据库里的每位注册中医师。对澳大利亚而言，中医行业仍然是一个新职业，行业现有成员正努力推广和强化整个中医行业。民众反映说，这么小的委员会却有如此多的活动报告，这个委员会工作效率很高。

在准备统计数据，编写年度报告时，委员会发现广告在警告通知总数中的比例仍高达34%，对此委员会感到非常失望。



《2005年健康职业注册法案》适用于维州中医行业等所有受监管的健康职业。该法案第1节“主要目的”规定，委员会负责规范受监管健康服务业的广告行为。

这一点非常明确！

委员会的工作职责就是执法。最令委员会感到失望的是，对中医行业的反复提醒，成效却不显著，因此对注册中医师的广告违规行为

采取起诉已变得很有必要。经过最初的教育、指导、全面及个别警告阶段，继续警告警告再警告已经没有什么意义了。

这是整个行业的职业道德问题。职业道德包括对公众利益的承诺，以及不以任何方式伤害患者、全心服务患者的责任。在符合相关要求的前提下，我们确实希望中医师能够通过执业活动来谋求生计，但健康护理的经济利益却可能会导致中医师误入歧途。

注册健康护理医师永远都不得出于牟利而故意误导或欺骗消费者。

委员会决定实施一项积极的宣传活动，向注册中医师传达有关合法及符合职业道德广告行为的讯息。这是本期新闻通讯稿的一个特别关注点。

委员会注册主任近期通过专业协会会议向中医行业成员发表讲话，所搜集的普遍反馈表明这种方式很有效。

委员会还邀请一些经验丰富的医师来编写一些有关各种广告问题的文章，以后我们将逐步刊登发表。本期新闻通讯稿刊登了四份有关广告的文章。对于投稿支持和指导同行的人员，我们始终心怀感激之情。

经由政府正式批准和发布的委员会广告规范内容非常详尽，明确指出该做什么，不该做什么。

我们欢迎大家提出进一步意见或建议，从而确保广告投诉在中医行业中销声匿迹。

CMRB Guiding Practitioners

Campaign on legal and ethical advertising

In an effort to engage with the profession, the Board always sends a representative, if available, when invited to attend Chinese medicine functions and events. The Board genuinely welcomes feed-back from the profession and uses this information to inform its policy setting. At the same time it seeks opportunities to:

- Explain the standards and rules which apply and provide opportunity for questions and answers
- Promote the Board's activities and provide accurate information.



Due to ongoing concerns about the high level of complaints and offences related to advertising, the Registrar has been attending meetings of professional association members to provide a presentation, answer questions and encourage debate and discussion.

In August the Registrar addressed a meeting of the FCMA (see photos) and in October she addressed a meeting of AACMA members. If there are any other groups

of Chinese medicine practitioners who would like to have the Registrar come along to a meeting please contact the CMRB office.



中医注册委员会向中医师提供指导

针对合法及符合职业道德广告行为所做的宣传

为积极参与中医行业的工作，每次受邀参加中医行业聚会和活动时，委员会都会尽量安排代表出席。委员会真诚欢迎中医行业提出反馈意见，并利用这些信息作为自身制定政策的指导。同时，委员会也寻求各种机会：

- 解释所适用的标准和规则，并提供问题解答机会
- 推广委员会活动，并提供准确信息

由于一直关注居高不下的广告投诉和违规行为，注册主任一直在参加各种专业协会会员单位的会议并发表演讲、解答问题、鼓励开展辩论和讨论。

8月份，注册主任在FCMA（参见图片）会议上发表讲话，10月份还在AACMA成员会议上发表讲话。中医师团体若希望注册主任参加会议，请联系本委办公室。



National Registration

The Council of Australian Governments (COAG) at its meeting of 26 March 2008 took a major step towards improving Australia's health system by signing an Intergovernmental Agreement on the health workforce.

This agreement will for the first time create a single national registration and accreditation system for ten health professions: medical practitioners; nurses and midwives; pharmacists; physiotherapists; psychologists; osteopaths; chiropractors; optometrists; podiatrists and dentists (including dental hygienists, dental prosthetists and dental therapists). The new arrangement will help health professionals move around the country more easily, reduce red tape, provide greater safeguards for the public and promote a more flexible, responsive and sustainable health workforce. For example, the new scheme will maintain a public national register for each health profession that will ensure that a professional who has been banned from practising in one place is unable to practise elsewhere in Australia.

Dr Louise Morauta, formerly of the Commonwealth Department of the Prime Minister and Cabinet in Canberra, has been appointed to head the implementation team for the first 12 months. The implementation team is now in place with staff located in Brisbane, Canberra, Melbourne and Sydney. Staff are in two teams, 'Policy and Legislation', headed by Chris Robertson, and 'Implementation', headed by Del Stitz.

Chinese Medicine

Chinese medicine is not included in the proposed national arrangements because it is only currently regulated in Victoria. On 28 July the implementation team called for submissions on inclusion (or not) of various partially regulated professions. Submissions closed on 3 October 2008.

The CMRB made a submission addressing the six AHMAC Criteria and based on the evidence it has gathered from its experience to date, presented a strong case for the inclusion of Chinese medicine in the national scheme.

The profession now awaits a decision by Government about whether or not Chinese medicine will be included. When this decision is made we will announce it on the "What's New?" page of the CMRB website www.cmrb.vic.gov.au.

All submissions made regarding the partially regulated professions are published at

<http://www.nhwt.gov.au/natreg-prp-28th.asp>.

全国注册

澳大利亚政府间理事会（COAG）在2008年3月26日召开的会议上签署了一份有关卫生保健工作人员的政府间协议，标志着澳大利亚卫生健康体系在改进历程上迈出了重要一步。

该协议将首次为10个卫生职业创建成单一的全局注册认证体系：执业医师、护士和助产士、药剂师、理疗师、心理医师、正骨师、按摩疗法师、验光师、足病师和牙医（包括牙科保健师、镶牙技师和牙科治疗师）。这项新方案将有助于健康专业人员更便于在全国各地流动，减少官僚形式问题，为公众提供更广泛的安全保障，促进产生一支更加灵活、快速响应并可持续发展的健康职业劳动力队伍。例如，新方案将为各个健康职业设置一个全国公共登记簿，确保在一个地方被禁止执业的专业人员无法在澳大利亚其它地方开展执业活动。

堪培拉联邦总理和内阁部前任官员Louise Morauta博士已被任命为执行小组的主管，负责头12个月的贯彻实施。目前这支执行小组已创建成立，小组成员分布于布里斯班、堪培拉、墨尔本和悉尼。人员分成两个小组，分别是Chris Robertson领导的“政策和法规”小组以及Del Stitz领导的“执行”小组。

中医行业

由于目前只有维多利亚州对中医业实施监管，因此中医业并没有包含于拟议的全局方案中。7月28日，执行小组呼吁各方就是否包含入各种受部分监管的职业提交相关意见。意见提交截止至2008年10月3日。

本委员会针对AHMAC六项标准并依据目前经验所搜集的证据，提交了一份意见书，强烈要求把中医行业包含入全局方案。

目前，中医行业正等待政府决定是否把中医包含入其中。政府一旦做出决定，我们将在本委网站 www.cmrb.vic.gov.au的“最新动态”（What's New?）栏目中公布结果。

有关部分监管职业的所有意见书都刊登在 <http://www.nhwt.gov.au/natreg-prp-28th.asp>

Properly Witnessing Documents

Having a document witnessed when signed affords protection to both the signatory and the party receiving the form. In the case of renewal forms there appears to be some confusion amongst practitioners about the method of having a document witnessed.

In order for another person to witness your signature you must in fact sign the document in front of the witness. The witness then signs the document as proof that s/he actually saw you signing the document. Consequently both parties will indicate the same date next to their signature on the document, indicating the two signatures were recorded on the one occasion.

A number of renewal forms had to be returned this year due to the witness dating their signature days or even weeks after the practitioner's signature, this clearly indicated that the practitioner's signature was not witnessed.

In the case of practitioners who renew as practising it is only necessary to have a person over the age of eighteen witness the document.

However, for practitioners renewing as non-practising it is necessary to have a witness who is authorised to witness a statutory declaration. A statutory declaration is different – it is an authorization by law (the Evidence Act 1958). A list of such persons is available at <http://www.cmrb.vic.gov.au/registration/authtowit.html>.

Signing a false statutory declaration is a criminal offence - you can be charged with perjury if the information is false.

Writing Receipts

Question: When should I write a receipt for a patient?

Answer: Every time they pay you money

Two real life incidents demonstrate what can go wrong, but really, it is standard business practice to issue a receipt for money paid. The receipt should be completely accurate and the services (and goods) provided also reflected in the patient notes. You are expected to do so as a matter of good business practice and proper record keeping. It's that simple.

Incident one

A patient complained that he had a serious reaction to herbs prescribed by a Chinese medicine practitioner. On investigation there emerged different versions of the patient's contact with the practitioner. The patient said he went back for a second consultation and complained to the practitioner about the reaction. Whereas the practitioner said the patient attended once and never returned.

Problems:

- i) The practitioner had no patient records for any visits, though did not deny that the patient had been at least once. He also did not issue receipts
- ii) The patient had no receipt/s for monies paid for consultations. The patient was furious and claimed that the failure to issue receipts was part of an overall pattern of deceit.

Incident two

A dispute between patient and practitioner about when and how many times the patient attended.

The practitioner admitted to only issuing receipts if the patient was a member of a health fund and asked for a receipt.

Problems:

- i) The practitioner had no receipts to back up the entries in the patient records
- ii) The patient had no receipt/s for monies paid for consultations and says the practitioner has falsified the patient records.

In both cases, basic and good systems for records keeping and finances would have clarified the situation.

If you follow these systems your records will support you when there is a query.

If you do not follow these systems, your records will not support your version of events (even though it may be the truth) and the lack of such systems casts doubt on your credibility.

What is Misleading and Deceptive Advertising?

Brett Leo

Misleading and deceptive advertising are terms used to describe any promotion used to unethically entice the public to purchase goods or services. In Chinese medicine such advertising could wrongly mislead or deceive the public by:

- creating an unrealistic expectation of benefit
- stimulating unnecessary use or overuse of services
- causing someone to believe they are at a disadvantage by not undertaking the service
- suggesting that the treating practitioner is more qualified than their actual level of training
- advertising costs which are not accurately described and/or where hidden charges apply.

If exaggerated claims of effectiveness and efficacy of a service are made, patients may feel cheated when their results are not exactly as advertised. Advertisements containing testimonials are an example of misleading advertising. They can deceive people into making purchases based on biased views or give vulnerable persons false hope. Testimonials create unrealistic expectations as results cannot be in any way guaranteed, by implication or otherwise.

Images used in advertising can be another tool for deceiving or misleading people. As with testimonials, 'before and after photographs' imply that only good results are expected. Advertising which uses carefully selected images of only the successful cases distorts the facts and is arguably dishonest. Images are particularly worrying as they tend to have a greater (misleading) effect.

If potential results are not properly and fully explained and substantiated with valid scientific research then making claims is both illegal and unethical. The best place to impart full and proper information is in the practitioner-patient consultation. The practitioner then has access to a full medical and social history, has the opportunity to present information to suit the individual and is in a position to carefully assess the person's understanding and interpretation of the information being provided. Advertisements do not provide this opportunity for interaction and must therefore be subject to strict controls.

The use of titles including doctor, professor and specialist can also be both misleading and deceptive. Titles can be used to imply a level of qualification above a practitioner's professional training. When using titles and terms it is important to be accurate and if necessary explain or qualify to avoid any confusion or misunderstanding.

Each word used in an advertisement is important. Words and terms which engender fear have no place whatsoever in advertising Chinese medicine services. We are here to promote health and harmony not doubt and worry. Chinese medicine treats people as living, embodied beings whose well-being is of utmost importance.

When advertising fees and charges, this must accurately reflect the actual costs to the patients. There must be no hidden charges and people need to have a clear understanding of what they will be expected to pay. Any terms and conditions should be clearly and accurately stated with the advertising content to avoid it causing any confusion.

In conclusion misleading and deceptive advertising in any form is unacceptable to our profession. To avoid this and the potential damage to the good reputation of Chinese medicine as a registered profession, advertising should provide useful, clear, accurate information. If in doubt, let's consult with each other. It is in the profession's interest to help the public make informed decisions about accessing Chinese medicine. If they then do choose Chinese medicine, our patients and the community will benefit from what we have to offer.

何谓误导性和欺诈性广告?

Brett Leo

误导性和欺诈性广告这两个词用来描述以缺乏职业道德的方式，引诱公众购买产品或服务的宣传推广行为。对中医行业而言，这类广告会以下列方式错误地误导或欺骗公众：

- 让人对疗效产生不切实际的期望；
- 诱使不必要或过度使用服务；
- 让人认为自己若没有接受该项服务就会对己不利；
- 暗示主治医师的治疗水平高于其实际受训程度；
- 在广告中没有准确说明成本费用和/或采取隐性收费。

若夸大宣扬服务的效力和疗效，则倘若治疗效果没有达到广告宣称的水平，患者就会感觉受到欺骗。含有患者证词的广告就是一种误导性广告。这种广告会诱骗民众相信具有偏袒性的观点，从而购买产品或服务，或给脆弱的民众一个虚假的希望。暗示或其它方式的患者证词都会营造出不切实际的期望，这是因为无论采用何种方式都无法保证疗效。

广告中使用的图片也是欺骗或误导民众的另一种工具。与患者证词一样，“治疗前后对比照片”也暗示着只会出现良好疗效。在广告中只精心选择成功案例的图片，这会扭曲事实真相，是一种无可争辩的欺瞒行为。图片反应出来的疗效更加显著（误导性），因此图片问题也尤为令人担忧。

若没有正确全面地说明潜在结果，并辅以有效的科学研究，那么擅自宣称疗效就属于违法和违反职业道德的行为。全面准确地了解相关信息的最佳方式就是通过医患咨询。随后医师就能全面了解患者的医疗和社交历史，有机会介绍适合个人的信息，同时也能认真地评估患者对所提供信息的了解和领会程度。广告不能提供这种互动机会，因此必须加以严格控制。

使用医生、教授和专家等头衔，也存在误导性和欺诈性。这些头衔可用来暗示医师具备了超乎其专业培训程度的资质水平。使用头衔和专业用语时，务必要保持准确，若有必要应加以解释或限定修饰，避免出现混淆或误解。

广告中的每个用词都很重要。在发布中医服务广告时，不得使用任何会造成恐慌的词语和专业用语。我们是要推广健康和和谐，而不是疑虑和慌乱。中医行业把人视为活生生的具体生命体，其健康安宁最为重要。

发布费用和收费广告时，必须向患者准确表明实际费用，不得存在隐性收费，患者需清楚了解自己该缴纳什么费用。广告内容中应清晰准确地说明条款条件，避免产生混淆。

总而言之，中医行业不予容忍任何形式的误导性和欺诈性广告。为避免发生这种情况及损坏中医行业这一注册行业的良好声誉，广告应提供有用、清晰而准确的信息。若存在疑虑，我们就要相互咨询。帮助公众做出是否接受中医服务的知情决定，这符合中医行业的整体利益。若公众确实选择中医，我们的患者和社会都受益于我们的产品和服务。

Why Are There Advertising Restrictions for Health Professions?

Damien Cameron

Providing information about health professionals and the services they provide is recognised as being of value to consumers, the community at large and those professionals engaged in advertising their services (ACCC, 2000). Consumers need information when considering available therapies or treatment options, choosing a health practitioner and deciding how best to utilise their services. This enables the patient to make an informed decision.

Consumers, however, can be particularly susceptible to persuasive influence, and are entitled to appropriate protection from misleading or false information. Some protection is provided through the *Trade Practices Act 1974*. This Act contains a range of provisions aimed at protecting consumers through prohibitions. Among others, some prohibitions relevant to this article are:

- A general prohibition on misleading and deceptive conduct
- Specific prohibitions for false or misleading representations about things such as a services value, quality, place of origin or impact on the environment
- Prohibitions on conduct that is likely to mislead the public about the nature, the characteristics, and the suitability for their purpose or the quantity of any service (ACCC, 2000).

In relation to advertising, Australian competition law prohibits professional organisations from advertising that is false, misleading or deceptive or that which is likely to mislead or deceive. These prohibitions or restrictions also apply to health professionals. And in the same way, they exist to protect consumers, or patients. At the 1999 Joint Conference of the Australian Competition and Consumer Commission (ACCC) and Health Care Complaints Commission, Mr Allan Asher, Deputy Chairperson of the ACCC said:

While the ACCC recognizes that health professionals are generally ethical and honourable individuals, when restrictions on advertising in a particular sector are lifted, participants have no experience in using advertising as a tool to provide information to consumers, and there may be a misconception with some participants that anything and everything is allowed. Therefore a regulatory framework is necessary to ensure that consumers are protected from inappropriate advertising.

Patients may be particularly susceptible to the persuasive influence of advertising. The nature of a specific condition or illness for which a patient is seeking help for, may render them more vulnerable to these forms of advertising. Additionally patients may lack the medical knowledge, or knowledge of the service or therapy the health professional provides, which also makes them more susceptible to exploitation.

Advertising information that is inaccurate, misleading or deceptive has the potential to cause harm and in relation to health or medical services to cause great harm (Asher, 1999). It is therefore imperative that the information in healthcare advertising be honest, accurate and complete. Advertising restrictions are in place to ensure this, to improve the protection of the consumer and to protect the reputation of the profession on which the public relies.

This is why, of course, in the *Health Professions Registration Act 2005* (HPR Act) (and previously in the *Chinese Medicine Registration Act 2000*), there are explicit offence provisions relating to advertising which apply to all registered health professions. It is also noteworthy that the need to regulate

advertising is specified in the first section of the HPR Act where its main purposes are stated.

References

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Why Are Testimonials Prohibited Under the Act?

Paul Haji

The Health Professions Registration Act 2005 (HPR Act) clearly states that:

A person must not advertise a regulated health service or a business providing regulated health services in a manner which;

- refers to, uses or quotes from testimonials or purported testimonials; or
- creates an unreasonable expectation of beneficial treatment.

Any Chinese medicine practitioner found to be in breach of the law is likely to be prosecuted and face severe penalties. The CMRB has issued advertising guidelines and repeatedly reminded us to help us understand and comply. It even issued a specific warning, in December 2006 that continued use of testimonials would now be prosecuted due to persistent offending.

Advertising of course is used widely in business because it is effective. Many businesses use testimonials and endorsements in their advertising material because it is a very powerful method of promoting a product or service.

Testimonials, however, are inherently misleading or deceptive and therefore have no place in health care.

Have you ever read a negative one? Have you ever read a neutral one? What does this tell you?

- A false testimonial is when the person supposedly providing the testimonial in fact does not exist. It would be very difficult to verify the authenticity of a particular testimonial without having an independent verification process in place.
- A particular testimonial may give false hope. As we well know, health is peculiar to an individual and therefore the same treatment for two different people cannot be expected to achieve the same outcome
- A testimonial might be provided with ulterior motive. A person providing the testimonial may have done so because of an inducement, financial or otherwise
- A testimonial can create prejudice towards other practitioners. Statements of client satisfaction can mislead others into believing that the results obtained by treatment

from that practitioner are superior to a result that would be obtained by other practitioners.

People have high expectations of health professionals, especially registered health professionals. It is important to inform the public of the availability of Chinese medicine services, and to provide information that helps people make an informed decision about the services being offered. Useful information about Chinese medicine is of great value and benefit to the public. This is best offered by Chinese medicine practitioners and can be done effectively without resort to the use of testimonials.

It is important to remember that any advertising used to inform the public of your services, using any media, whether it be print, radio or internet, is the responsibility of the individual practitioner who stands to benefit from such advertising. A registered practitioner must also ensure that any advertising of Chinese medicine used in a multi-practitioner practice or when working for another clinic is lawful and without the use of testimonials.

Should You Call Yourself a Specialist?

This was the recent subject of discussion by the Reference Group which meets with the Board three times per year. The CMRB advertising guidelines say:

The minimum standards require that any advertising must not:

- imply the practitioner is a specialist unless they have additional higher-level qualifications.

In the absence of any accepted Australian system for recognising specialisation in Chinese medicine, the Board discourages the use of any form of wording that implies the practitioner is a specialist – unless the practitioner is able to validly substantiate the claim. The Australian community attaches particular meaning to the word 'specialist' and would expect the practitioner to have high-level, additional qualifications in the area of specialty. The Board would also expect the practitioner to provide readily understood information about their advanced qualifications, which would be of a level that warrants such claims.

In the absence of such qualifications, acceptable forms of wording that would enable members of the public to identify Chinese medicine practitioners who practise in particular areas, could be as per the following examples:

- Working in the field of sports injuries
- Focus is on women's health
- Special interest in treating skin disorders
- Experienced with children's health.

Chinese medicine practitioners must be certain that they can substantiate any claims made in advertising material, particularly in relation to outcomes of treatment, whether implied or explicitly stated.

In determining whether an advertisement is misleading, the Board will consider the overall impression of the advertisement, and the likely interpretation by members of the public. This is regardless of any conditions, qualifiers or disclaimers contained in fine print.

At the August 2008 meeting concerns were raised about what appears to be a proliferation of claims to "specialise in" treatment of various medical conditions – commonly infertility, cancer and pain treatments. Clearly Chinese medicine has much to offer in all

these situations but the profession needs to contemplate when it is appropriate (or not) to use words which convey that a person has particular expertise in an area of health care.

The Reference Group agreed that both formal training and clinical experience are relevant to the status of specialist. Of course, in some cases the claims of specialising are quite legitimate but in the absence of formal post-graduate courses available in these areas, queries arise regarding the basis of the claims.

The Reference Group held a view that ideally such claims should at least be subject to a formal, professional assessment process. Self-assessment is not considered adequate.

The Reference Group invites views from the profession.

Please submit your thoughts to: registrar@cmrb.vic.gov.au

Why are Before and After Photographs a Dangerous Way to Advertise?

Michelle Ruskin

Recently, *The Age* (1 Nov 2008) reported the issues regarding the use of before and after photos for the purposes of advertising and new rules which have been implemented as a result. The article was directed toward medical practitioners, particularly cosmetic surgeons and dermatologists but as registered Chinese Medicine practitioners we need to be clear on our own profession's position regarding before and after photos.

Although the CMRB advertising guidelines are mostly in line with those of the medical profession, if you haven't read them you may be naive in thinking that the use of before and after photos can be an appropriate form of advertising.

We have all seen the before and after photos of cosmetic surgeons and dermatologists showing remarkable and dramatic improvement in appearance, sometimes with the help of mood lighting, camera angles and make-up. Whilst good results do occur, the best results cannot in good faith be promoted as "typical". Such photos have enormous propensity to mislead. Arguably they also create an "unreasonable expectation of beneficial treatment" which is prohibited by law and must surely expose the practitioner to a higher risk of valid complaints.

Whilst the Medical Practitioners Board (MPB) does not prohibit the use of before and after photos, on 31 October 2008 it brought into effect new advertising guidelines which state:

The MPB considers that the use of 'before and after' photographs has significant potential to be misleading or deceptive, to convey to a member of the public inappropriately high expectations of a successful outcome and to encourage the unnecessary use of medical services (Section 7.1).

The CMRB has a clear position regarding the use of graphic or visual representations. The Advertising Guidelines for Registered Chinese Medicine Practitioners state that the minimum standards require that any advertising "must not use enhanced or misleading photos or images such as 'before and after' photos. Paragraph 7.2(o) specifically prohibits the use of graphic or visual representations except in accordance with the guidelines. Graphic or visual representations may only be used to illustrate a recommended treatment on someone who has received such service, to inform and educate the public without creating an

Why Are Before and After Photographs a Dangerous Way to Advertise?

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unrealistically favourable impression of the results. A genuine desire to properly inform prospective patients would require information about the full range of potential outcomes and advice about the factors which influence the likely results. Advertisers, of course, selectively choose photos depicting extremely good results. What does this tell you?

The use of before and after photos may be considered a form of testimonial, which under Section 94(c) of the HPR Act is prohibited. The specific offence provisions on use of testimonials in health advertising are applicable to everyone.

The CMRB guidelines are in place to protect the public, especially those seeking treatment for the condition/s represented. This also preserves the good reputation of the Chinese medicine profession, on which the public relies, especially now that it is a registered profession.

References

Health Professions Registration Act 2005

CMRB, Advertising Guidelines for Registered Chinese Medicine Practitioners

The Age, Nov 1, 2008

http://www.medicalboardvic.org.au/pdf/MPV_Advert_Guidelines_FA.pdf

Watch Out! The Heat Lamp Can Burn!

An experienced Chinese medicine practitioner shares his story

A heat lamp, usually emitting infra-red rays, is designed to help improve clinical results in treating symptoms associated with soft tissue injuries, chills and muscular pain. It is easy to operate, there is no smoke, it can be very effective, it is often a pleasant experience for the patient and for all these reasons this form of therapy is widely adopted in Chinese medicine therapy.

The lamp I use has two temperature settings – high and low. The temperature is set high initially to heat up the lamp quickly, and then low to maintain a comfortable, therapeutic temperature during the treatment.

There is still, however, a risk of burns, as I discovered recently. This happened to me despite my many, many years of experience. I am therefore writing this to alert others and hopefully prevent any of you or your patients having a similar experience.

The risk of burns may be especially present for patients with sensitive skin or a high level of body fat. To avoid burns I recommend the following:

- Explain the therapy thoroughly and carefully to the patient, before the treatment
- Advise of the therapeutic benefits but also the (low) risk of burning
- Place the lamp very carefully
- Instruct patients to let you know if they feel it is getting too hot
- Ensure the patient is able to communicate effectively in this situation (I have a bell and also remain nearby so my patients can call me)
- Actively monitor the patient during the treatment
- Display a sign in the treatment room reminding patients to let you know if there are any concerns.

If a burn occurs, positive action must be taken by the Chinese medicine practitioner to ensure it heals as quickly as possible and no complications occur. Remember, hot weather, sensitive skin, immunity problems or inadequate care can lead to complications.

Your clinical judgment will dictate what response is required, but basic objectives include protecting the skin from further damage and promoting healing. Depending on the severity of the burn, you may need to ensure:

- explanation and advice to the patient
- a light cover to protect the affected area
- dressing the wound
- referral for further medical assessment and possible treatment.

This was a reminder to me that vigilance at all times is important, even when we are very experienced, and we are never too old or too experienced to learn more.

Postgraduate Researchers Needed

New research into acupuncture and pain relief in emergency departments

Pain is the most common reason for presenting to an Emergency Department (ED), yet there is evidence that pain is often inadequately managed by pharmacotherapy. There is further evidence to suggest that acupuncture is an effective therapy for pain relief yet it is unclear whether acupuncture provides benefits for patients presenting to Emergency Departments. In order to shed some light on this question, the Australian National Health and Medical Research Council (NHMRC) has recently awarded RMIT University just over \$400,000 for a three year study into the effectiveness of acupuncture in treating the acute pain associated with back pain, ankle sprain and migraine in patients presenting to two Victorian Emergency Departments. The study is based on preliminary data gathered through pilot studies at the EDs of the Northern and Epworth Hospitals which currently offer acupuncture to patients.

The research team led by Professor Marc Cohen from RMIT University includes Dr Devilliers Smit an ED physician who works at both the Northern and Alfred hospital EDs, Prof Peter Cameron who is Academic Director of Emergency Medicine at the Alfred Hospital, Associate Professor David Taylor Director of Emergency and General Medicine Research at the Austin Hospital, Prof Charlie Xue, Head of Chinese Medicine at RMIT University, Dr Michael Ben Meir an ED Physician at the Epworth hospital and Dr Zhen Zheng from RMIT University.

The research team is seeking to include PhD researchers and is looking for expressions of interest from acupuncturists, registered with the CMRB, who are wanting to pursue a PhD to assist with the study.

Prof Marc Cohen says that: "ED physicians are very pragmatic people and will include any treatment that works for their patients. They are less interested in theories that may explain how treatments work. This study has therefore been designed to compare the effects of acupuncture with drug therapy as they would be applied in practice with the primary outcome measure being pain after one hour. Other outcomes include patient satisfaction and acceptability and the effect on health resource utilisation including time till discharge from the ED."

Prof Cohen adds "Emergency Departments are constantly under pressure to assess, treat and admit or discharge patients within strict time constraints despite having little or no control over patient influx. If acupuncture is shown to be effective, it could have a widespread influence over ongoing pain management practices in ED settings."

Interested applicants who are wanting to join the research team and pursue a PhD are advised to contact Prof Marc Cohen (email: marc.cohen@rmit.edu.au or phone: 9925 7440).

Lessons from Professions Standards Panel

Communicating well with patients

What Went Wrong?

A Professional Standards Panel hearing established by the Board to enquire into the conduct of a male practitioner found that the practitioner may have engaged in professional misconduct. The practitioner was cautioned, required to undertake counselling and required to alter the way in which he practises Chinese medicine. In his treatment of a female patient, the practitioner

- inappropriately touched the patient in and near intimate areas of her body
- asked intrusive personal questions about her personal relationships
- had deficient patient communication
- had not explained his treatment proposals or obtained informed consent
- failed to notice the patient's discomfort with treatment while touching near intimate body areas.

The practitioner, while eventually accepting he had practised inappropriately, explained that the hand pressure and other touching he applied, and the questions regarding the patient's relationships, were relevant to the patient's particular condition (menstrual problems and pain). It was his practice that females at times have their breasts exposed during massage. The practitioner stated he would have explained his method of treatment at the first consultation. He was not aware of her discomfort, possibly partly because it was his practice to treat three patients at one time.

As a result of the hearing the practitioner has now altered the way he practises to better protect the modesty of patients and to protect intimate areas from contact during massaging. He now sees only one patient at a time in order to avoid distraction and makes more effort to explain what will happen during treatments and to obtain proper informed consent.

What are the Lessons for the Rest of Us?

- Firstly this reminds us about the importance of effective communication with patients. It is essential to ensure that methods of treatment are clearly and fully understood and agreed to. This can be especially challenging for practitioners who do not share a first language with the patient.
- Secondly, we cannot rely on patient assertiveness to detect discomfort or disagreement. Practitioners need to pay careful attention and ensure opportunities for feedback from patients are provided.
- Thirdly, the practice of dealing simultaneously with multiple patients makes awareness of patient concerns harder to detect and is discouraged. Patients' modesty concerns are by definition sensitive and must be respected and protected.

Prosecutions

Ms Yuki Murata

Ms Yuki Murata pleaded guilty at Melbourne Magistrates Court on 4 September 2008 to a variety of the charges under the *Health Professions Registration Act 2005* (HPR Act) and it was found proven that she had, on a website, her business card and with a patient engaged in:

- Misleading and deceptive advertising,
- Using testimonials to advertise a Chinese medicine practice,
- Using a title, words or descriptions that, having regard to the circumstances, indicates she is an acupuncturist and authorised to practise in acupuncture,
- Claiming to be qualified to practise as an acupuncturist, and
- Using the title of 'acupuncturist'.

Section of HPR Act	Offence	How committed
94(1)(a)	Misleading and deceptive advertising	Two websites
94(1)(c)	Using testimonials to advertise a Chinese medicine practice	Two websites
80(1)(b)(ii)	Using a title, words or descriptions that, having regard to the circumstances, indicates she is an acupuncturist and authorised to practise in acupuncture.	First consultation with patient
80(1)(b)(ii)	As above	Second consultation with patient
80(1)(b)(ii)	As above	Business card
80(1)(e)	Claiming to be qualified to practise as an acupuncturist	First consultation with patient
80(2)(a)	Using the title of 'acupuncturist'	Second consultation with patient
80(2)(a)	As above	Business card

Ms Murata was placed on a twelve month good behaviour bond without conviction, was fined \$500 and ordered to pay \$2,500 towards the Board's legal costs.

The Board's actual legal costs plus investigation costs and expenses exceeded \$7,500.

Mr Ching Long (David) Yang

Mr Yang was found guilty and convicted on 30 October at Broadmeadows Magistrates Court of nine charges of breaching the HPR Act.

On 5, 9 and 16 February 2008, at the business premises Bai Cao Tang, in Footscray, the defendant during acupuncture consultations with a patient:

- Represented that he was an acupuncturist;
- Provided the patient with acupuncture and Chinese herbal medicine treatments;

- Represented that he was qualified to provide acupuncture and Chinese herbal medicine ;
- Provided the patient with a receipt for acupuncture; issued under another practitioner's name.
- Permitted the patient to make a further appointment with him.

Section of HPR Act	Offence	How committed
s80(1)(c)	Holding out as having registration	First patient consultation
s80(1)(b)(ii)	Using words	First patient consultation
s80(1)(e)	Claiming to be qualified to practise as an acupuncturist and Chinese herbal medicine practitioner	First patient consultation
s80(1)(c)	Holding out as having registration	Second patient consultation
s80(1)(b)(ii)	Using words	Second patient consultation
s80(1)(e)	Claiming to be qualified as above	Second patient consultation
s80(1)(c)	Holding out as having registration	Third patient consultation
s80(1)(b)(ii)	Using words	Third patient consultation
s80(1)(e)	Claiming to be qualified as above	Third patient consultation

The Magistrate emphasised the purpose of the HPR Act to protect the public. He viewed this as a very serious breach of the law and breach of public trust. He took into account favourably that Mr Yang pleaded guilty, but also took into account that Mr Yang had been previously warned by the Board in early 2007 and again in 2008 with the assistance of a qualified interpreter. Despite this he continued to knowingly break the law and thus was convicted. He was also fined \$3,000 and ordered to pay the Board's costs of \$3,000.

The legal expenses cost to the profession of this prosecution is in the vicinity of \$4,000.

Ms Narelle White-Ryan

Ms White-Ryan was found guilty and convicted on 31 October at Melbourne Magistrates Court of ten charges of breaching the HPR Act.

Section of HPR Act	Offence	How committed
s80(2)(a)	Use of title	Pamphlet usage - 'Acupuncturist'
s80(1)(e)	Claiming to be Qualified	Second Pamphlet - cosmetic and Japanese Acupuncture
s94(1)(a)	Misleading and deceptive advertising	Business Card - 'Acupuncture'

Section of HPR Act	Offence	How committed
s80(1)(c)	Holding out as having registration	2 consultations
s80(1)(e)	Claiming to be qualified	1 consultation
s80(1)(c)	Holding out as having registration	3 consultations
s80(2)(a)	Use of title	3 consultations
s80(1)(b)(ii)	Using words which indicate authorised to practise	1 consultation
s80(1)(e)	Claiming to be qualified	1 consultation
s94(1)(a)	Misleading and deceptive advertising	Web-site - Acupuncture/expertise

Once again the Magistrate viewed this as a very serious breach of the law and breach of public trust. He emphasised the public utility of courts and the need to generate general deterrence to others from committing such offences. He took into account favourably that Ms White-Ryan pleaded guilty, had a good record and was financially under stress, but also took into account that she had been previously warned by the Board in April and May 2008. Despite this she continued to knowingly break the law and was thus convicted. She was also fined \$5,000 and ordered to pay the Board's costs of \$3,000.

The legal expenses cost to the profession of this prosecution is in the vicinity of \$5,500

Mr Roy Charitra

Mr Charitra was found guilty without conviction on 30 October at Broadmeadows Magistrates Court of 6 charges of breaching the HPR Act.

Section of HPR Act	Offence	How committed
s80(5)(c)	Using a protected title	Website of AACMA Ltd
s80(5)(c)	Using a protected title	Website of ANTA
s80(5)(b)	Claiming to be qualified in Chinese herbal medicine	Business card
s80(5)(c)	Using a protected title	Business card
s80(5)(c)	Using a protected title	Certificate displayed in patient waiting area
s80(5)(a)	Holding out as registered in Chinese herbal medicine division	Business Letterhead

Mr Charitra was placed upon a six month good behaviour bond without conviction, was fined \$500 and ordered to pay \$3,000 towards the Board's legal costs.

The legal expenses cost to the rest of the profession of this prosecution is in the vicinity of \$7,500.

Advanced Allergy Elimination Pty Ltd

Advanced Allergy Elimination Pty Ltd pleaded guilty to five charges under the HPR Act at Melbourne Magistrates Court on 24 October 2008.

Section of HPR Act	Offence	How committed
s94(1)(d)	Expectation of beneficial treatment	Business Website
s94(1)(c)	Use of testimonials	Press pack issued
s94(1)(a)	Misleading and deceptive advertising	Business Website
s94(1)(c)	Use of testimonials	Business Website
s94(1)(c)	Use of testimonials	Promotional CD

The company was found guilty without conviction, fined \$500 and ordered to pay \$3,000 towards the Board's legal costs.

The legal expenses cost to the profession of this prosecution is in the vicinity of \$13,000.

Ms Jian Hua YU

Ms Yu pleaded guilty at Melbourne Magistrates Court on 24 November 2008 to a variety of charges under the Health Professions Registration Act 2005 which were found proven.

Section of HPR Act	Offence	How committed
80(1)(b)(ii)	Using a title, words or descriptions that, having regard to the circumstances, indicates she is and acupuncturist and authorised to practise in acupuncture.	Patient consultation on 5 July 2008
80(1)(c)	Holding out as having registration	Patient consultation on 5 July 2008
80(1)(c)	Holding out as having registration	Patient consultation on 5 July 2008
80(1)(c)	Holding out as having registration	Patient consultation on 5 July 2008
80(1)(e)	Claiming to be qualified to practise as an acupuncturist	Patient consultation on 12 July 2008
80(1)(e)	Claiming to be qualified to practise as an acupuncturist	Patient consultation on 19 August 2008
80(2)(a)	Using the title of 'acupuncturist'	Patient consultation on 19 August 2008
94(1)(a)	Misleading and deceptive advertising	Advertisement on window of clinic
94(1)(a)	Misleading and deceptive advertising	Business card distributed

She was found guilty without conviction, placed on a twelve month good behaviour bond and ordered to pay \$2,000 towards the Board's legal costs.

The legal expenses cost to the profession of this prosecution is in the vicinity of \$5,500.

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