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An "Ongoing" List of Unauthorized Advertising Practices

This resource focuses on a review of actions taken by the Chiropractic Examining Board involving marketing or advertising techniques. In reviewing both its minutes and issue disciplinary decisions, the Board generally focuses its attention on two (2) "major" aspects of marketing concerns.

Violation of State Administrative Code

The first major area of interest involves enforcement of Administrative Code §CHIR 6.02(15). This section of a chiropractor's "standard of conduct" prohibits "false, deceptive or misleading" advertising. Various examples of such advertising are specifically referenced in the attached copy of the code. Of the examples listed, particular attention is given to CHIR 6.02(15)(f) dealing with any references to a doctor having "specialization" or "specialty" in relation to their practice.

The Division of Enforcement has strictly interpreted this section of the administrative code to broadly prohibit any reference to the terms "specialty" or "specialization" unless the chiropractor has actually completed a diplomat status granted by the American Chiropractic Association or International Chiropractic Association. In interpreting this portion of the Administrative Code, the Board has issued disciplinary sanctions against chiropractors for advertising in the following manner:

1. Using the phrase "the chiropractic expert".
2. Using the phrase "specializing in traditional chiropractic healthcare".
3. Advertising that an office "has many hours of post graduate training on headaches".
4. Referencing that a doctor has "additional training" in a particular modality of care.

In enforcing this portion of the Administrative Code, the Board generally discourages any implication that a doctor has advanced or superior training over that of other doctors, unless the doctor actually has completed post graduate training offered through the ACA or ICA.

Violation of United States Code Provisions

A second major area of attention involves advertising associated with FDA approval or Medicare endorsement. In the area of FDA testing, chiropractors must be alert to the distinction between FDA "market clearance" and FDA "approval" of a device or technique. One example involved the FDA's testing of the decompression device, DRX9000. In one situation, a doctor advertised the device as having received pre-market approval, when the FDA had only issued premarket clearance of the device. Premarket clearance indicates only that a device is substantially equivalent to the legally marketed devices not subject to premarket approval. This incorrect identification is regarded as "misbranding" and violates a section of the Federal Code.

With respect to the area of Medicare, a section of the United States Code prohibits advertising in a manner which implies federal government approval of a program or service. The code section makes it unlawful for any person to advertise using the names, abbreviations, symbols, or emblems of the Social Security Administration, Healthcare Financing Administration, Department of Health and Human Services, Medicare, Medicaid, or any combination or variation of such words, abbreviations, symbols or emblems in such a manner that the person advertising such items would convey the false impression that the advertised item is endorsed by such entities. An example of such prohibited conduct involves an advertisement that indicates that a certain doctor is approved by Medicare and Medicaid programs. In following a strict interpretation of the Code, chiropractors are often encouraged to avoid the use of words such as "Medicare" or "medical assistance" in the advertisements which can be interpreted as a false endorsement.