

**Maryland Board of Chiropractic Examiners  
Annual Jurisprudence Presentation  
(1.5 CEU credits)**

**ADVERTISING ISSUES &  
REGULATORY UPDATE**

**Panelists:**

**Marc Gamerman, D.C. President  
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David Ford, C.F.E., Investigator**

**Presented at the request of the MCA  
1:00 – 2:30  
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BWI Marriott Hotel**

### III Advertising Target Issues

- In the past year, incidences of violations of advertising regulations have increased significantly. Complaints are filed by patients, competing chiropractic practitioners and other healthcare professionals.
- Advertising issues are prevalent because of public exposure, dissemination and publication – basically “its all hanging out for everyone to see!”
- Sources: Newspapers, trade periodicals, Yellow Pages, Television and Radio.
- **Basic Regulatory requirements of COMAR 10.43.03 re Advertising:**
  1. All advertisements must clearly identify the practice as chiropractic, including the name, office address, phone number and educational degree of the practitioner. (e.g. “*Acme Healthcare Clinic, Dr. Joe Johnson – Unacceptable – Acceptable advertisement would read: “Acme Chiropractic Healthcare Clinic or Acme Healthcare Clinic, Joe Johnson, D.C”.*”.)

2. Bottom line – the advertisement must clearly and unequivocally let the public know it is a chiropractic practice.
3. Additionally, pursuant to H.O. Article 3-407, all trade names must be pre-approved in writing by the Board before use.
4. An advertisement may NOT contain statements which:
  - Contain a misrepresentation of facts (e.g: *“Dr. Johnson can cure headaches, back pain and constipation forever”*)
  - Are likely to mislead or deceive due to partial disclosures of fact (e.g: citing only partial statistics regarding subluxation relief after treatment or failing to include relevant information relating to subluxation relief)
  - Are likely to create false or unjustified expectations of favorable results (e.g: *“The BLX 6000 Traction Machine will cure your backache forever”*)
  - Contain representations/implications that in reasonable probability can be expected to cause a prudent person to misunderstand or be deceived (e.g: Advertising chiropractic services under the heading of *“physical therapist”* in Yellow pages – advertising under *“Physical Therapy”* is O.K. if chiropractor holds PT privileges)

- Contain representations that the chiropractor is willing to perform illegal procedures (e.g: “Dr. Johnson will perform minor cosmetic surgery in his outpatient clinic.”)
- Contain representations regarding use of any equipment, treatment or procedure not within the accepted, prudent practice of chiropractic (e.g: Use of devices not approved by the FDA or not accepted or approved by general consensus of prudent care in Maryland – Past example includes use of a non FDA approved electric pulse device constructed in Mexico)

- **Licensee Solicitation & Gifts:**

- Licensees may solicit/advertise in person, by telephone, internet, newspaper or by mail except:
  - Where the solicitation amounts to fraud, undue influence, intimidation or overreaching or
  - Contains statements which would violate the aforementioned advertising regulations.
  - Significantly, even if using an advertising agency or 3<sup>rd</sup> party company to implement

**the advertisement or solicitation, the licensee will be ultimately held responsible.**

**Licensees may NOT give any gift, compensation, remuneration of any intrinsic value to any other healthcare practitioner, patient or other person for bringing or referring a patient (H.O. Article 3-313(15). Licensees must avoid the actual or perception of impropriety at all times. The following are common examples of illegal compensation:**

- **Cash**
- **Objects such as TVs, Cameras, DVDs, box of fresh bagels, etc**
- **Coupons for dinner or entertainment event**
- **Free services such as treatment, massage, etc**
- **Lottery tickets or chances to win other prizes**
- **Quid-pro-quo or barter for other services**

**Items of *de minimus*/non-intrinsic or nominal value may be given – examples:**

- **Coffee mugs with practice logo**
- **Pens/pencils, calendars with practice logo**
- **Inexpensive t-shirts with practice logo**

**The test: If the items have a value outside of the practice, they may not be given. Any questions should be addressed to the Board Executive Director on a case-by-case basis.**

## **REVIEW OF CASE STUDY**

### **CASE STUDY #1**

#### **THE DECOMPRESSION DEVICE DILEMMA BEWARE OF THE DRX9000 ADVERTISING PROMO**

**In the Winter, 2006 Minnesota Board of Chiropractor's newsletter, it was announced that the Superior Court of California recently fined a chiropractor \$25,000.00 for false advertising related to the decompression therapy applied by the DRX9000 device and permanently prohibited the licensee from ever using such advertising in the future. The decision referenced the placing of anonymous advertisements offering a free report about a NASA discovered, space age treatment and machine. The court stated that the defendant failed to verify the representations and assertions of the manufacturer/distributor: Axiom Worldwide, Inc, Altadonna Communications, Inc.**

In particular, the court decided that the licensee was unable to substantiate or produce the following:

- **Reliable, scientific studies or fact-based evidence demonstrating an 86% success rate for non-surgical spinal decompression...**
- **Reliable, scientific studies or fact-based evidence demonstrating a 90% reduction in disc herniation in 71.4% of patients**
- **Reliable scientific studies or fact-based evidence regarding therapeutic effect of space travel on astronauts;**
- **Reliable, scientific studies or fact-based evidence documenting that the therapeutic effect of the DRX9000 in the most severe cases when nothing else has worked;**
- **Reliable scientific studies or fact based evidence regarding the representation that pre and post treatment MRI's showed greater than a 50% reduction in size and extent of herniations after 4 weeks of treatment with the DRX9000;**
- **Reliable scientific studies or fact-based evidence regarding the advertising that the DRX9000 is either a new or space-age technology.**

**Maryland Chiropractors are put on notice that if they are using similar or identical advertising promises or claims, they are in great risk of violating of the advertising regulations and their licenses are at risk;**

**Also, remember, civil and criminal liability for intentional fraud on the public could lead to civil suits and/or imprisonment and fines.**

**Bottom line – the DRX9000 machine and similar approved devices are acceptable traction devices; however, BE CAREFUL OF THE ADVERTISING YOU USE.**

## **QUESTION & ANSWER SESSION**

**Concluding remarks - Adjourn**