

Business Practices: College and Legislative Expectations

Presentation to:
Ontario Chiropractic Association
October 19, 2016

**Presented by:
Lad Kucis**



GARDINER ROBERTS

* This presentation is for informational purposes only. It is not intended to be construed as legal advice. For legal advice, please consult a lawyer directly.

Items to be Reviewed

- Expectations placed on chiropractors by College of Chiropractors of Ontario (the “College”) and applicable legislation regarding the following business practices issues:
 - **Fees**
 - General Rules
 - Unit Billing
 - Block Fees and/or Payment Plans
 - Billing Third-Party Payors
 - **Advertising**

Sources of Regulation

College Policies

- Guideline: Business Practices (G-008)
- Standard of Practice: Advertising (S-016)
- Guideline: Advertising (G-016)
- Protocol: Public Display Protocol (P-016)

Legislation

- Professional Misconduct Regulation (852/93): Chiropractic Act

OCA Position Statements

- Position on Treatment Recommendations and Discounts





Fees



Objectives of Business Practices Guideline

- To clarify for chiropractors the sections of the Professional Misconduct Regulation concerning business practices;
- To ensure chiropractors provide accurate, complete information to patients regarding fees, unit billing, block fees and/or payment plans;
- To ensure chiropractors clearly communicate to patients their right to choose and/or refuse block fees and/or payment plans and their right to opt out of such plans at any time during care; and
- To ensure chiropractors understand and comply with policies and procedures for billing third-party payors.



- Fees must be for care that is diagnostically or therapeutically necessary;
- Fees must be fair and reasonable;
- Billing practices must be disclosed to patients in advance of any care;

General Rules re Fees



**KEEP
CALM**

&

**FOLLOW
THE RULES**



General Rules re Fees

...cont'd

- An account for professional services must be itemized, if:
 - requested to do so by the patient or a person or agency who is to pay, in whole or in part, for the services, or
 - the account includes a fee for a product or device or a service other than care.



- A re-assessment must be:
 - conducted when clinically necessary, and in any event, no later than each 24th visit
 - be sufficiently comprehensive for the chiropractor to:
 - evaluate the patient's current condition;
 - assess the effectiveness of the chiropractor's chiropractic care;
 - discuss with the patient, the patient's goals and expectations for his/her ongoing care; and
 - affirm or revise the chiropractor's plan of management for the patient.

Unit Billing

As defined in the Business Practices Guideline, Unit Billing refers to:

“charging and invoicing a patient for each component of the service performed at a single visit, as opposed to charging and invoicing the patient for the whole visit.”



A chiropractor engaging in Unit Billing shall:

- comply with all College regulations, standards of practice, policies and guidelines relating to business and billing practices; and
- ensure that the Unit Billing is fair and reasonable and be aware that charging a fee excessive to the service performed may constitute professional misconduct.

Block Fees and/or Payment Plans

As defined in the Business Practices Guideline, a Block Fee and/or Payment Plan refers to:

“any fee where the patient is charged for multiple services and/or treatments at any time other than when the services and/or treatments are provided.”



Block Fees and/or Payment Plans ...cont'd

A chiropractor charging a Block Fee and/or Payment Plan must ensure that they put in place a signed, written agreement between the chiropractor and the patient. The agreement must:

- give the patient the option of paying for each service on a “pay per visit” basis;
- disclose to the patient the regular unit cost per service and the unit cost per service established by the Block Fee and/or Payment Plan if the fees differ; and



Block Fees and/or Payment Plans ...cont'd

- fully inform the patient of his/her right to opt out of a Block Fee and/or Payment Plan at any time during care, and the patient's right to a refund of any unspent portion of the Block Fee and/or Payment Plan, calculated by reference to the number of services provided multiplied by the Block Fee/Payment Plan unit cost per service.
- * A chiropractor is not allowed to place any undue pressure or duress on the patient in offering a Block Fee and/or Payment Plan.



Repayment of Unused Block Fee and/or Payment Plan

- A patient may choose to opt out of a Block Fee and/or Payment Plan at any time during care, even if an agreement has been previously signed;
- A chiropractor shall not subject the patient to any undue pressure and/or duress when the patient chooses to opt out of a Block Fee and/or Payment Plan; and
- A chiropractor must fully refund to the patient any unused portion of the Block Fee and/or Payment Plan calculated by multiplying the number of services provided by the established unit cost per service of the Block Fee/Payment Plan Agreement.

Repayment of Unused Block Fee and/or Payment Plan ...cont'd

Example of Refund Calculation

Total of Block Fee (i.e. \$100) –
[Per Service Cost as per Block Fee
Agreement (i.e. \$20) x Number of
Service of Obtained (i.e. 4)] =
\$20 Refund



- * You cannot charge regular rates for services, if they were discounted as per Block Fee Agreement

Billing Third-Party Payors

- A chiropractor cannot bill a third-party payor a higher amount than the regular fee that they would otherwise bill to an uninsured patient for similar services.
- It is also not permissible to have differing fees for various third-party payors – exception: i.e. pre-established fees with WSIB and Financial Services Commission of Ontario





OCA Position Statement: Treatment Recommendations & Discounts

- **Block Billing**
 - “Block Billing” means billing and payment for a group or series of services rather than for each service
 - A “block” should not extend beyond a single assessment – treatment – reassessment cycle
- **Discounts**
 - Are considered appropriate in two circumstances:
 - Compassionate reasons; and
 - Administrative savings and patient convenience when billing a block fee.
- * Discounting of fees should not be an inducement to purchase a volume of services. The scope of any discount should not exceed a single assessment – treatment – reassessment cycle

Fees and the Professional Misconduct Regulation

The following are considered acts of professional misconduct for the purposes of the Professional Misconduct, which are relevant to the charging of fees:

- Submitting an account or charge for services the member knows is false or misleading – section 1(23);
- Failing to disclose to a patient the fee for a service before the service is provided, including a fee not payable by the patient – section 1(24);

Fees and the Professional Misconduct Regulation ...cont'd

- Charging a block fee unless,
 - the patient is given the option of paying for each service as it is provided;
 - a unit cost per service is specified
 - the member agrees to refund to the patient the unspent portion of the block fee, calculated by reference to the number of services provided multiplied by the unit cost per service – section 1(25);



Fees and the Professional Misconduct Regulation ...cont'd

- Failing to itemize an account for professional services,
 - if requested to do so by the patient or person or agency who is to pay, in whole or in part, for the services, or
 - if the account includes a fee for a product or device or a service other than a treatment – section 1(26);
- Selling any debt owed to the member for professional services. This debt does not include the use of credit cards to pay for professional services – section 1(27);
- Contravening the Chiropractic Act, the RHPA or the regulations under either of those Acts – section 1(28);



Fees and the Professional Misconduct Regulation ...cont'd

- Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital within the meaning of the Public Hospitals Act, if the contravention is relevant to the member's suitability to practise – section 1(29);
- Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional – section 1(33); and
- Contravening a standard of practice of the profession or failing to maintain the standard of practice expected of members of the profession – section 1(1).



Advertising



Standard of Practice: Advertising (Advertising Standard)

- Sets out key goals;
 - Provides a definition of advertising;
 - Set out the expectations placed on chiropractors re advertising; and
 - Confirms that it is an act of professional misconduct to contravene or fail to maintain a standard of practice.
- * The Advertising Guideline details and provides guidance re the Advertising Standard

Goals of the Advertising Standard

- To provide chiropractors with advertising guidelines to ensure all advertisements serve the public interest;
- To educate the public on what is available for their chiropractic care;
- To ensure, as much as possible, that the public has the information to make rational choices for their care;
- To assist the public in obtaining the services of chiropractors of their choice; and
- To maintain a professional image.

Definition of Advertising

In the Advertising Standard,
“Advertising” is defined as:

“any message communicated outside a member’s office through a public medium that can be seen or heard by the public at large with the intent of influencing a person’s choice of service or service provider. This standard applies equally to members acting individually, as a group, or as a professional health corporation”.



Expectations re Advertising

An advertisement **must**:

- be accurate, factual and contain information that is verifiable; and
- be readily comprehensible by the persons to whom it is directed.



An advertisement must **not** contain:

- anything false or misleading;
- a guaranteed success of care;



Expectations re Advertising

...cont'd

- any comparison to another chiropractor's or another health care provider's practice, qualifications or expertise;
- any expressed or implied endorsement or recommendation for the exclusive use of a product or brand of equipment used to provide services;
- testimonials that refer to a particular chiropractor or office (exception: testimonials re the benefit of chiropractic); and
- material that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional.

An advertisement **may**:

- allow an individual or organization to endorse a chiropractor provided that:
 - the individual or organization proposing the endorsement has sufficient experience relevant to the subject matter being endorsed; and
 - the chiropractor has been appropriately assessed as providing the subject matter being endorsed;
- offer an initial complementary consultation (i.e. only a discussion re how chiropractic may benefit the patient – no exams, treatments or diagnostics);



Expectations re Advertising

...cont'd

- name a specific service, technique and/or product but cannot claim superiority or endorse the exclusive use of such services, techniques or products;
- make reference to the chiropractor being a specialist, provided the chiropractor is recognized pursuant to College's policy as a specialist, and the specialty is disclosed; and
- make reference to the chiropractor being affiliated with any professional association, society or body, other than the College, only on a curriculum vitae, business stationery and recognized public displays.

Advertising of Fees

A chiropractor may advertise his/her fee for chiropractic services provided:

- the advertisement contains accurate, complete and clear disclosure of what is and what is not included in the fee;
- there are no hidden fees/costs;
- the chiropractor does not bill a third-party payor for the complimentary portion of the diagnostic or treatment service;



Advertising of Fees ...cont'd

- the advertisement expressly states the timeframe to be honoured for any complimentary or discounted diagnostic or treatment service;
- the advertisement does not limit the offer to a certain number of participants;
- no obligation is placed on the patient for follow-up appointments as a result of the complimentary or discounted diagnostic or treatment service; and
- the advertisement is presented in a professional manner that maintains the dignity of the profession.

Internet Rules

A chiropractor must adhere to the following rules regarding advertising on the Internet:

- Banner advertising on the Internet must comply with the Advertising Standard;
- A chiropractor's website is considered an extension of the chiropractor's office. Information on a chiropractor's websites must be informative, educational and professional; and
- Information on a chiropractor's website must comply with the standards of practice, except the Advertising Standard – College Council to circulate proposed changes to this item shortly.



Public Presentations & Displays

“Public Presentations” are a type of community service that includes educational sessions and/or public health screenings. These public events are used to encourage and promote chiropractic in a positive and professional manner.

“Displays” include presentations of printed or other visual material to members of the public, in a place normally frequented by the public, by a person or persons who are physically present when such material is distributed or presented. They do not include signage, billboards, or other forms of visual advertising that do not ordinarily require that the person advertising be physically present.

Public Presentations & Displays

...cont'd

This type of advertising is permissible provided that:

- a chiropractor adheres to the College's regulations and standards of practice (e.g., consent, record keeping);
- professional conduct is maintained at all times;
- material distributed complies with the Advertising Standard (pre-approval recommended);
- assessments comply with the College's Public Display Protocol Policy;
- no controlled acts of diagnosis and/or adjustments are performed; and
- no coercion or pressure tactics are used (however potential patients may ask for business card or request appointment).

Additional Points re Advertising

A chiropractor must not:

- advertise or permit advertising with respect to his/her practice in contravention of the regulations or standards of practice; and
- contact or communicate with or allow any person to contact or communicate with potential patients via telemarketing or electronic methods.



Advertising and the Professional Misconduct Regulation

Violating the Advertising Standard would likely be considered a breach of the following heads of “professional misconduct” under the Professional Misconduct Regulation of the Chiropractic Act:

- contravening a standard of practice of the profession or failing to maintain the standard of practice expected of members of the profession (section 1(1)); and
- engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional (section 1(33)).

- Review and adhere to the Legislation and College guidelines/standards
- If unsure regarding propriety of any practice, seek assistance from chiropractor colleagues and/or legal counsel
- If you are the subject of a complaint regarding a business practice, please ensure that you take the matter seriously

College of Chiropractors of Ontario

Tel.: 416-922-6355

Toll Free: 1-877-577-4772

Website: <http://cco.on.ca/>

E-mail: cco.info@cco.on.ca

Lad Kucis

Partner

Gardiner Roberts LLP

416-864-3114

lkucis@grllp.com

or

Connect via LinkedIn

