



## Defamatory articles or not?

The editorial staff and myself from time-to-time receive abuse from irritated authors about rejection of manuscripts, or about some issue related to publication of their article. However letters from lawyers raise matters to another level. We have previously had the policy to publish all such letters from lawyers and other groups who complain about what we publish. This is done on the basis of openness, a concept that now is a dominate factor in medicolegal circles when dealing with complaints.<sup>1</sup>

Paul Radich, a lawyer who acts for the New Zealand Chiropractors' Association Inc and its members, sent us a letter claiming that two articles in the previous issue of the NZMJ were defamatory.<sup>2,3</sup>

His letter states:

The article written by Professor David Colquhoun and published by the New Zealand Medical Journal (NZMJ) in its 25 July 2008 edition (Vol 121, No 1278) is defamatory of all members of the Chiropractic profession, the New Zealand College of Chiropractic and its President. It is one of the most blatant examples of defamation that we have seen. It is of significant concern that an article in those terms could be written and published in view of the inevitable consequences of those actions.

It asserts, for instance, that 82% of Chiropractors used the title Doctor in order to mislead: that is, they used the title intentionally "to imply that they were registered medical practitioners". It asserts that this is in breach of the law, and that "it seems clear that the law is not being enforced and it is widely flouted". It attacks the chiropractic profession, for instance, by suggesting that it preys on the "weak-minded, ignorant, and superstitious", and that it is "gobbledygook". It states that the idea of giving a qualification in chiropractic is "ludicrous", and such a qualification is "accredited by experts in nonsense". It falsely overstates a risk of death to patients that receive treatment.

The article written by Andrew Gilby [sic] and published by NZMJ is defamatory also. It makes assertions derived from wholly inadequate research, does not detail the criteria upon which its assessments are made thus making statistical "assertions", and considers that use of the title "Doctor" by chiropractors is "not permissible" and that such practitioners are "unlikely" to be complying with the law. The article suggests that this may harm clients seeking healthcare, and attributes various malicious motives to chiropractors' use of the title "Doctor" other than as a legitimate courtesy title.

Each of these statements are defamatory in that:

- a the publications tend to lower the entire profession: including the practitioners of that profession; the teachings and concepts of the profession itself; those associated with regulating the profession and its practitioners; and those that are responsible for educating and

certifying practitioners - in the estimation of right thinking members of society generally; and/or

- b the publications contain false statements about the profession, its practitioners, regulators, and educators, that have been published to the discredit of those persons; and/or
- c the publications are published without justification and are calculated to injure the reputation of the profession, its practitioners, regulators, and educators, by exposing them to hatred, contempt or ridicule.

Allegations of such an extreme nature are regarded by the courts as amounting to a clear cut case of defamation.

Before further steps are taken, we request, in accordance with section 25 of the Defamation Act, that Professor David Colquhoun, Mr Andrew Gilby, and Professor Frank Frizelle publish, in the next edition of the publication, with substantially similar prominence, a retraction of the statements in the articles and an apology to the profession, including its practitioners, regulators, and educators. The terms of the retraction and apology must be approved by us before publication.

We request further that the Association on behalf of the profession be given the opportunity to write a reasonable reply to the articles, to be published in the next edition of the publication, and with substantially similar prominence.

In accordance with section 25(2) of the Defamation Act, if this course of action is accepted, you are each, jointly and severally, obliged to offer to pay to the Association, on behalf of the Chiropractic profession:

- a the solicitor and client costs incurred by the Association, its members and its Council in connection with the publication of the retraction; and
- b all other expenses reasonably incurred by the Association, its members and its Council in connection with the defamatory statements that have been published; and
- c compensation for pecuniary loss suffered by the Association, its members and its Council as a direct result of the publication complained of.

We will advise you of the solicitor and client costs and of other expenses incurred upon your agreement to proceed under section 25.

The *Journal*, as with most publications, at times finds itself drawn into a situation in which it must deal with threats of legal action, the history of similar events has previously been published in the NZMJ.<sup>4</sup>

Several issues raised by this letter to the editor are covered in the Uniform Requirements for Manuscript Submitted to Biomedical Journals (<http://www.icmje.org/>). These requirements continue to evolve and are updated regularly. There is a very good part on publication ethics, which I draw readers' attention to.

The *New Zealand Medical Journal* is one of the group members who helped develop this policy and uniform requirement statements. The uniform requirements state that “The editor of a journal is the person responsible for its entire content”.

In the article by Gilbey, data is provided about use of inappropriate titles by New Zealand practitioners of acupuncture, chiropractic, and osteopathy<sup>2</sup> while the greater context is provided by Colquhoun.<sup>3</sup>

The comments made by Paul Radich are entirely consistent with the response as expressed by Professor Edzard Ernst (Editor-in-Chief of Focus on Alternative and Complementary Medicine (FACT) and Chair in Complementary Medicine at the University of Exeter) in his humorous article *In praise of the data-free discussion. Towards a new paradigm*<sup>5</sup> when he states “data can be frightfully intimidating and non-egalitarian”.

In this issue of the *Journal*, a letter is published from Simon Robb, the Registrar from the Medical Council of New Zealand (MCNZ), which points out their concerns about the use of inappropriate titles.<sup>6</sup>

Hopefully these articles will fuel more debate about this issue and help define just what really reflects the consumer’s expectations of those who use the title doctor.

The *Journal* has a responsibility to deal with all issues and not to steer clear of those issues that are difficult or contentious or carry legal threats. Let the debate continue in the evidence-based tone set by Colquhoun and others.

I encourage, as we have done previously, the chiropractors and others to join in, let’s hear your evidence not your legal muscle.

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