Revelations on Regulatory Models from Around the World - Part 2

Australian Health Practitioner Regulation Agency

This is Australia
- 23 million people
- 653,000 registered health practitioners
- 14 health profession boards
- 8 state and territory offices
- 1 National Law & Agency

ESSENTIAL ELEMENTS OF THE REGULATORY SCHEME
Structure

- Australian Health Workforce Ministerial Council
- 14 National Boards (100+ committees)
- 1 corporate Board
- 1 single agency
  - but co-regulatory arrangements in 2 states
- Self funded – from registrant fees

Objectives

- Public protection
- Workforce mobility
- Access to services in the public interest
- Flexible, sustainable, responsive health workforce
- High quality education & training
- Rigorous and responsive assessment of overseas trained practitioners

MODEL OF REGULATION
**Title Protection v Scope of Practice**

- Primarily title protection
- Limited practice protections
  - Restricted dental acts
  - Prescription of optical appliances
  - Restriction on spinal manipulation
Multiple decision makers
• National Boards and their delegates
  - Immediate action powers
  - Cautions, conditions, undertakings
• Panels
  - reprimands
• Tribunals x 8
  - cancellation

EVIDENCE BASED STANDARDS

5 Core Registration Standards
- Criminal history
- English language skills
- Recency of practice
- Continuing professional development
- Professional indemnity insurance
Profession Specific Standards

- Boards may develop and recommend standards about other matters
  - Limited registration
  - Lists of Specialties
- Dental - scope of practice

Policies, Codes and Guidelines

- Largely common code of conduct
- Common social media policy
- Common guidelines for:
  - Advertising regulated health services
  - Mandatory reporting

Evidence based approach

- Commissioning research
- Risk-based regulation unit
- Mandated consultation
- Office of Best Practice Regulation
**ROLE OF EMPLOYERS**

- **Mandatory Notification**
  - Practising whilst intoxicated by alcohol or drugs
  - Sexual misconduct in connection with practice
  - Risk of substantial harm because practitioner has impairment
  - Risk of harm - significant departure from accepted professional standards
Kia ora, koutou katoa - Hello and Greetings to you all from Aotearoa - New Zealand

Agenda
- Context
- Essential elements of the New Zealand health practitioner regulatory regime
- Restricted title, restricted activities and scopes of practice
- Professional discipline
- Standards
- Role of employers in regulation

The New Zealand Context
Context - New Zealand

- Parliamentary democracy with 4.7 million people, and growing
- Multicultural society with particular obligations under the Treaty of Waitangi
- 9.5% of GDP spent on health
- Some reliance on international workforce

Context - 2003 Statutory Reform of Health Regulation

- One statute
- 16 health regulatory authorities
- 22 health professions (with ability to add more)
- 109,000 registered health practitioners
- Cost of regulation met by practitioners

Professions regulated under the Health Practitioners Competence Assurance Act 2003

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<tr>
<th>Chiropractic</th>
<th>Oral Health (Dentistry, dental hygiene, clinical dental technology, dental technology and dental therapy)</th>
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2016 Annual Educational Conference
Essential Features of the New Zealand Regime

- Primary objective is to protect the public
- The statute is framework legislation
- Focus on practitioner competence and fitness to practice rather than professional discipline
- ‘Independent’ of government and practitioners
- Involves a number of agencies

Wider Regulatory Framework
Statutory Objective

“...to protect the health and safety of...the public by providing for mechanisms to ensure health practitioners are competent and fit to practise...”

Competence

Practitioner competence is the focus of legislation:

• Competence is to be established before a practitioner may be registered

• Competence is to be recertified annually

• Practitioner competence may be reviewed at any time

• A deficiency in competence is to be remediated not penalised.

Fitness to practise

Concept of fitness to practise covers both conduct and health. A practitioner must be:

• a fit and proper person to practise; and,

• physically and mentally able to safely practise their profession
“Independence” of Government & Practitioners

- Regulatory Authorities created by statute
- Members appointed by Minister of Health
- Minister has very limited powers over Regulatory Authorities
- Majority of members are practitioners

Nature of the Regulatory Regime

- Both title and activity protection
- Scopes of practice
- Prescribed qualifications and accredited courses
- Annual licencing and recertification
Title & Activity Protection

- Title protection for all;
- Activity protection for some - restricted activities set by Parliament e.g. carrying out:

  “surgical or operative procedures below the gingival margin or the surface of the skin, mucous membranes or teeth.”

Scopes of Practice

- Scopes of practice are set by each of the Regulatory Authorities not by Government
- They describe and delineate a profession’s activities
- The Dental Council has 20 scopes of practice
Discipline

A Regulatory Authority does not have disciplinary powers:

- It may refer a matter to a Professional Conduct Committee ("PCC") for investigation
- Following investigation, a PCC may lay charges against a practitioner before the Health Practitioners Disciplinary Tribunal ("HPDT").

Health Practitioners Disciplinary Tribunal

- Independent of Regulatory Authorities, but funded by them
- Sits as a Court of Law
- Comprised of a Chair, 1 lay member & 3 professional peers
- May impose a number of penalties

Disciplinary Pathways

- Breach of Patient Rights
- Professional Conduct Committee
- Regulatory Authorities
- Conduct
- Health Practitioners Disciplinary Tribunal
- Health & Disability Commissioner
Standards

Regulatory Authorities required to set standards of:
- Clinical competence
- Cultural competence, and
- Ethical conduct

Tiered approach to standards

Standards (continued)

Dental Council has a 3 Tier Standards Framework comprising:
- Ethical principles
- Professional Standards with guidance
- Practice Standards
## Core Registration Standards

- **Competence** - minimum standard to be maintained
- **Fitness to practise** - criminal conduct and health
- **Communication skills** - English language
- **Recency of practice** - degradation of skill & knowledge

## Standards - Evidenced Based

- External subject matter experts
- Working Groups, including practitioner & academic members
- Internally generated statistical data
- Stakeholder Consultation
- Commissioned research

## Employer Involvement
Employer Involvement

- Employers required to notify of practitioner competence or health concerns
- No employer role in governance of Regulatory Authorities
- Regulatory Authorities developing relationships with employers

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Dental Council
Te Kaunihera Tiaki Niho

Revelations on Regulatory Models from Around the World - Part 2
Regulatory Model in Ontario, Canada
Agenda

- Essential elements of professional regulatory regime in Ontario
- Scope of practice and restricted title regime
- Professional discipline under Ontario’s regulatory regime
- Role of employers in regulatory regime

How Do Regulatory Bodies Come into Existence in Ontario?

- Self-regulation of a profession, not by a government department or agency
- Delegation of authority by legislation enacted by the provincial legislative assembly to self-regulatory body (College)

- Typically, a professional association lobbies the government for self-regulation
Delegation of Authority by Legislation

- The statute sets out
  - powers and duties of the regulatory body
  - objects of the regulatory body
  - scope of practice of the profession (if any)
  - title or professional designation restricted to members
  - activities restricted to members (if any)

Delegation of Authority by Legislation (cont’d)

- process for
  - entry to practice
  - handling complaints about conduct or actions of a regulated professional
  - hearing and determining allegations of professional misconduct/incompetence
  - information about regulated professionals available to the public

Professions Regulated in Ontario: Health Professions

- Audiologists and Speech Language Pathologists
- Chiropractors
- Dental Hygienists
- Dental Surgeons
- Dental Technologists
- Dentists
- Dietitians
- Homeopaths
- Kinesiologists
- Massage Therapists
- Medical Laboratory Technologists
- Medical Radiation Technologists
- Naturopaths
- Nurses
- Occupational Therapists
- Opticians
- Optometrists
- Pharmacists and Pharmacy Technicians
- Physicians and Surgeons
- Physiotherapists
- Psychologists
- Registered Psychotherapists and Mental Health Therapists
- Respiratory Therapists
- Traditional Chinese Medicine Practitioners and Acupuncturists
Professions Regulated in Ontario:
Other Professions

- Agrologists
- Architects
- Certified Engineering Technicians and Technologists
- Chartered Professional Accountants
- Early Childhood Educators
- Foresters
- Funeral Directors
- Geoscientists
- Human Resources Professionals
- Insurance Brokers
- Land Surveyors
- Lawyers and Paralegals
- Professional Engineers
- Real Estate Brokers and Salespersons
- Social Workers and Social Service Workers
- Teachers
- Veterinarians

Scope of Practice Regime

- Scope of Practice
  - profession “licensed”
  - activities “licensed”

Scope of Practice Regime (cont’d)

- Early Childhood Educators
  “The practice of early childhood education is the planning and delivery of inclusive play-based learning and care programs for children in order to promote the well-being and holistic development of children…”
  “No person shall engage in the practice of early childhood education … unless the person holds a certificate of registration issued under this Act.”
Scope of Practice Regime (cont'd)

- **Regulated Health Professions Act**

  “No person shall perform a controlled act … in the course of providing health care services to an individual unless,
  (a) the person is a member authorized by a health profession Act to perform the controlled act; or …”

Scope of Practice Regime (cont'd)

- **Dietitians**

  “The practice of dietetics is the assessment of nutrition and nutritional conditions and the treatment and prevention of nutrition related disorders by nutritional means.”
  “In the course of engaging in the practice of dietetics, a member is authorized … to take blood samples by skin pricking for the purpose of monitoring blood readings.”

Restricted Title Regime

- **Restricted title**
  - title
  - holding out
Restricted Title Regime (cont’d)

- Social Workers
  
  “No person except a registered social worker shall use the English title ‘social worker’ or ‘registered social worker’ ... to represent expressly or by implication that he or she is a social worker or registered social worker.”

  “No person except a registered social worker shall represent or hold out expressly or by implication that he or she is a social worker or registered social worker.”

Scope of Practice/Restricted Title Regime

- Common regime in Ontario
- Scope of practice + restricted title

Strengths

- Protection of public against risk of harm
- Activities where risk of harm must be performed by regulated professionals
Challenges

- Overlapping scopes of practice
- Consumer choice

Professional Discipline

- Board of directors (Council)
  - members of the profession elected by members of College
  - persons appointed by the government (public members)
  - governing body and manages and administers the affairs of regulatory body

Professional Discipline (cont’d)

- Role of Council
  - responsible for setting strategic direction and for ensuring the College meets its mandate as set out in legislation
  - makes regulations subject to review by responsible Minister and approval by government
  - makes by-laws
Professional Discipline (cont’d)

- Committees of Council
  - Council members
  - public members
  - Non-Council members

Professional Discipline (cont’d)

- Committees of Council (cont’d)
  - Carry out regulatory processes of regulatory body
    - screen complaints and reports
    - conduct hearings

Professional Discipline (cont’d)

- Screening/investigation committee
- Discipline Committee
- Powers of the screening/investigation committee and Discipline Committee
Professional Discipline (cont’d)
• Professional misconduct defined by Act and regulations
• Standards of practice approved by the regulatory body
• Majority of members of screening committee and Discipline Committee - members of the profession

Strengths
• Direct involvement of profession in regulation of the practice of the profession
• Expertise of profession used for the purpose of regulating the profession
• Increased acceptance of regulation by the profession

Challenges
• Maintaining confidence and trust of the public
Employers in Regulatory Model

- Not directly involved in governance of regulatory body
- Key stakeholders
  - mandatory reports
  - users of publicly available information provided by regulatory bodies

Advantages

- Independent role for each is appropriate

Challenges

- Does employment setting create challenges for members’ compliance with standards of practice of the regulatory body?
- Employers’ understanding of the regulatory body’s processes
Conclusion

- Essential elements of professional regulatory regime in Ontario
- Scope of practice and restricted title regime
- Professional discipline under Ontario’s regulatory regime
- Role of employers in regulatory regime

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Our Regulatory Model

- Standards
- Regulation
- Improving Quality
- Workforce Development

Homegrown
Largely Female
Graduate Workforce
70% employed in Health & Social Care Trusts
All registered

Social Work Workforce – 6000
- 30% employed in Voluntary, Education, Welfare, and Justice Sectors

Social Care Workforce – 2900
- Approx 50% vocational qualifications
- 20% employed in Health Social Care Trusts
- NURSING registration

All registered
Strengths

- Recognises the continuum of Care
- Responsibility to upskill, strengthen and improve the standards of the workforce
- Stakeholder Partnerships fosters agility
- Influence Quality Improvement of Social Care Services

Challenge - Culture for Social Care

- Strategic Direction of Social Care
- Workforce Intelligence
- Adapting to Regulation
- Upskilling and Qualifications
- Consequence and impact of poor or dangerous practice - influencing practice

Continuous Professional Development

In the context of continuous professional development, it is crucial to maintain a balance between theoretical knowledge and practical application. This involves:

- Ongoing learning: Engaging in activities that enhance skills and knowledge.
- Reflective practice: Regularly examining and improving professional practice.
- Networking: Collaborating with peers and experts to share ideas and resources.
- Accountability: Being responsible for one's own professional growth.

These elements are essential for maintaining high standards and ensuring the delivery of quality care.
Development of Social Care

- Standards of Conduct & Practice
- Vocational Qualifications
- Working with employers to determine need
- Influence Government policy
- Working with Education sector

Fitness To Practise

- Taking action when Registrants breach Standards of Conduct and Practise
- Complaints about 1% of Registrants
- 0.1% proceeded to FtP Hearing
- Threshold for intervention - Risk to Service Users
- Range of approach from Consensual Disposal to Formal Hearing
Why We Are Unique

• Regulate Profession and Workforce
• Workforce Skills Development
• Awarding Body for Professional Awards in Social Work
• 1st in Europe to register Home Care Workers
• Partnership supports Regulation to be part of Quality Improvement

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Revelations on Regulatory Models from Around the World – Part 2

Regulation in Colorado
Structure of Colorado Government

- All executive agencies must be housed within a principal department.
- There can be no more than 20 principal departments.
- Department of Regulatory Agencies (DORA) is a principal department.

DORA

- 136 industries and professions
- 640,000 individuals and 24,000 businesses
- 40 boards, advisory boards and commissions
- 7 regulatory divisions
- 2 non-regulatory divisions
- Colorado Office of Policy, Research & Regulatory Reform

Colorado Regulatory Structures

- Constitutional commissions
- Policy-autonomous boards & commissions
- Director-model programs
- Director-model programs with advisory boards
Essential Elements of Colorado’s Regulatory Regimes

Essential Elements

- Licensing
- Enforcement
- Sunrise Reviews
- Sunset Reviews

Essential Elements - Licensing

Ensures initial minimal, competency
- Passage of an examination
- Educational requirements
**Essential Elements - Enforcement**

Ensures ongoing compliance
- Examinations of books of entities
- Inspections of facilities
- Complaint & investigation process
- Disciplinary action

**Essential Elements - Sunrise**

- Required when seeking to regulate a currently unregulated profession or occupation.
- Key determination is whether regulation is necessary to protect the public.
- May recommend regulatory structure based on evidence found during review.

**Essential Elements - Sunset**

- Periodic review of existing programs
- Key determinations:
  - Is regulation necessary to protect the public?
  - What regulation is necessary?
- Opportunity to reform statutes, rules and administrative processes
Scope of Practice v. Restricted Title:
Who Gets to Practice What?

Scope of Practice – What is it?
• The practice is broadly defined in statute
• Only those who satisfy criteria may practice
• Certain titles are protected

Scope of Practice - Advantages
• Regulator has greater discretion and flexibility in determining the scope of practice.
• Regulation can adapt more quickly because the practice is broadly defined.
Scope of Practice - Challenges

- No clear boundaries for regulated community.
- Overlapping scopes of practice can result in blurred lines.
- The need for current subject matter expertise demands regulator remain current on latest developments.
- Greater potential for abuse by regulator.

Restricted Title - What is it?

- Anyone may engage in the pertinent practice, but only those who satisfy certain criteria may use the protected title.
- May or may not involve a state-issued credential.

Restricted Title - Advantages

- Relatively clear definition on who may use the protected title.
- More objective standards than a scope of practice regime.
Restricted Title - Challenges

- Consumer confusion is more common.
- Hands of the regulator, if there is one, are tied when something egregious occurs and nothing can be done.

Professional Discipline: Who Hears the Case?

Two basic options of who hears the case:
- Regulator
- Administrative Law Judge (ALJ)
Regulator- Advantages

- Regulator possesses necessary subject matter expertise.
- More timely hearings (probably).
- Regulator can prioritize when a case is heard.

Regulator- Challenges

- Managing the proceedings can be difficult.
- Maintaining impartiality can be difficult.

ALJ- Advantages

- Greater impartiality and objectivity.
- Proceedings run more smoothly and fairly.
ALJ - Challenges

• Hearing may not be timely.
• ALJ controls docket, so egregious cases may not get prioritized.
• ALJs typically lack subject matter expertise.
• Some ALJs are good, some are not so good.

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