

Understanding Professional Self-Regulation

Glen E. Randall BA, MA, MBA, PhD candidate, *Founding Registrar of the College of Respiratory Therapists of Ontario (CRTO) 1993 - Nov 2000*

In the course of daily life, people routinely come together to make business transactions in which they buy and sell products and services ranging from groceries to dental care. When making these transactions, some people may be disadvantaged as compared to others, due an imbalance of information and knowledge. While the average person will be able to determine when a piece of fruit has spoiled, they may have greater difficulty knowing if their car engine is beyond repair, or if they really require a root canal on a tooth. To address this problem, governments regulate a great deal of commercial activity within society, in order to create a more level playing field between experts and the general public.

Government has a wide range of mechanisms at its disposal to influence or control business transactions. When it comes to regulating transactions between the public and professionals, governments are expected to make sure that the public has some form of protection. For instance, government rules help to ensure that our legal system is fair, teachers are knowledgeable, accountants behave in an ethical manner, and physicians are competent. Examples of government regulation range from rules requiring informed consent when a member of the public has a medical procedure performed, to rules about insider trading for buying and selling stocks. Overall, it is believed that such rules create a fairer system. One of the most common approaches used by government to regulate the practice of professionals is through a system of professional self-regulation.

What is Professional Self-Regulation?

Professional self-regulation is a regulatory model which enables government to have some control over the practice of a profession and the services provided by its members. Self-regulation is based on the concept of an occupational group entering into an agreement with government to formally regulate the activities of its members¹. The agreement typically takes the form of the government granting self-regulatory status. This is done through a piece of legislation which provides a framework for the regulation of a specified profession, and identifies the extent of the legal authority that has been delegated to the profession's regulatory body.

The specific legal authority transferred from government to the profession's regulatory body varies with different regulatory models. In exchange for the benefits of professional status, the regulatory body of a profession is expected to develop, implement, and enforce various rules. These rules are designed to protect the public by ensuring that services from members of the profession are provided in a competent and ethical manner. This legal authority often includes: the right to set standards for who may enter the profession; the right to set standards of practice for those working in the profession; and the right to create rules for when and how members may be removed from the profession².

The self-regulatory model also generally requires that a regulatory body put in place a complaints and discipline system. Such a system permits members of the public to raise concerns about services a professional provides to them, as well as provides a process to investigate and, if necessary, discipline any member of a profession who fails to meet professional standards of practice. It is expected that all of a regulatory body's decisions and activities will be done in the "public interest." In other words, the primary purpose behind all regulatory body decisions is to protect the public from incompetent or unethical practitioners.

Approaches to professional self-regulation range from minimal to extensive control over a profession. Governments select from among different regulatory approaches, based on the nature of the activities performed by a profession's members, and the extent to which the public might be harmed if an incompetent member of a profession provided services. Professional self-regulation may take the form of licensure, certification or registration. While the process of *registration* can be as simple as a requirement to ensure that one's name is recorded on some official record, the processes of licensure and certification have more onerous requirements.

Licensure is one of the most restrictive forms of professional regulation. Specifically, licensure provides an occupational group with monopoly control over who can practice a profession. Only those individuals who have met specific requirements to enter a profession are issued a "license" to practice the profession. Entry requirements are generally quite detailed and often include attaining specified educational requirements and completion of some form of licensing examination.

Certification is essentially the stamp of approval given to an individual for meeting predetermined requirements. Certification is often associated with monopoly use of a specific title or professional designation. This model protects the public by providing information about qualifications so that the public can make an informed decision about who they want to receive services from.

In recent years, in order to improve their accountability to the public and limit the monopoly control that some professions had attained, many regulatory models around the world have undergone reform. These reforms have attempted to provide the public with access to a more transparent regulatory system, as well as greater choice in who can provide various services. As a result of this desire for transparency and choice, more sophisticated forms of regulation have evolved, which might be described as hybrid models - combining different features of licensure, certification and registration.

Ontario's health professions, for example, are regulated under the *Regulated Health Professions Act, 1991*³. This piece of legislation has created a new and innovative model for professional self-regulation which no longer gives professions an exclusive scope of practice. Rather, the legislation provides for overlapping scopes of practice, whereby different professionals may carry out the same activities. This overlap offers the public maximum flexibility to determine which professional he or she wants to provide a service.

At the same time, the regulatory model provides title protection for each of the professions, which allows the public the ability to identify which individuals possess which skills.

Jurisdictions around the world have been interested in this new hybrid model for professional self-regulation. This is especially true of other Canadian jurisdictions. This interest suggests that any new occupation, to receive professional self-regulation, can expect to have aspects of a hybrid model incorporated into its regulatory framework.

Why Have Self-Regulation?

In Ontario, professional self-regulation has been used as a means of controlling the practice of some professions for more than 200 years. Government authority delegated to these professions has provided them with a great deal of autonomy and authority in determining both how many, and who, would be allowed to enter each profession. This control has also allowed the professions to limit the supply of professionals, which has ultimately translated into higher incomes for individual members^{4 5 6}.

Today in Ontario, there are more than three-dozen self-regulating professions, ranging from physicians and lawyers to architects and veterinarians. The majority of these self-regulating professions are health professions. This high percentage makes sense since incompetent or unethical health professionals run a high risk of causing harm to the public. Nonetheless, practitioners of other occupations can also cause harm to the public. For example, incompetent engineers can cause buildings to collapse and unethical accountants could embezzle your life savings.

In the later half of the Twentieth century, criticism of the self-regulating professions became wide-spread. The public came to see the monopoly control these professions had as simply a means of increasing the personal wealth of their members, rather than as a way to protect the public from incompetent or unethical practitioners. During this time, formal models of self-regulation have undergone fairly dramatic transformations. The emphasis of self-regulation has shifted from a focus on protection of the profession, to a focus on protection of the public.

Despite this greater emphasis on making the self-regulating professions more responsive and accountable to the public, numerous occupational groups continue to seek government support to become self-regulated professions. This raises the questions: why is self-regulatory status so desirable and what exactly does a profession gain from this exercise? The reality is that when an occupational group is granted the privilege of self-regulation, it gains a great deal. This includes greater autonomy and control, professional prestige and, in many cases, financial rewards.

Greater autonomy and control translates into independence of individual members of a profession to carry out activities with less or no supervision. It also means more autonomy and control for the profession as a whole. Under professional self-regulation, the regulatory body for a profession is able to set entry requirements and standards for practicing the profession, rather than having government, or another profession, impose requirements on the profession. In addition, the regulatory body provides the profession with a means of gaining access to government, which allows it to express its point of view and even negotiate for additional authority.

Prestige comes from attaining “professional” status and all of the benefits that go along with that status. Financial rewards resulting from self-regulation are difficult to quantify and they generally take several years to accrue. The financial benefits to professionals stem, in part, from the increase in demand for the services of a profession due to the public’s greater assurance that these professionals meet high standards.

Governments can also gain a great deal from allowing an occupational group to self-regulate. This form of regulation allows government to demonstrate that they have taken action to protect the public, but in a way that minimizes the government's role. Regulating through a regulatory body also allows for greater flexibility in the regulatory process as rules can often be developed more quickly. The government saves the expense of hiring experts to assist with creating unique rules and standards for the profession. The self-regulatory model also transfers the cost of regulating from government to the profession itself. Most importantly, the self-regulatory model helps to insulate government from the actions of individual members of a profession or the rules put in place by its regulatory body.

One of the most persuasive arguments in favour of self-regulation is that an occupational group has evolved over time and developed a specialized body of knowledge which makes members of the group experts. Because the knowledge these members have is so specialized, it would be difficult and expensive, for the government to determine and monitor standards of practice for the profession. It is therefore thought that members of a profession are in the best position to set standards and to evaluate whether they have been met.

The regulatory body of a profession has significant autonomy from government in regulating its profession. Nonetheless, since a regulatory body's legal authority is delegated from government, there needs to be some mechanism to ensure public accountability. This accountability of a profession is often facilitated through a reporting requirement to the government, usually through the Minister from the department which sponsored the legislation giving the group self-regulatory status. While the government generally has an arms-length relationship with the self-regulating profession -that is, it is not expected to interfere directly with the regulatory bodies decision making process - it often retains some ability to direct the regulatory body to do as it wishes under threat of removal of the profession's self-regulatory status.

Another common method of holding a regulatory body accountable to the public is through the appointment of members of the public to its governing Board. Some organizations may have only one token public member, while others can have a majority of the Board appointed by government. In Ontario, self-regulatory legislation for the health professions mandates that just under half of each Board is composed of public appointees. Some would argue that such a large proportion of Board members need to be public members in order to ensure that there is effective public participation and that the organization makes its decisions in the public interest, as well as remains accountable to the public. Others would argue that having such a large proportion of public representatives on a regulatory body's Board runs contrary to the principle of self-regulation. They would argue that only members of the profession, with specialized knowledge of the profession, are able to make decisions about the practice of the profession.

Qualifying for Self-Regulation

The move towards self-regulation is typically a long journey. In order to qualify for self-regulation, governments tend to consider several factors. First, government considers whether there is a risk of harm to the public from members of the occupational group. The basic philosophy of the self-regulatory model is that if there is no risk of harm to the public, there is no need for any form of government intervention, including self-regulation, which might limit who can provide a service. Under this circumstance, the greater choice of service provider the public has the better.

Second, the occupational group needs to be large enough to have adequate resources to implement a self-regulatory model. The resources required for self-regulation is quite significant. This means having adequate financial resources, as well as the commitment of enough members of the profession to assist with creating the standards and rules that will be necessary for the self-regulatory process to be implemented. Almost all self-regulating professions are expected to finance these activities through fees paid by members, who are required to maintain their memberships in order to practice the profession. As a result, it is uncommon for governments to allow smaller occupational groups to become self-regulated.

Lastly, the occupational group needs to have a defined body of knowledge that may be attained through specified education and does not overlap significantly with another occupational group. If the body of knowledge is too esoteric, or is already possessed by other occupational groups, it becomes impractical to set standards of practice for the profession.

What Does a Regulatory Body Do?

Regulatory bodies are expected to act in the public interest and not in the interest of the profession they regulate. In many situations, the public interest and the profession interest may be the same. In situations where they are not the same, it is the role of the professional association to represent the interests of the profession, while the regulatory body considers the public. Because of the conflict between making decisions in the interest of the public versus that of the profession, governments often requires a separation between regulatory body and professional association⁷. Despite this potential conflict, in some circumstances, such as the profession is newly regulated, fairly small, or the risk of harm to the public is relatively low, government may allow both the professional association and regulatory body to co-exist as one organization. Nonetheless, the public interest is expected to take precedence in making decisions related to regulatory functions. Failure to do so leaves the profession open to losing its self-regulatory status and potentially being regulated directed by government.

The main functions of a regulatory body include: (1) setting requirements for individuals to enter the profession; (2) setting requirements for the practice of the profession; (3) setting up a disciplinary process; and (4) setting up a process to evaluate the on-going competence of members. For most occupational groups that are seeking professional self-regulation, they have already determined entry requirements and have developed standards of practice. In most cases, these requirements will have evolved over time and become informally adopted within the profession, despite lacking the same legal authority they will have under a regulatory body. Likewise, more advanced occupational groups will also already have a process in place for removing undesirable members. However, under a self-regulatory model, this process will probably have to become more formal and transparent.

Finally, a new regulatory body will need to implement some mechanism to assess the on-going competence of members. Again, more advanced occupational groups may have some form of quality assurance already in place. Determining a method for evaluating continuing competence is often the most controversial activity performed by a regulatory body. There is controversy because quality assurance has such a dramatic impact on the individual members of a profession, due to the stress associated with complying with any requirements. Should a member fail to comply with the quality assurance process, or fail to meet current competency standards, the member might be compelled to undergo additional training or run the risk of being removed from the profession.

Quality assurance programs can also be controversial due to their high costs. One of the most common approaches to quality assurance has been to require a minimum number of education credits. This approach is the easiest to implement and is therefore often a starting point for new professions. Professions which use this approach are numerous and include health professions, lawyers, and real estate agents, to name a few. However, research questioning the value of this education credit approach is gaining support. While proponents see the education credit system as a good way of ensuring that professionals continue to expose themselves to ongoing education, critics argue that these systems are too focused on the process of education without having any knowledge of whether professionals actually learn anything when they attend educational events.

One of the most popular methods of overcoming the deficit of credit systems has been to require professionals to maintain a professional portfolio. This portfolio not only documents a professional's attendance at educational events, but also includes documentation of how those educational events relate to his or her specific educational needs as well as how what he or she learned is translated into the daily practice. While this professional portfolio approach to continuing competence is more proactive than the educational credit approach, it has been argued that it fails to adequately protect the public from members of the profession who are good at maintaining a professional portfolio but actually have not maintained their competence.

To address this dilemma, in some professions, where the potential risk of harm to the public is relatively high, the competence of professionals may be re-assessed on an ongoing basis. This may be done through a peer assessment process, where a professional is observed in his or her normal work environment, or a more formal assessment process, which re-evaluates competence in simulated environments. Examples of professions which undergo this more intensive assessment of their continuing competence include physicians, pharmacists and airline pilots. Where the potential risk of harm to the public is not as high, more cost effective and less stressful approaches to assessing continuing competence may be more appropriate.

Conclusion

Attaining self-regulated status not only sends a message to society about the expertise and professionalism of an occupational group, but also provides members of the profession a priceless opportunity to gain control over their future and that of the entire profession. In the absence of self-regulation, at best, occupational groups can expect to be relegated to the status of second class citizens in a world which has come to highly value professionals. Making the move towards professional self-regulation is one which each occupational group will have to make after thoughtful deliberation. Ultimately, self-regulation has tremendous benefits – but with those benefits come costs and responsibilities.

References

- ¹ Rueschemeyer, D. (1983). Professional autonomy and the social control of expertise. In R. Dingwall & P. Lewis (Eds.), *The Sociology of the Professions* (pp. 38-58). Hong Kong: MacMillan. ² Manitoba Law Reform Commission (1994). *Regulating professions and occupations*. Winnipeg: Manitoba Law Reform Commission.
- ³ Ontario. (1991). *Regulated Health Professions Act*. Toronto: Queen's Printer.
- ⁴ Freidson, E. (1970). *The profession of medicine: a study in the sociology of applied knowledge*. New York: Harper and Row. ⁵ Larkin, G. (1983). *Occupational monopoly and modern medicine*. London: Tavistock. ⁶ Manitoba Law Reform Commission (1994). *Regulating professions and occupations*. Winnipeg: Manitoba Law Reform Commission. ⁷ Bayles, M.D. (1988). Professional power and self-regulation. *Business & Professional Ethics Journal*, 5(2), 26-43.