Openness and Transparency in Professional Regulation: How Much is too Much?

The Changing Regulatory Landscape
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Agenda

• What events have shaped today’s discussion?
• Has landscape about openness and transparency in professional regulation changed?
• Questions to consider as decisions are made

Timeframe

• January 2013 publication of a series of articles in Toronto Star
• Transparency initiative of Advisory Group for Regulatory Excellence (AGRE)
• Summer and fall 2014 publication of another series of articles in Toronto Star
Timeframe (cont’d)

- October 2014 letter to health regulatory Colleges from Minister of Health and Long Term Care
- December 2014 submissions by health regulatory Colleges
- Spring and fall 2014 – other legislative initiatives

“Secrecy regarding Cautions”

- Series of articles in Toronto Star in January 2013
- “Doctors, dentists, pharmacists: The mistakes you can’t know about”
- “The warnings issued to them are kept secret by their regulatory colleges because they aren’t required to tell you about them”

AGRE and Transparency Initiative

- Advisory Group for Regulatory Excellence (AGRE) established
- 8 principles to guide health regulatory college discussions about making more information publicly available
Transparency Principles

• Principle 1:
  - The mandate of regulators is public protection and safety. The public needs access to appropriate information in order to trust that this system of self-regulation works effectively.

Transparency Principles (cont’d)

• Principle 2:
  - Providing more information to the public has benefits, including improved patient choice and increased accountability for regulators.

Transparency Principles (cont’d)

• Principle 3:
  - Any information provided should enhance the public’s ability to make decisions or hold the regulator accountable. This information needs to be relevant, credible and accurate.
Transparency Principles (cont’d)

• Principle 4:
  - In order for information to be helpful to the public, it must:
    • be timely, and easy to find and understand.
    • include context and explanation.

Transparency Principles (cont’d)

• Principle 5:
  - Certain regulatory processes intended to improve competence may lead to better outcomes for the public if they happen confidentially.

Transparency Principles (cont’d)

• Principle 6:
  - Transparency discussions should balance the principles of public protection and accountability, with fairness and privacy.
Transparency Principles (cont’d)

• Principle 7:
  - The greater the potential risk to the public, the more important transparency becomes.

• Principle 8:
  - Information available from Colleges about members and processes should be similar.

Two-Phased Approach to Implementing Transparency

• Phase 1
  - names of non-members practising illegally
  - additional information re discipline proceedings
  - relevant criminal findings of guilt
  - relevant bail conditions

• Phase 2
  - criminal charges (if relevant to practice)
  - known discipline findings in other jurisdictions
  - known registrations in other jurisdictions
  - certain outcomes from decisions of screening committee
    • cautions
    • undertakings
    • specified continuing education or remediation programs (SCERP)
2014 Media Reports

- Summer of 2014 debate surfaces again in media
- Fall of 2014 media reports regarding private Toronto pain clinic where infection outbreaks and no publicly available information regarding inspection reports

Request from Minister of Health and Long-term Care

- October 4, 2014 Minister Eric Hoskins' letter to health regulatory colleges
- Make transparency a priority objective in strategic plan
- Establish measures that will continuously increase transparency in College processes and decision-making

Request from Minister of Health and Long-term Care (cont’d)

- Colleges with inspection programs to publicly disclose full, detailed, useful information with respect to inspections conducted
Request from Minister of Health and Long-term Care (cont’d)

• October 28, 2014 ADM’s letter to health regulatory colleges
• December 1, 2014 deadline for health regulatory colleges to report to Minister and make reports publicly available

Request from Minister of Health and Long-term Care (cont’d)

• Strengthen existing measures to enhance transparency
• New measures to be developed and implemented to increase transparency
  - College processes
  - decision-making
  - information disclosure
• Specified areas to be considered

Submissions by Health Regulatory Colleges

• Responses of health regulatory Colleges posted online
• Identified a number of measures that have been or will be implemented
  - online posting of council meeting dates, agendas and minutes
Submissions by Health Regulatory Colleges (cont’d)

- re-design of online public register and college websites to increase accessibility of information
- developing and improving public consultation processes

Submissions by Health Regulatory Colleges (cont’d)

- incorporating a public “question period” into council meetings
- undertaking a governance review
- other measures

Other Legislative Initiatives

- Bill 103, Protecting Students Act, 2014
- Bill 10, Child Care Modernization Act, 2014
Other Legislative Initiatives (cont’d)

- Terms, conditions and limitations resulting from a written agreement or other agreement between the College and the member
- Bail conditions
- Notice of discipline hearing

Other Legislative Initiatives (cont’d)

- Notation of certain complaints resolutions if resolution directed to be posted on register
- Current or previous criminal proceedings relevant to membership

Has Landscape about Openness and Transparency Changed?

- Still about openness regarding member information
- Also about transparency about how regulator makes decisions and carries out its functions
- Not limited to health regulatory Colleges
Has Landscape about Openness and Transparency Changed? (cont’d)

• AGRE transparency principles developed to assist Colleges to make decisions about what information to make publicly available
• A number of health regulatory Colleges have decided on additional information to make publicly available

Has Landscape about Openness and Transparency Changed? (cont’d)

• Minister’s letter creates expectation for increased transparency regarding College processes and decision-making, as well as information disclosure

Questions to Consider

• Transparency principles as a framework
• Overarching question
  - Does the proposed action serve and protect the public interest?
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Relevance and Duration

- Making publicly available a member’s criminal findings of guilt or bail conditions or criminal charges
  - relevance to member’s suitability to practise
  - how long should the information remain on the public register

Screening Committee Decisions

- Making publicly available a decision of the committee that screens complaints and investigation reports
  - types of decisions
  - how long should the information remain on the public register

Decision-Making Process of Screening Committee

- Will the internal processes for decision making of screening committee need to change to support increased openness?
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Procedural Fairness

- Will a College consider additional procedural protections afforded to members at the screening stage?

Communication with Public

- How to communicate effectively with the public about these matters?

Transparency regarding College Processes

- Will posting of minutes of Council meetings and Council meeting material online mean changes to internal processes should be made to support increased transparency?
- How long should information remain on the website?
Transparency regarding College Processes (cont’d)

- What are the key processes of a College about which to ensure there is clear and accessible information available to the public?

Conclusion

- Landscape for openness and transparency has changed
- Expectations for Colleges for increased openness and transparency

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