

# Keynotes

## Systems of regulation in physical therapy

Dr Elizabeth Ellis sets out how regulation can help ensure that high professional standards are maintained nationally.

### SYSTEMS FOR UPHOLDING PROFESSIONAL STANDARDS

There are many systems for maintaining and improving professional standards. Each has advantages and disadvantages. This paper concentrates on regulation, but there are other ways of attempting to keep standards high:

- **International conventions.** Many countries incorporate these into local law.
- **The legal system.** The criminal law, civil law and special regulations for professional groups can all help protect the public from bad practice.
- **Government policies.** Governments can regulate the behaviour of practitioners through policies and sanction those who do not comply.
- **Codes of ethics.** Professional associations attempt to control professional behaviour with rules, often referred to as codes of ethics.
- **Systems of health payment.** In some countries, health insurance schemes can dictate the treatments provided.
- **Ethical training.** A very strong influence on professional behaviour is the ethical training of practitioners, learned from role models.

### WHY REGULATE?

Regulation protects the public from unqualified people assuming positions of responsibility without the ability to maintain standards of care. It can also be a means of tracing and managing qualified professionals whose practice falls below the acceptable standards.

A professional group that is regulated often has a special standing and trust in the community. The professional group can, however, have limits put on its scope of practice by regulation.

### TYPES OF REGULATION

#### Register of names

Authorities can establish a simple register of the names of people who claim the title of physical therapist. This allows practitioners to be traced, and may provide information on the size and nature of the workforce, but achieves little else.

#### Restriction on professional title

A more significant step is when only those on the register can call themselves physical therapists. Usually this is accompanied by a recognition that only people with a certain qualification will be recognised as physical therapists. This provides some control on the nature of the programmes leading to recognition.

This type of regulation usually acknowledges that there is an overlap between professional fields. However, it should also recognise that even though other professionals may apply techniques used by PTs, they are not practising physical therapy.

#### Restricting practices

A further step is to restrict certain practices to those on the professional register. This is particularly relevant when the purpose of regulation is to protect the public. A more comprehensive process is to define the scope of the complete professional field and prohibit anyone from carrying out any of these practices. On the other hand, an extensive description of every task and procedure tends to limit the scope of practice, and can become dated very quickly.

#### Licensure

In some countries, there is a distinction between being registered and being licensed. In these countries, you can be on the register and call yourself a physical therapist, but still be unable to practise legally unless you have a current licence. This will usually be available annually for a fee, and may be dependent on the applicant updating and maintaining skills.

This two-tiered approach can mean that administration of regulation is more complex.

### DEBATE ABOUT REGULATION

There is debate in many countries about deregulating health professionals. Registration is sometimes seen as anti-competitive, particularly when the profession itself has control over the supply and scope of practice. It is sometimes claimed that the risk of injury is so low that the cost of administering regulation outweighs the public benefits. Some say that market forces should determine who offers what

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health care services, and the result would be lower health care costs. This argument is flawed however, since the profession usually covers the cost of administration through renewal fees.

There are also clear advantages to the public if there is an independent regulatory body to discipline individuals, advise on standards of education and practice and protect the public.

## PUTTING INTO PRACTICE

There are many decisions to be made if a system of registration is to be introduced, and they will be best resolved after open debate between legislative authorities and the groups which represent the profession. The profession will benefit from listening to fellow citizens, not just experts, on what is required for a fair and equitable system of handling complaints about standards of care.

### Registration requirements

#### Examination

When establishing national or state exams for graduates, a registering authority has to consider whether the exam properly measures competency, and whether the standards expected for locals and therapists trained abroad are similar. The use of computers can improve access to exams, and ease administration over large geographic areas.

#### Qualifications

Recognising qualifications is administratively simpler. But the registering authority must decide on the system of recognition. There is a range of options. For example:

- programmes can be formally accredited to verify the educational and practical standards of their graduates, and this usually requires a set of objective national standards against which the programme can be evaluated;
- well-accepted and established programmes are sometimes automatically recognised;
- older qualifications are sometimes accepted on the assumption that practitioners with these will have developed skills and knowledge during their career.

#### Good character

Another common entry criteria is that the person should be of "good character" and therefore fit to practice in a trusted profession. This can be assessed by:

- character references;
- declarations concerning prior convictions;
- a system of reporting convictions to the registering authority.

#### Conditional registration

In some countries, registration can be accompanied by conditions on practice: there may be a limit on time or the nature of practice, or a requirement that the practitioner should be supervised. These provisions are often used if a practitioner is visiting a country for a short time and wishes to teach or carry out research.

## MAINTAINING STANDARDS

Once a proper system of registration is in place, maintaining standards becomes easier because practitioners can be held accountable. In an attempt to maintain standards, some countries have introduced mandatory continuing education. Others have introduced annual licensure exams.

Other facets of the continuing process of maintaining standards are as follows.

### Dealing with complaints

A system for maintaining professional standards must involve an independent, objective system for handling complaints with the power to investigate and prosecute. In most instances the outcomes will be determined by the laws and values of the relevant country.

It is very important that there is guidance available for the complainant on where and how to lodge the complaint.

If a complaint goes to the courts and the individual is found guilty, then the registering authority can consider the outcome of the court case and the professional association can consider both the court decision and the decision of the registering authority.

Because registering authorities receive complaints of varying severity, they need to have plenty of options for action. Sometimes practitioners are having problems themselves and need medical examination, counselling and rehabilitation rather than disciplinary action.

Many complaints are resolved through alternative dispute resolution methods such as direct resolution or mediation. An apology or explanation can be enough to resolve some complaints.

### Committees of inquiry

A committee of inquiry is a more formal mechanism for dealing with serious allegations. These committees can question the practitioner directly. Lawyers can accompany the practitioner and provide advice, but cannot act as advocates.

For serious allegations which could have serious consequences such as de-registration, the court-like hearing is usually chaired by a person with legal training, and the practitioner is allowed to be represented by an advocate.

### Informal safeguards

Although formal legislation and disciplinary provisions provide some safeguards, most control of professional behaviour probably occurs informally. The development of professional values in undergraduates should not be neglected, as this is one of the greatest opportunities to influence professional standards.

It is also wise to ensure that mechanisms such as peer review continue. Every professional has an interest in preventing unprofessional conduct in their peers. To ignore professional misconduct is to condone it.

## Reading list

- Health Care and the Law* by M Wallace, (Law Book Co, Sydney, 1995)
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- What People Want from Mediation by DE Peachey in *Mediation Research*, edited by K Kressel, DG Pruitt and Associates (Jossey-Bass, London 1989)
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