
 Council on Licensure,  
Enforcement and Regulation

**Lessons in  
Effective Remediation**



2010 Annual Educational Conference - September 23-25

Presenters: Jim Anliot, Affiliated Monitors  
Karen Puckrin, College of Nurses of  
Ontario  
Kevin McCarthy, College of Nurses  
of Ontario

*Promoting Regulatory Excellence*

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**Presentation Objectives**

- Identify problems with “traditional” remedial sanctions
- Explore alternative approaches to remediation
- Address issues regarding implementation of remedial measures

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**Differences between US and Canada**

- American approach to regulation
  - Emphasis on penalties for misconduct
  - Emphasis on formal disciplinary proceedings
- An example of a Canadian approach to regulation
  - Less adversarial, more mediation and ADR
  - More emphasis on improving practice
- What can we learn from each other?

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**“Traditional” Remedies**

- License Revocation
  - Not traditionally a “remedial” measure
  - Can sanctioned practitioner still own practice?
  - If so, how do we control his/her behavior?
  - Can licensee reapply for new license? How soon?
  - Can we set conditions on new license?

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**“Traditional” Remedies**

- License suspension
  - Provides control
  - We can set conditions and restrictions
  - But how long is too long?
  - Does a license suspension really teach?
  - What happens when licensee returns?

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**“Traditional” Remedies**

- Fines or administrative penalties
  - Not really “remedial”
  - Maximum amount may be too small to have any impact, but
  - Excessive amount = de facto revocation
  - Can agency impose fine directly?

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**“Traditional” Remedies**

- Injunctive relief
  - May prevent further misconduct, but
  - Can it produce improvement?
  - Can agency obtain this directly?
- Restitution
  - Useful only when harm is economic and measurable
  - Not generally available to most US boards

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**“Traditional” Remedies**

- Probation with Remedial Education
  - Most common option for US licensing boards
  - Underlying premise: Fix deficiencies in practice by improving individual knowledge and skills

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**“Traditional” Remedies**

- Problems with Probation
  - Is there an appropriate educational program?
  - Is the educational program readily available?
  - Is the program of sufficient quality?
  - Will the new knowledge or skills be used?
- What if the problem is NOT a lack of individual knowledge or skill?

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A New Tool: Compliance Programs

- Not really a new concept
  - Nursing home plans of correction
  - Program integrity agreements in US
- Goes beyond individual skill issues
- Most effective when problems arise from:
  - Lack of adequate organizational structure
  - Lack of adequate operating systems or procedures

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A New Tool: Compliance Programs

- Can address systemic problems:
  - Establish consistent operating procedures
  - Set standards of conduct for practice staff
  - Screening and credentialing of employees
  - Proper delegation of patient care functions
  - Poor clinical documentation or improper billing
  - Complaint reporting and resolution systems
- Can be used in variety of contexts

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A New Tool: Compliance Programs

- Three major elements
  - Comprehensive audit/evaluation of practice
  - Creation of standard operating systems and procedures
  - Training of practice personnel
- Issues
  - Allow self-assessment?
  - If not, use outside entity to evaluate and design?

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Another New Tool: Competency Assessment

- Comprehensive evaluation of individual knowledge or skills
- May involve variety of assessment tools:
  - Reviews of records
  - Discussion of real or hypothetical cases
  - Over-the-shoulder direct observation
- May require use of external provider

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How Do We Make Sure It Gets Done?

- How will we evaluate compliance?
- Who will provide the oversight?
  - What level of objectivity must we ensure?
  - Do we need specialized expertise?
  - Do we have sufficient internal resources?
- Should we use an independent external entity?

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How Do We Make Sure It Gets Done?

- How will we evaluate compliance?
  - Can progress be measured effectively on paper?
  - Will on-site inspection be required?
  - Will inspections be announced or not?
  - If on-site inspections are done, how will we protect privacy rights of third parties?

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### How Do We Make Sure It Gets Done?

- Using Our Own Agency Resources
  - Easier to administer
  - More direct control of monitor
  - Familiarity with monitor
  - No need for contracts or competitive bidding
  - Sometimes better control of the process

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### Issues of Independence and Bias

- What level of neutrality is required?
  - Is mere appearance of bias fatal?
- Can investigator be a neutral monitor?
  - Is a different investigator required?
  - Can any investigator escape the influence of the original investigation?

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### Issues of Independence and Bias (cont'd)

- Can a Board member be the monitor?
  - Recusal as decision-maker?
  - Disqualification as witness?
- Can we use a Board-recruited outsider?
  - Does Board recruitment = automatic bias?
  - If monitor is paid, does that create bias in favor of payor?

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### Issues About Resource Availability

- Using agency investigator or staff
  - Are we just shifting backlogs?
  - Do we need special expertise?
  - Does investigator have that expertise?
- Using Board-recruited outsider
  - Time invested in recruitment process
  - Criteria for selection
  - Can we find enough monitors?

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### Using Our Own Resources: Other Issues

- Payment
  - Who pays?
  - If Board pays, do we have the money?
  - If licensee pays, how do we enforce this?
- Public records issues
  - When do reports/documents become public
  - Protection of patient and third party data
- Monitor protection

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### Allowing Licensee to Choose Monitor

- What if licensee cannot find one?
- Criteria for acceptability - who decides?
- Quality of assessments
  - How do we assure adequate report content?
  - Objectivity of assessments?
- Can the Board "steer" the licensee to an acceptable monitor?

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### Advantages of External Oversight

- Increases objectivity and protects process
  - Avoids bias or conflict of interest issues
  - Provides credible, objective information for further decisions
- Promotes use of necessary expertise
- Reduces backlogs - faster resolution of minor cases
- Allows us to redirect limited resources

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### Issues with External Oversight

- Relationship between external monitor and Board
  - Control over outcome, further proceedings?
  - Control over selection of monitor
  - Scope of monitor's responsibility & authority
  - Agency/board access to monitor's documents
  - Do we need a contract? - competitive bidding
  - Agency/board expectations

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### Issues with External Oversight

- Relationship between external monitor and licensee
  - Who is the client, the agency or the licensee?
  - Notice of monitor's reporting obligations
  - Monitor's role - Is the monitor a mentor?
  - Can licensee challenge monitor's findings?
  - Effect of failure to pay monitoring costs
  - Protection of monitor and third parties

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Maximizing Outcomes  
&  
Supporting Change

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Program

- I. Legislative Framework: *The Regulated Health Professions Act*
- II. Philosophy for enforcement: Where did it come from?
- III. How do we implement CNO's Philosophy?
- IV. What is the evidence of efficacy?
- V. Refining Remediation: What next?

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I. Legislative Framework

- *Regulated Health Professions Act*
  - Reports, mandatory
  - Complaints - public input
- Case law
  - Finney vs. Barreau du Quebec

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### Case Study

Part one:

- An old story played out with new technology!
  - Smoke signals
  - Pony express
  - Snail mail
  - Telephone
  - Fax
  - Face book
  - Blogs
  - Twitter
  - ?

As a regulator does this story interest you?

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### II. Philosophy

#### Social Contract

- Nursing Profession
  - Promise of safe professional care
  - Accountability for care given
- Ontario Public
  - Control over who can practise nursing

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### II. Philosophy

#### Regulatory Action - Options

Involuntary Voluntary

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Persuasion

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### III. Implementation

- Intake assessment
  - Complaints
  - Mandatory reports
- Resolution:
  - ADR for complaints
  - Regulator action for reports

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### Case Study

Part two:

As a regulator what would you do?

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### III. Implementation

COMPLAINT	REPORT
1. Resolution Agreement is reached <ul style="list-style-type: none"> <li>- ICRC adopts resolution</li> </ul>	<ul style="list-style-type: none"> <li>• Options for action by the Executive Director:               <ol style="list-style-type: none"> <li>1. Bank</li> <li>2. Invitation to meet with the Executive Director</li> <li>3. Investigate                   <ul style="list-style-type: none"> <li>- ICRC decides outcome</li> </ul> </li> </ol> </li> </ul>
2. Investigation <ul style="list-style-type: none"> <li>- ICRC decides outcome</li> </ul>	

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Case Study

Part three:

What did the College do?

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IV. Evidence of Efficacy

Do these processes:

- Protect the public
- Maintain confidence in self-regulation
- Utilize a non-adversarial process - whenever possible
- Model a principled approach to regulation and the accountability of those regulated

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IV. Evidence of Efficacy

Based on previous screen:

- Qualitative
- Quantitative

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<h3>V. Next Steps</h3> <ul style="list-style-type: none"><li>• Standardize approach</li><li>• Develop staff skills</li><li>• Improve timeliness</li><li>• Specific feedback</li><li>• Explore members feelings</li><li>• Expand research to determine efficacy</li></ul>		

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<h3>Speaker Contact Information</h3> <p>James R. Anliot Director of Healthcare Compliance Services Affiliated Monitors, Inc. P.O. Box 961791, Boston, MA 02196 janliot@affiliatedmonitors.com Phone: (866) 201-0903</p> <p>Karen Puckrin and Kevin McCarthy College of Nurses of Ontario 101 Davenport Road, Toronto, ON M5R 3P1 <a href="mailto:Kpuckrin@cnomail.org">Kpuckrin@cnomail.org</a>; <a href="mailto:KMcCarthy@cnomail.org">KMcCarthy@cnomail.org</a> Phone: (416) 963-7526 (800)387 5526</p>		

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