



**Regulation Matters:
a CLEAR conversation**

Episode 10: The Scope of Regulation – Can the Boundaries Be Stretched? November 13, 2018

Line Dempsey: Welcome to our podcast once again, Regulation Matters: a CLEAR conversation. I'm your host, Line Dempsey. For those of you that do not know me, I am the senior investigator with the North Carolina State Board of Dental Examiners. I'm on the CLEAR Board of Directors, as well as the current Chair of the NCIT Committee and Vice Chair of the Annual Conference Program Committee with CLEAR. As many of you may know, the Council on Licensure, Enforcement and Regulation, or CLEAR, is an association of individuals, agencies and organizations that comprise the international community of professional and occupational regulation. Our podcast is a chance for you to hear about the latest and the greatest in our community. Today, I'm actually joined by Andrew Charnock, Chief Executive and Registrar at the Occupational Therapy Board of New Zealand. So welcome, Andrew.

Andrew Charnock: Hello.

Line: I know it is quite a bit of a different time change between the two of us. It's late afternoon/evening for me, and early morning for you. So I guess good morning to tomorrow from me, and I guess you're talking to me yesterday.

Andrew: Yes, I am, very good.

Line: Thank you so much for joining me. You're gonna be a presenter at the Regional Symposium in Wellington, New Zealand this month, and this is focused broadly on measuring and reporting regulatory performance. And I understand your topic is related to the scope of regulation - can the boundaries be stretched?, looking at the factors that conform or restrict the governance scope and practice of regulation. And in this podcast episode, we want to consider some of those questions that I think you'll be talking about at the symposium. I guess let's start off with, maybe, is regulatory legislation too clumsy and cumbersome for regulation as it stands today?

Andrew: So I guess my answer to that would be yes, and no, which is probably a good regulator's response. The reason I think I would say yes, because the regulation of course has to be consistent, transparent and appropriate in its response, and so in order to do that, often people have legislation,

or guidance and policy that allows them to apply those principles each time they come up against issues or notifications.

But for me, it sometimes stifles, dare I say, creativity or maybe looking at something from a different vantage point to what we've always done. It also may affect how agile we are in responding to notifications, complainants or practice issues that are presented to us. And I'm reminded of the work of Harry Cayton at the Professional Standards Authority, who talks about right touch regulation, and one of the principles there is that regulators should have an agile approach. And that obviously flies in the face of a legislative rulebook approach to addressing issues. So on the one hand, I can understand why we need legislation and rulebooks to guide our practice of regulation, but I think it sometimes stops us from actually saying, "Can we look at this a little bit differently?" And that would be my observation. Of course, the types of things that you have to deal with would need to be taken into consideration. If somebody has done something that's causing harm to the public or potentially dangerous and that caused a serious risk of harm if the person was continuing to practice or work, then obviously, we don't take an agile approach to that; we'd take a quick responsive approach to that. So, it's horses for courses, I think. Yeah, so that's how I would respond to that particular question.

Line: Well, you mentioned protection of the public. If the principal purpose of any regulation is therefore to protect the public, are we having issues or are you guys having issues explaining more to the public about what they can expect?

Andrew: Yeah, in our piece of legislation - obviously we've got one piece of legislation called the Health Practitioners Competence Assurance Act, which covers all the health regulators in New Zealand. It's one piece of legislation, and different bodies and boards and councils operate under that one piece of legislation. And at the moment we do that independently of one another. And so the processes, the approach, the policies, and guidelines that we develop are done independently of each other. And there's probably another question in there as to why that's the case and could things change. But in direct sort of response to the protection of the public, that's our prime purpose and it's one of the opening statements in the legislation, the protection of the public. My response to that is, protection of the public from what? And in my case, it's people who are practicing as occupational therapists, for doctors it's those medical practitioners, and so on, and so forth. But I think that we need to be able to explain to the public what to expect from those practitioners and also who are those practitioners - where do they work, and what kind of work do they do? And so we get into the arena of collecting information about the work force in order to explain to the public what it is they do and what they can expect when they actually meet a practitioner. And so, the principal purpose of regulation is protecting the public and, as I said, we need to be able to explain either individually within our respective professions or, what I would like to see, collectively around what to expect when you meet a health professional, and that probably leads us into the territory of looking at a shared code of ethics, shared competencies around practice. A key one to me would probably be a key competence around communication.

We probably all have those as independent organizations and bodies that we promote. But it would be really helpful, I feel, to get a coherence connected competence that is shared across all the professions around, as my example is, communication.

Line: Right. Well, what do you think is resulting or causing miscommunication or even reduced responsiveness? Are there too many regulators?

Andrew: I don't think so. We get into a very sensitive area when we start talking about too many regulators, as you probably know, because people have invested a huge amount of time and personality, and of course the occupation itself has a social standing. And when you start to talk about maybe reducing down the regulators, combining, amalgamating regulators, you're starting to tread on people's toes, their sensitive toes, around the history of the profession, the social standing of that profession in the community, and within the healthcare professions generally. An interesting observation I've always sort of thought in relation to health regulation is that the health regulators themselves seem to have the same standing within health regulation as the profession does. So if you can imagine that what's usually top of the list is doctors and nurses, and when anything is sort of promulgated from organizations or responses required from a health regulator, it's usually those larger organizations that are usually first out of the gate with a response or are the first people that organizations, governments, ministerial departments contact for further information. So yeah, there is an interesting link. In our legislation, which is being reviewed at the moment, there is an option for the Minister of Health to amalgamate authorities and we saw that happening in Australia with the development of AHPRA, the Australian Health Practitioners Regulatory Authority, which is an organization that pulls together all the health regulators in Australia.

Line: So it sounds like it might be time for regulators to align their strategies a bit, maybe looking at maybe different countries' major strategies. For example, health regulators alignment with health and health workforce strategies - would that be something that would be of interest in New Zealand?

Andrew: Oh, definitely, we're having a debate at the moment. It's a debate that's taking place in some of the journals as well as the news around the collection of health workforce data. Our legislation does not direct us to collect health information. We as health regulators are in a prime position to be able to collect that data. And I'm not sure what it's like in other countries, but in New Zealand every year there is a licensing round, so practitioners would apply for a new license each year to practice and to do that, they have to make an application for license to practice for the coming year. And there is an opportunity there for the regulators to ask particular questions.

Now, this is where I go back to the question, protecting the public and protecting them from what? And it would be really helpful to understand the makeup of each profession - where they're working, how long they've got left to work, what their particular area of specialty is, or what particular area of specialty do they want to move into as a post-graduate activity? So there is an opportunity to align with Health Workforce, which is an organization that's part of the Ministry of Health in New Zealand,

which collects data around health practitioners, and I think there's a prime opportunity for us to agree with the support of Health Workforce New Zealand, which is reflective of the New Zealand health strategy to say, "Where are we going with our health strategy, and who is going to deliver on it?" That question is then posed to Health Workforce New Zealand, who then pose it or have a conversation with the regulators to say, "This is the direction of travel. If we're going in this direction and we're trying to meet these strategic objectives, it would appear that we need to agree what kind of practitioners do we want for the future of health provision in New Zealand." Now that sort of connectivity doesn't happen at the moment, and it needs to, as far as I can see, because it goes back to the prime purpose of the legislation again, to protect the public.

Well, if we know that we're going to be short of anesthetists in a remote island just off New Zealand called Stewart Island, or that there's going to be a dearth of anesthetists in the central city of Auckland and we can see that retirement coming up, or that people are doing post-graduate programs in anesthesiology, then it would make sense to direct people to those particular areas.

If I can take that idea a little bit further - then the regulators, if they're having this connected conversation with the Ministry, with Health Workforce New Zealand, we can say, "Well actually, nurses, occupational therapists, in order to deliver on that program or that strategic health objective, we'll need to change that scope of practice. We may need to adjust their competencies, so that they can deliver on that."

So hopefully what I'm sketching out hopefully is a connective piece of work where the language, the conversation is joined up. And at the moment, I don't think that we're in that arena.

Line: With that kind of thinking, would you all need to develop generic competencies for individuals like that, or maybe even a generic code of ethics that would cross multiple disciplines?

Andrew: Well, the short answer to that, from my perspective, is yes. But I think we need to be a little bit more educated around just saying Yes. I think if we look at the objectives - and any organization, any country will probably have strategic health outcomes for its population - I think we need to start there and say... So what does that mean? What collectively do we want our practitioners to do and be able to do in relation to competence and shared competence? And if you start the conversation there, then I think it makes a lot more sense. And the connectivity and the evaluation of any changes to competence and delivery in healthcare would be easier to spot.

Line: So looking at, I guess, moving back towards maybe the governance boards in New Zealand, should they move to be more proactive towards risk-based agenda, or a reactive one? I guess, how are they currently for you guys, and what direction should they be going?

Andrew: I think it's a mixture. It's a mixture from my observation of working with different boards having conversations with chief execs and registrars. Of course, I'm not exposed to the discussions

around each of the board tables that happen across New Zealand, but my view is that it should be risk-based, but again, it goes back to that question of protecting the public. What are we protecting them from and what are the risks inherent in that profession? And of course, the profile for each professional around risk will be different, and I think part of the governance activity that needs to happen is a clear understanding of the workforce, the scope of competences, and ethics of that workforce, a clear understanding of that, and that's where I think governance boards need to have conversations with practitioners so that they understand the areas that they're working in and the landscape that they're working in and the challenges that they face. That requires the board to actually be more open and transparent and approachable to the profession.

We've probably grown up, all of us, within systems where regulators have existed for a long time but have often taken on policing activity to whatever profession they are regulating. And of course, that can drive practitioners underground. And a fear of raising the flag, or saying, "I think there's a problem at this workplace, and I think I'm the problem - Can you help me?" is a path that we probably need to go down more readily than sitting back and waiting for notifications or problems to appear at the board table. So it does require the governance board to take off that policing activity and become more proactive towards the professions that they regulate. And part of that, I think, is having conversations with practitioners. I think, I was at a conference in Melbourne some years ago where a medical practitioner described what I've interpreted as the other side of the mountain.

So I think for most regulators, we are on one side of a mountain and the practitioners or the people we regulate are on the other. And there's a tunnel through the mountain. And usually, regulators sit on one side of the tunnel, like the board of control people, and wait for people to come through the tunnel. Now these people might be pushed through by their employer; people might walk through themselves; or they may be reported by other agencies like the police. So it really is about getting over to the other side of the mountain. And the governance boards need to be able to lift their heads from the detail and do that.

Line: That's an interesting perspective, I like that. So, I guess, obviously, you've got the symposium coming up. Any parting comments or things that you wanna get across to our listeners?

Andrew: I think that my observations really in my presentation at the symposium in November will basically be around my experience and reflection, so I actually start my presentation by giving an apology, because I'm not going to quote research data, measurements, evaluation. I'm actually going to sit back and say, "I've been doing... I've been in health care for 43 years; half of that time has been in regulation in the UK, and as well as New Zealand. I just want to be able to have a conversation with you about my observations and my reflections of what I've seen," and that's the position I'll take and hopefully answer some of the questions that we've talked about briefly here and give more sort of depth to my thinking. So, hopefully, it forces people out of that boardroom rulebook situation into a different way of looking at things and collecting information in order to respond to protect the public.

Line: Excellent! Well, I wish that I could be there in New Zealand. I think it's over my birthday weekend, but something about that really long flight that makes it really difficult for me to get there from North Carolina. But I certainly do appreciate you speaking with us today and being a part of this podcast. I know it's always wonderful to have the opportunity to share and learn from each other. For those listening, registration is still open for the Wellington Regional Symposium. It's November 29th and 30th, if you're able to consider joining us there. And thank you, Andrew for speaking with us today.

Andrew: Thank you.

Line: And thanks for our other listeners that have joined us today on the podcast. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. Please subscribe to our podcast. It's available in a lot of different mediums: Podbean, iTunes, Apple Podcasts, Google Podcasts, Google Play, Stitcher, Spotify or TuneIn. If you've enjoyed this podcast episode, please leave a rating or comments in the app. Those reviews help us improve our ranking and make it easier for new listeners to find us. Feel free to also visit our website at www.clearhq.org for additional resources and a calendar of upcoming training programs and events. Finally, thanks to our CLEAR staff, specifically Stephanie Thompson. She's our content coordinator and editor for our program. Once again, I'm Line Dempsey and I hope to be speaking to you again soon.

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