



**Regulation Matters:
a CLEAR conversation**

Episode 25: What It Means to be a Good Regulator

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Line Dempsey: Welcome to our podcast, Regulation Matters: a CLEAR conversation. Once again, I'm Line Dempsey, your host for this podcast, and I'm currently the chief compliance officer with Riccobene Associates Family Dentistry here in North Carolina. I'm on the CLEAR board of directors as well as the current chair of the National Certified Investigator Training Committee with CLEAR.

As most of you are aware, 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 the latest and greatest in our community, and I'm really happy to be joined today by Deanna Williams. She is president and principal partner with Dundee Consulting Group. Deanna has been a long-time member of CLEAR. I've worked with her on several things. She's a past president; she's involved as faculty and committee member for several of our CLEAR Learning programs. In 2019 in September at our annual educational conference, she was awarded the Service Award for Lifetime Achievement for CLEAR. So I'm really super happy to have you here today.

Deanna Williams: Well, thank you very much, Line. I'm glad to be here too.

Line: And thank you to our listeners for joining us. And today's topic is, what it means to be a good regulator. That's a wonderful question, I think, or a topic to discover and explore today. This was the topic and theme at a conference hosted by the Professional Standards Authority in the UK and it surely resulted in a rich discussion there. Can we start our discussion today with, maybe, just a general question of, what does it mean to be good?

Deanna: Well, thanks, thank you, Line. I think, in the regulatory context, it's perhaps easier to define what's good by considering what bad regulation looks like. And there are examples of regulatory failure that have resulted in the loss of regulatory privilege and we've seen this across jurisdictions, professions and occupations. For example, we've seen the teachers in the UK and engineers, denturists, teachers, and real estate brokers across Canada in various provinces lose their regulatory privilege.

So I think if you look at the things that were common in the regulators that experienced this, we can almost turn it around and say, "Well then, if this happens, what does good look like?" So for example, erosion of public trust and confidence is a common element. And I think for a good regulator, we wanna strive to be trustworthy and we wanna do what it takes to earn and keep public confidence, not only in what we do, but how we do it.

A second common element is that are we willing, or are we seen to be willing, to put public interest above all others. And I think good is consistently asking at all levels of our organizations, what does this decision or action have to do with the public interest? Can we describe why and how we believe this action or decision best serves and protects the public?

And I think, most importantly, we should be asking the question, are others likely to see it that way? And I think that is really important. I think we also don't wanna be seen to be avoiding answering difficult questions about what we do or why we do something, but we do wanna be seen, if we're good regulators, as genuine and authentic in explaining our actions and being helpful in trying to have the public and other stakeholders understand those. I think lack of consistency and, therefore, defensibility is another problem. And I think good regulators have frameworks in place to ensure that consistent decision-making, or how we take actions, is in place. And I think the scrutiny of decisions by other eyes is also a really good practice.

I think we need to evaluate ourselves. So good regulators have evaluative processes in place that don't just rely on self-examination but are validated through some other assessment or peer process. And I think that's a really important part of being a good regulator. And then, of course, good governance is very important, and that's adhering to good governance principles, how conflicts of interest are addressed and managed. And I think it's really, together with our staff and our governors, is building a culture of excellence in safety, where questions are welcomed and where they're seen as opportunities rather than challenges. And then I think the other point for regulators, which is really important, is we have to be agile and flexible. I think that's really important.

Line: So that makes great sense. Looking at it from the compliance side of things where I'm working, it's very difficult to tell how I'm doing a good job other than lack of bad reviews or bad performance. I guess looking at it from the regulator's perspective, what ways or metrics or things can we put in place to know if we are doing good?

Deanna: Yeah, I think that's a really good question because in my experience, most regulators do experience one or more of these challenges at one time or another, and when two or more of them can occur at the same time, that often will give rise to what we'd know as a perfect storm. But I think it's important that we don't just make the assumption that we're good because no one has told us otherwise, and I think if we do that, then it puts us at risk of being too complacent.

So how we know--I think we have to evaluate ourselves and evaluating what we do through that "why?" lens. If something doesn't fit within our public interest role, then should someone else be

doing it? Do we seek answers to the right questions? How does this fit within our regulatory mandate? What risks are we attempting to address and mitigate? Is this the best action to serve and protect the public, and how is it likely to be seen by others?

I think it's asking those questions, like that part of that culture of inquiry even. And how do we add value to what we do? Can we demonstrate that there's value in what we do? And looking at how do we engage our registrants or the public--do we do post-engagement surveys or interviews to see what they thought or what they learned when they sort of contacted us? And so looking at what information are we getting back, and then what are we doing with that info?

And with respect to being adaptable, I think that the regulatory world internationally is finding that with so many things changing, we really have to have that capacity to be able to be adaptable and nimble. And how ready, willing, and able are we to do that? And even with looking at the culture that we have, are we a culture that looks at new and different approaches and tries to be on the front end of change when it comes? Or do we just take a sort-of wait and see approach and if it's imposed on us, then we'll do it? So, I think those are some of the things--we can ask those questions continually in our own organizations to try and get a handle on how do we know how we're doing. But we do have to be, I think, brutally honest and really looking at what we do and how we do it. We really do have to scrutinize our information that we're getting back when we ask these questions, because if we're not honest, we're gonna probably not be able to go forward with some changes that need to be made.

Line: Right. So I guess what kind of conditions would facilitate or inhibit good regulation? So, if we at least have an idea of what we need to ask to find out if you're doing the job I guess, looking at that from the inside perspective looking out, what conditions would help us do better or worse?

Deanna: Yeah, I think good regulation is facilitated by a number of things. Good governance, which I already mentioned, knowing what good governance means and adhering to the principles of good governance. So staying in each other's respective lanes; roles and responsibilities are known and respected; our regulatory mandate is clear--everyone's aware of it.

I think we have to have appropriate levels of trust within our regulatory organizations, but it can't be blind trust. Just because staff says this is what we should do, as regulatory governors we still need to be able to ask the questions that will help me to understand why we should do this if we're not sure.

And I think the biggest thing for good regulation is that absolute commitment at all levels of the organization to putting public interest above all others. I think that's really, really important. And I think that good regulation can be inhibited by sort of the opposite stuff-- by poor governance, by weak leadership both at board level and in the organizations, if necessary relationships break down. And I think we have to do some really tough things as regulators, so if we do those, but all of our necessary relationships start to fall off the rail, then we probably haven't been very successful in doing what we need to do.

And I think the other thing that really facilitates good regulation is trying to be good regulators as opposed to just-good-enough regulators. And I think that most regulators fit in the good-enough category, and I don't think that's necessarily bad. If we're seen to be good enough in protecting the public, then people kind-of leave us alone and we don't end up on the front pages of the paper and so on. But I do think that we need to, as regulators everywhere, sort-of move beyond being just good enough and saying, "Well how can we be better?" And that's being courageous and things, challenging precedents that we used to have, not doing things 'cause it's the way we always did them, but look at how can we do things better. And if there isn't a compelling legal reason to not be able to regulate further and treat a minimum as a minimum and not a maximum, then I think we should be doing that.

Line: So you mentioned a little bit on organizational factors. I guess, how do you see human, organizational, and systemic factors together impacting good regulation?

Deanna: Yeah, this is a very interesting concept, I think, and in my mind, I almost see them as three kind of circles, which kind of overlap and necessarily intersect, Line. I think that as regulators, the majority of regulators probably exert oversight on the human sort of aspect - a person to practice the regulated profession or occupation. But I think how well we can do it and how effective we can be is also largely due to the other two factors. So if you think of regulated professionals representing the human factor - so they had to demonstrate that they meet certain requirements for initial licensure, and they may have to, depending on the jurisdiction, demonstrate that they have some kind of ongoing competence. That seems relatively straightforward. But then I think you look at the organizational factor, and not all regulators have the ability to do the same things for different reasons and often it comes down to capacity, either size or financial resources. So how much can we do in our ability to exert influence over the humans that we do, so the organizational capacity, I think, is really, really important.

And then most of our registrants, at least a lot of them, they work in systems. So they're working in some kind of system where regulators often don't have any control at all over. And when we see professionals (and I know in the pharmacy world, we saw this a lot) where the pharmacy professionals would commonly blame "the system" in which they practiced as the reason that they were unable to meet the expected practice standards that we're trying to enforce. And some systems such as hospital systems or in the pharmacy world, big chain drug store employers, they often had their own systems in place to handle serious issues of concern or complaint through internal processes, which meant that as a regulator, we didn't always know if a registrant had been subject of a concerning practice or behavior at all.

So I think that there needs to be better open dialogue and communication, really, between the systems or the places in which our registrants work, between our capacity and what we're able to do within the confines of our human and financial resources and statutes that create us and then also with the registrants themselves that we regulate.

And I do think, one other thing is that, I think technology has a potential to bring these three circles

closer together, and it certainly has changed and continues to change how we're able to interact with registrants and with the public, I think generally in a meaningful way.

Line: Absolutely, that has been a big change over the last few years. Well, I guess, let me ask about this, what about trust? How do you see the relationship between the virtue of trust and good regulation? And obviously there's the the clear - if the public can trust us, then we'll be good regulators. But I guess, how is this relationship?

Deanna: Yeah, I think that as regulators, we often make a mistake thinking that we automatically are respected and trusted because of the authority that's granted to us by the statute, but I don't really buy into that. I think that we gain respect and we're given public trust not just because of the authority granted to us by a statute or legislation, but because we're seen to be good regulators.

And in my view, Onora O'Neill, who has done a TED Talk (she's an Irish philosopher and her TED Talk's entitled "What the public doesn't understand about trust"), I think she sort of nailed this perfectly. She says that we're trusted to do certain things or functions, whether or not we're deserving of that trust. And I think in the case of regulators, we do get some trust. People trust us just by the virtue of our position and authority; they trust us to have their backs when things go wrong; they trust that we know what we're doing and we're going to do the right things. But I think Onora O'Neill's view takes it a little bit further - and I want everyone to contemplate this - is that we're seen as trustworthy and therefore worthy of the public trust if they see us to be competent (so we know what to do and we do it well), they see that we're reliable (so we make consistent decisions and we can be relied upon to make consistently good decisions), and that they think we're honest and we have integrity and that we tell them the truth. We evaluate ourselves and we report on successes, but we also report on areas for improvement. And I think that is very hard for us to do. But we don't just hold our registrants accountable, but we demonstrate accountability for what we do too.

And I think I would just end, Line, with the wise words of Harry Cayton, who many will know used to be the chief executive of the Professional Standards Authority. He said, "We not only have to do the right things, but importantly we have to be seen to be doing the right things."

Line: That's a great way to wrap up this discussion. It's been fabulous to speak with you. You're one of my favorite people. I love getting to see you at CLEAR, and I just really appreciate you being a part of this podcast.

Deanna: Well, thank you very much for inviting me to join you today. I've enjoyed it very much too and love working with you both.

Line: And I wanna thank our listeners again for joining us for this episode. And please come back for another episode of Regulation Matters: a CLEAR conversation very soon. We wanna also point out that our podcast is available through a lot of different avenues. You can subscribe to it on Podbean, iTunes, Apple Podcast, Google Podcast, and Google Play. It's also available on Stitcher, Spotify, and TuneIn. So

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Feel free to visit our website at www.clearhq.org for additional resources as well as a calendar of upcoming training programs and events. Finally, I'd also like to thank our CLEAR staff, specifically Stephanie Thompson; she's our content coordinator and editor for this program. She does a lot of stuff behind the scenes that really makes this work. Again, I'm Line Dempsey, and I hope to be speaking to you again very soon.

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