Regulation Matters:
a CLEAR conversation

Episode 28: Research on Recidivism

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Line Dempsey: Welcome back to our podcast, Regulation Matters: a CLEAR conversation. Once again I'm your host, Line Dempsey. 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. First, I wanna welcome back our frequent listeners. We're glad to have you back. And for our new listeners, just a way of explanation. 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 to hear the latest and greatest in our community. And today, I'm joined with a couple of people from Washington State, Jimi Bush who is the director of quality and engagement and Sarah Chenvert, performance manager, both with the Washington State Medical Commission. So first, let me welcome you and say that we're glad to have you with us today.

Guest speakers: Thank you for having us. Thank you.

Line: Absolutely, and again thank you for being a part of this. Today, we're going to talk about recidivism and a study the Washington Medical Mission recently conducted. So let me start with Jimi, if you would tell us a little bit about this report and maybe why you decided to look at recidivism in Washington.

Jimi Bush: Absolutely! There was a general interest by our medical commission members, basically our board members, to evaluate if the Medical Commission was effective in our mission to protect patient safety. And one of these aspects in protecting patients safety - to see if the physicians and physician assistants that we regulate, those folks who needed corrective action, if their practices have changed or if their behaviors have been modified in some way, or if there was a general ongoing need to continue to intervene. So to do that, we really needed to understand where we were in terms of recidivism and practitioners just needing a little extra help. So we decided to create a baseline report with our licensees that have received discipline over the past 10 years, and look for behavior patterns among those licenses that have undergone more than one instance of discipline during that time frame. So someone in the past 10 years who's been disciplined and then had another occurrence of discipline within that 10 years, we're referring to those folks as our recidivists.

Line: Turning to Sarah, I guess. Obviously, I did quite a bit of research back in grad school but I've always been interested in methodology. So I guess obviously looking at these people that had been in trouble with the regulatory board - what was really the methodology behind this research?

Sarah Chenvert: So we created a baseline report of licensees who have had two or more actions issued by the Commission between 2008 and 2018. There were 55 recidivists during this time frame; five were physician assistants, and 50 were physicians. The data gathered was classified into four time periods, the first being the time from initial licensure to the first filed complaint, and then the time from first complaint to discipline action, then the five-year period immediately following the discipline action, and then the five-year period after that or 10 years from discipline.

I also gathered demographic data on our recidivists, including practice type, specialty, location, and the nature of the complaint. I was able to gather this information by accessing our a complaint database and licensing information. I also pulled the case file for those licensees that had multiple actions taken, and then I analyzed their file for commonality in complaint nature and other patterns in their behavior and practice.

Line: So when you guys did this, did you also look at - Like in North Carolina from my experience working with the Dental Board, we did have letters of caution, which didn't rise to the level of public discipline, but it was somebody that was cautioned. Did you guys look at that as well, or was it strictly just someone that had actually received some type of formal discipline?

Jimi: We don't have that functionality in Washington. In some jurisdictions, they're also called letters of concern, which we're actually trying to implement now. Because a lot of, like you're saying, a lot of issues, especially with the recidivism we might not rise to the level of actual formal complaint, but in Washington we don't have another avenue to notify a practitioner. So, unfortunately, all of these are formal discipline actions that have been taken.

Line: Gotcha, okay, and that makes sense from that perspective. I know for us, you see someone that maybe it didn't rise to the level of full discipline, but it was something that they failed to document correctly in their records, and then we would certainly see people again down the road that had the same issue that maybe didn't again rise to that level but you're also then looking at, hey, why did this person do this a second time? So, I guess looking at it, Jimi, from your report, Sarah mentioned you guys had specific timelines that you guys were looking at. I guess, why were those time frames chosen as they were?

Jimi: We chose those time frames mainly because there's a wealth of research that indicates that the first few years after physician has received discipline they're more likely to re-offend. So we chose these time frames that go along with research to see if Washington physicians were following this national trend.

So just in terms of buckets or time periods, we decided to look at the immediate five years after discipline, which we're referring to as period A, and then the five years after that, which we were calling period B, to understand how much intervention our licensees needed as time goes. The other aspect, not only does it align with the research that's already been done, but this time period really looks at what we're calling a significant amount of time. But after 10 years, you have to start considering that behavior patterns may not be as large of a factor in recidivism, say, as age or the time from their initial licensure. After 10 years, you should probably start considering if there's a deterioration of skills that needs to be factored in as opposed to just kind of behavior that needs to be corrected. So that was really, that was why we chose that time frame, just because it gave us enough time to look at behavior patterns, but not so much that age issues might start to need to be factored in.

Line: Okay. Well, good. Well, let's get to the interesting stuff. So what happens with your results. I guess, Sarah, let me start with you on that. So what was most interesting about your results?

Sarah: Yeah, so we found a lot of interesting things from our results. We found that our recidivists were licensed for an average of eight years before their first complaint was filed against them. And most of our recidivists had between two and five complaints filed against them before receiving discipline action. In the initial five years following that discipline action 48 of the licensees had a subsequent complaint filed against them, and 84% of those complaints resulted in additional actions.

And this is on point with what Jimi was explaining earlier, with the research indicating that the initial five years following discipline is a rather susceptible period for re-offending. Of the 55 recidivists, 64% no longer hold an active license to practice in Washington. Five licenses were revoked, and 11 were suspended as a result of discipline. Nine also voluntarily surrendered their licenses, and the remaining recidivists who no longer practice just allowed their licenses to expire and never renewed. In 69% of the recidivists studied, the violation was rooted in issues that stem from communication deficiencies on the part of the provider. Examples of the violations that were considered communication deficiencies were not complying to the order in discipline, failing to accurately keep records, failing to communicate adequately to a patient, whether it be written or verbal, false advertising and/or failing to supervise properly.

44% of our recidivists were board-certified in their specialty. And lastly, the top five specialties of recidivists were family medicine, internal medicine, emergency medicine, OBGYN, and psychiatry.

Line: What's left? [laughter] Just kidding.

Sarah: [laughter] Exactly!

Line: So, I guess, staying with you, Sarah, are there people who are more vulnerable than others when it comes to recidivism?

Sarah: Absolutely! We found that the solo practitioner was the most vulnerable. 48% of our recidivists were identified as solo practitioners. In regards to specialty, family medicine with the top specialty at 65% for recidivists, which is not really surprising since, per our census reports, family medicine is the top specialty in Washington state. They encompass 14% of our licensees, so I'm pretty sure that's probably similar in other states. And lastly, another population that could be more vulnerable would be foreign graduates. 33% of our recidivists had graduated from medical schools that were outside of the United States.

Line: Well, that's interesting. So I guess, Jimi, what does the Washington Medical Commission plan to do with this information?

Jimi: We really wanna look at and revamp our compliance program in general. We wanna make sure that our compliance program, the folks that are overseeing our disciplined licensees, that they're working closer with the licensee from the get-go. So we don't wanna set the licensee up for failure, and by working closer with them on their disciplinary sanctions, we can adjust ahead of time any possibility for a failure to comply.

So an example of this would be ordering an evaluation of the licensee or some kind of education that the licensee either cannot afford or cannot attend. So we don't wanna send them to an evaluation program that they can't pay the tuition for because then they would be in default of their order, and that's just something we can help in the beginning to mitigate. And so we can help them either identify funding or maybe we can just choose a different program. We can work with our board members to find something that meets the board member goals and the needs of the licensee.

So we also want them to understand, them being the licensee, that not complying with the order can result in additional disciplinary action, and any concerns the licensee may have around that, that we address ahead of time. So those are really just kind of fundamental aspects of our compliance system that we want to look at and communicate better with our licensees.

So the next part of this is, we've determined that communication and boundary issues are common complaints, and they are common areas where recidivism happens. But these skills are rarely addressed as part of formal medical education. So there's an opportunity for the Medical Commission to educate clinicians on the importance of communication with your patient in order to avoid having a complaint filed in the first place. And we live in a world, we're continuing to work in a world, where by boundary violations can stem from the use of digital platforms, such as social media and online reviews like Yelp and those kind of services. So a lot of our physicians here in Washington were not taught in medical school how to use these platforms in a professional manner. So we want to educate them on these issues before problem arises, and we're using the recidivism data to identify those areas of concern and be proactive in our outreach and education. You never know what you don't know. And so making sure that they're educated on the professional use of social media and online reviews, making sure they have that education to prevent a problem in the first case is really what we're gonna focus on.

And so then, like Sarah was talking about with the vulnerable populations, we know so much more about them in terms of recidivism now and we're using that data and our demographics to reach out to these vulnerable populations and address their unique needs. Maybe there's something else happening with recidivists that are vulnerable populations that were not fully getting. So we're gonna start interviewing those people and going a little bit deeper into their special needs and making sure we're addressing those.

And so, like Sarah said, about eight years after initial licensure is when these discipline issues start to arise. So we wanna begin to reach out to licensees after five years of initial licensure to create a check-in system. We're currently creating an educational resource web page that has refresher courses with the most up-to-date information on proper social media use, communication, bedside manner. And as the program evolves, we'll just add the other common discipline issues that we find. But we wanna be able to have a place and a resource for physicians to go to basically just refresh some skills, see what else is on the horizon and have that opportunity to contact someone at the Medical Commission if they feel that they're struggling.

So those are our immediate goals with this baseline report, but I'm sure they'll continue to evolve as we continue to collect the data.

Line: That's excellent. And, I guess, speaking about - is CE something that you guys could potentially even offer to those practitioners at that five-, six-, seven-year mark when they're coming back, to get some educational credit which might entice them to do it? Or is that something you guys have looked at yet?

Jimi: We are gonna provide CME. We wanna make sure that we don't wanna waste anyone's time. So all of our online webinar resources will be able to provide CME for those, so that not only are they getting refresher courses, but they're also gonna get some credit for it as well.

Line: That's excellent. And looking back to the study itself, and again, North Carolina is obviously a different state ad we do things differently, but the people that are in some type of discipline or have some type of order or something to follow, do they have a probation visit or anything like that, that happens from time to time from the board?

Jimi: Yeah. So depending on the sanction that the board has put out, there can be multiple things. But one of them is we have what's called a practice review. So someone will go into their setting, whether it's a hospital or their office, whatever it might be, and kind of have a review on the issues. So let's assume they were disciplined for charting irregularity and so we would just go in and look at their electronic health record, make sure they're not copying and pasting, that they're kind of documenting the patient care in a way that we're asking them to.

The other kind of probation check-in that we have is every year they come before the board and just

kind of give an update on how they're doing. So we have two panels on our board, and so the license will go before one of the panels. And it's just supposed to be a conversation. We don't want them to feel stressed, but it's just kind of, do you feel better about your work situation? The board really just wants to make sure they're doing okay as a person and that the sanctions that we impose are helping them. And if they're not, just kind of like, is there a different way we can help you? So those are the two main options for kind of a check-in with the licensee and the board.

Line: Well, that's excellent; great. Well, this has been a great talk. I really appreciate you guys joining me, both Jimi and Sarah. So certainly thank you for your time and being part of this CLEAR podcast. I think it's always one of those wonderful opportunities to be able to sit down and talk about these issues and learn what's happening in the field of occupational and professional licensing. And it's always different because we all have different organizations or boards or regulatory bodies that we work with, so that's great. So thank you for speaking with me today.

Jimi: Thanks for having us. I'm really happy to be here.

Sarah: Yeah, thank you so much.

Line: Absolutely. And thank you to our listeners. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. So again, I wanna thank our frequent listeners. If you're new to the CLEAR podcast, please take an opportunity and a few minutes just to subscribe. We are available on Podbean, iTunes, Apple Podcast, Google Podcast and Google Play, Stitcher, Spotify or TuneIn. If you've enjoyed this podcast episode, please leave a ratings or comments in the app. Your reviews help us improve our ranking and make it easier for new listeners to find us. And feel free to visit our website at www.clearhq.org for additional resources and a calendar of upcoming training programs and events.

Finally, I wanna thank CLEAR staff, specifically, Stephanie Thompson; she is our content coordinator and editor for this program. Again I'm Line Dempsey, and I hope to be speaking to you once again very soon.

The audio version of this podcast episode is available at https://podcast.clearhq.org/e/recidivism_study/.