



**Regulation Matters:
a CLEAR conversation**

Episode 35: The Role of Public Members

November 17, 2020

Line Dempsey: Welcome to our podcast, Regulation Matters: a CLEAR conversation. Once again, I'm your host, Line Dempsey. I am currently the chief compliance officer with Riccobene Associates Family Dentistry here in North Carolina. I am on the CLEAR Board of Directors as well as the current chair of the National Certified Investigator Training 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. This podcast is an opportunity for you to hear the latest and greatest in our community, and today I'm very excited to be joined by Graeme Keirstead - he is with the College of Physicians and Surgeons of British Columbia - along with Barbara Holtry with the Oregon State Board of Nursing. So we're really super happy to have you guys with us today.

Guest speakers: Thank you very much, Line.

Line: Absolutely! And also thank you to our listeners for joining us. So today's topic of conversation is public board members and the unique role that they serve on regulatory boards and councils. I guess to start off the conversation, let me start with Barbara. Why do regulatory boards include public members?

Barbara Holtry: Well, the primary purpose of a regulatory board is, of course, to protect the public by ensuring competent practice within whatever occupation is being regulated. So to that end, having a member of the public participate in the proceedings would be essential. Boards in the US started adding public members to regulatory boards in the 70s and 80s. There was a societal push for more government accountability at that time, so public members were a natural evolution there. I know in Oregon, the Board of Nursing added its first public member in 1973 and added a second member in 1997. So although they've been around for decades, I think that the importance of public members has been more of a topic of conversation in the US since the Supreme Court decision came down in 2015 regarding the North Carolina Dental Board. I think after that, a lot of regulatory boards are considering whether to increase the number of public members that they have on their boards or maybe use the public members that they do have a little differently.

Line: Thanks for pointing out the Dental Board. I was the senior investigator for 16 years with them before moving on, so, glad you brought that one up. It is very important. Graeme, how is it different in Canada?

Graeme Keirstead: Well, it's not terribly different. I don't know that we have the same long history, but it has become more formalized in recent years and decades. In 2009 in health professions in British Columbia, the College of Physicians and Surgeons began to be regulated under omnibus legislation, the Health Professions Act, and it required no fewer than one-third public members on our board and on many committees. Back in the day of pure self-regulation, public members were not as common or even as welcome, frankly. They weren't treated with respect or as equals by members of the profession, but they've really come into their own and have found their own voice. Because public members really occupy the people's seat at the table, they are as important on boards and committees as anyone, and it helps us to avoid the skepticism that the public interest is really being promoted by our boards when it's largely just members of the profession there. We've always heard the negative assessments of police policing police, and I think that's true of any profession. So I would say that their presence primarily lends authenticity as we earn and hopefully maintain the public trust with every decision where we make in the public interest.

Line: That's great. Well, I think Graeme, we'll just continue with you. The role of a public member, is that actually different than that of a member of the profession? And I certainly know how it works with the Dental Board. But from a Canadian perspective, is it different?

Graeme: I think it is different. There's a difference of perspective, certainly. Members of the profession, of course, bring system knowledge and profession-specific perspectives, and that of course, is helpful when you're creating and enforcing standards of ethical performance. When you're judging, however, whether those standards are being interpreted and carried out in the public interest, then you really need to have the public there as well. So the public is there to make sure that all decisions are made in the public interest and not as representatives of a particular group or perspective, but from a really broad range of view. That said, it can be really helpful to have skilled members of other professions or people at different competencies in the mix. It seems everybody wants to have people with IT experience, accountants or lawyers on their board (those boards that are not regulating lawyers, accountants and IT people) in order to be able to give that diversity and particular point of view overall. So it's really allowing the public to sit in. After all, this is a delegated responsibility from governments, which the governments would be doing themselves, but for the trust that they place in the professions to play a part in it, as a check and balance, having the public there as well allows us to really be able to carry out our work.

Barbara: I agree. The public members are the public's voice on a board. And I know when I'm orienting public members for our board, I encourage them to think of their own families, the grandmothers or aunts or children, especially when they're hearing disciplinary cases. Put yourself in the shoes of the people who are receiving the services, 'cause it's easy for the professional members

of a board to get lost in the details of the case, and public members can provide a good balance for any possible bias that might be on the part of the professionals unconsciously.

Line: Barbara, let me follow up with that in that, are your public members allowed to participate and actually vote on decisions and disciplinary hearings?

Barbara: Oh yes, definitely. In fact, Oregon has a very citizen-centric governance push. It was just a few years ago, 2012, that a law was passed that when a health professional regulatory board reviews any investigatory information or reports, a public member must be actively involved. And some boards take that so far as to, if there isn't a public member at that particular meeting, then they don't discuss the disciplinary cases and it waits to the next meeting. It's that actively involved part that is a little open to interpretation, I think, but definitely public members are involved in listening to all the disciplinary cases and they all vote.

Line: That's really interesting.

Graeme: None of the decisions that our disciplinary bodies or inquiry committee, which determines charging standards in relation to complaints against members of the profession, is able to happen without a public presence on the decisions, so our disciplinary hearing bodies are typically two professionals, one member of the public and one lawyer. So the lawyer acts as legal counsel for the decision-making body itself and will assist with writing the decision. But when you look at it, that takes it to 50% members of the profession and 50% not. We also have a 50-50 split on our serious matters inquiry committee, taking a look at whether or not matters meet the charging standard for going to hearing. So there is a lot of very intentional public participation in dealing with our most serious complaints.

Line: And that's really interesting. I know some of our listeners are involved in different jurisdictions or states where it actually might be prohibited from them to actually have an active role in a hearing, so that's great to hear this perspective. So I guess, back to you, Graeme, how many public members would you say is optimal? Obviously, you're kind of explaining for two regulatory members, there's a public member, but I guess, expound on that a little bit.

Graeme: Yeah, I will. My opinion on this is informed by a recent report. The British Columbia government put together a steering committee to look at health regulation in the province, and it's certainly taken a critical look at a number of other professions as well over the years, as have many jurisdictions, to determine best practices in governance. And this is entirely to ensure that we are governing in the public interest. So the steering committee report that was issued, and I believe in very late August of 2020, came forward and said that we should be moving to 50/50 boards, so 50% members of the profession, 50% members of the public.

Line: Wow!

Graeme: And 100% appointed boards, so that we would be putting together a list of people that we would want to have appointed, and then that would be vetted by an independent body within government, but at a bit arm's length, to determine who gets appointed to the board. This has two huge benefits. One is that it eliminates the perspective that elected members have that they're representing some kind of a constituency rather than actually acting in the public interest at table with that specific and unique lens. But for members of the public, it allows us to be able to, or allows the appointing body to be able to, select a diverse group of people who will represent multiple perspectives and bring multiple backgrounds to the table. And I think that that would create a much healthier decision-making body because it would make for more robust conversation and decision making with more integrity.

Line: I like that idea of diversity; we'll come back to that. Barbara, what would you say optimal number of public members would be for you guys?

Barbara: I don't know if there is a specific number. I really like hearing the 50-50 split between public members and professional members. In Oregon, it's a nine member board; we only have two public members. I think most health care boards in the US seem to average between 9 or 13 members total, some more, some less, and I don't think the percentage of public member to professional member is very high on any of them. There might be some that have quite a few, but as far as it even approaching half, I don't think I've heard that. But I think more public representation would be a good thing.

Line: Yeah, absolutely, I agree with you. Certainly from the North Carolina perspective, it's similar to what you described. So Barbara, I guess, is there anything in particular that you're looking for in a public member? I know that most of those are appointed probably for a lot of the ones in the US, but is there stuff that would make a more ideal public member?

Barbara: Well, I think really a willingness to break from the pack, if necessary, is a good trait to have, not just in a public member but in any of the board members, but especially in a public member. It's all right to vote differently from the other members if they feel that that is the right thing for public safety, 'cause that's the point of the whole thing. So I think one of the challenges for any deliberative body is to avoid group think, and that's a particular challenge for public members who may not understand a lot of the technical aspects of the matters that are brought before them.

Graeme: Which is also, I think, really a key skill, Barbara, is to be able to identify that they're not truly understanding some of the subject matter and knowing exactly what they're meant to bring to table. Which I think the primary attribute I would say would be curiosity, real engagement through being curious at table, wanting to know what's going on and why to be able to determine if from their own perspective as a consumer, and I think of most people are consumers of medical practice, from a consumer perspective, is this something that actually sounds right to you? Is it being done in a way that really passes muster? Would a person on the street look at this decision askance because they think that... Well, that really serves the interest of the profession alone. Someone who is committed, who comes prepared, who is able to be respectful and also to demand respect, I believe is somebody

that can sit at the table and engage fully--and break from the pack, exactly like you've said.

Line: Brilliant. Well, Graeme, you mentioned earlier diversity, so I guess maybe a kind of almost like a two-fold question. How do you ensure diversity of opinion and background? Obviously, that probably is very important. But also I guess then how do you recruit qualified public members?

Graeme: I think that the only reason that we don't have diverse boards is because of the way in which they're either appointed or elected. There's no real control over who is elected, and as Barbara has mentioned earlier and as we've experienced as well, we don't always have any control or input over who's appointed to our boards as public members. And if we are to create truly diverse boards that represent the entirety of the population, then it's really important to be able to have a lot more control over who gets appointed. So our model coming up, I believe, will be a 100% appointed board. To be able to have active input on applicants for it is a critical part of this.

So what we want to do to ensure diversity at the table is to really evaluate what our needs are, so what attributes would make a strong board member and list all of those out. And we've done this through a composition matrix that we've put together. We also take a look at what attributes make a strong board that has the diverse experiences, backgrounds and perspectives there. So some people would want to bring different cultures to the table, different levels of education, different regions of the province (everybody has rural and urban regions within their state or province), sexual orientation or gender identity, whether people come from an indigenous background as an example. As well as the kinds of specific professional expertise that they might have, whether somebody is, as I said earlier, an accountant or a lawyer, or somebody who has a lot of experience in IT. You'd wanna be able to list all of those out and then ask applicants to reflect against those lists what their own attributes are in relation to the ones that you've stated are desirable for you for a strong board member who would be able to engage well. We're going to be doing this through an open call process, advertising our vacancies for committees as well as for the board, and to be able to recruit people in based on not only their CVs, but also their statements of cultural and other diversity as reflected within the compositions matrix. And I think that that will allow us to be able to have a full spectrum of governors who are able to truly engage with the work in the kind of multifaceted way that really allows for public interest decision-making.

Line: Barbara, any thoughts on that?

Barbara: Well, basically, I just agree. Having a diversity of opinion and background is important, especially for public members to a board. It can be, though, very difficult to find people who are even willing to participate on a Board. Even with all of the resources of our Governor's Office who appoints all of our board members, we have gone months without a full complement of members while a search is conducted. So diversity is important; it's essential to represent all of the people that are in the state or province. Realistically, it can be hard to find.

Graeme: I do think that there's some benefit to having a degree of compensation through honorarium

or otherwise to allow people to be able to feel that their time is not solely altruistic - although it should be, of course. But also I think that we as those who run these organizations need to be a bit flexible about when we hold our meetings as well and for how long, and then make some concessions so that people are not meant to be working during their normal working hours for no compensation whatsoever. It's a tricky game to really work out, if you're asking people to come during regular working hours at no compensation, but you'll pay expenses, it doesn't really make for a lot of people other than, frankly, retirees who are interested in becoming involved. Or some of the truly dedicated I suppose would step up, but it would be at a personal sacrifice that I don't think is really necessarily reasonable to expect of them.

Line: And certainly the sacrifice is being made by the registrars that are participating on those boards as well, so I agree with you completely. I guess, let's ask one final question. I'll start with this with Barbara, and then give Graeme an opportunity to close it out. But I guess how do you prompt and encourage public member involvement during meetings?

Barbara: Well, as we mentioned before, serving on these boards can be a particular challenge for public members who may not understand a lot of the technical aspects of the policies or the cases that are brought before them. So for part of that reason, it's important to help public members feel plugged in to the topics and the board. I know on our board, we pair new members with a seasoned member, someone who's been with us for a year or two who can help them understand the process of the meetings, just the ebb and flow of the agenda items, and can answer questions as the meeting proceeds. I think it's also helpful for board staff to check in with new members prior to a meeting, to encourage them to ask questions about any of the materials in the meeting packet. Sometimes I think people will open up to staff, whereas they might not to other board members. So it's another opportunity to just help answer their questions and make them feel comfortable with what's going on.

I also think it's helpful during a meeting for board presidents or chairs to take care during the meeting, to stop and ask if the public members have any questions or anything to add on a subject. And that goes for when testimony is being given as well, during hearings or policy discussions. Just pause and ask the witnesses to explain some detailed point or a technical item further for the benefit of the public members - to just go ahead and stop and call it out and say, "For the benefit of the public member...," and go on from there. It just kind of helps focus the discussion a little bit.

Graeme: And as a lawyer working with these boards, I am keenly aware that this is all within the framework of the practice of law. These are administrative law frameworks that these decisions are being made within, and so we provide a fundamental education to all of our board members, and committee members as well, around administrative law principles of fairness, natural justice and such, so that they truly understand the importance of working within that. And that, frankly, supports the decision-making because things are less likely to be overturned on appeal if you follow the basic principles of the administrative law.

I think that one of the things that we really need to focus on, and Barbara really hammered on this

one, is like the training. You've really got to buddy people up, you've got to make sure that they're feeling welcome, you've got to make sure that they have people that they can relate to that they're going to be able to engage with to become acclimated into the culture of the organization and feel more at peace with their position. We all have codes of conduct that really direct how the boards do their work. This typically requires members to be respectful of others opinions, views, cultural or linguistic diversity, and I think that that gets to, it's not enough to create diverse boards; you have to make them inclusive as well. And you have to do that by assuring respectful dialogue. And I would say that the key point I would like to make there is you've got to train your board president or chair in the skills that are going to allow that person to be able to maintain a respectful dialogue and engage everyone in speaking, the introverts, the extroverts, the professionals, and the public.

Line: Excellent points. Well, I think this has been a great discussion. So I just wanna thank you both, Graeme and Barbara, for your time and being a part of this CLEAR podcast. It's wonderful to have this opportunity to talk about these issues and learn from each other. So thank you for speaking with us today.

Barbara: Thank you for having us.

Graeme: Thank you very much. It was fun.

Line: Absolutely! Good! And thank you to our listeners for tuning in. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. Thank you to our frequent listeners- you're the ones that have put us on the map. But if you're new to this CLEAR podcast, please take an opportunity to subscribe to this. It's available on Podbean, Apple Podcasts, Google Podcast, Stitcher, Spotify, TuneIn, and now on Alexa on Amazon Echo devices. So if you've enjoyed this podcast, please leave a rating or comment in the app. These reviews help us to improve our ranking and make it easier for new listeners to find it. Feel free to also visit our website at www.clearhq.org for additional resources and a calendar of upcoming training programs and online events.

And finally, thanks to our CLEAR staff, specifically Stephanie Thompson, our content coordinator and editor for our program - I've made her work a little bit harder today. I'm Line Dempsey once again, and I hope to be speaking to you again very soon.

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