

 Council on Licensure, Enforcement and Regulation
2011 Annual Educational Conference



Trends in Regulatory Oversight II: The Regulators' Perspective

Pittsburgh Pennsylvania

Presenters:

- Richard Morales, Colorado
Division of Registrations
- Marc Seale, United Kingdom
Health Professions Council
- Deanna Williams, Dundee
Consulting

Promoting Regulatory Excellence


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Trends in Regulatory Oversight II

- **Formal & Informal Accountability**

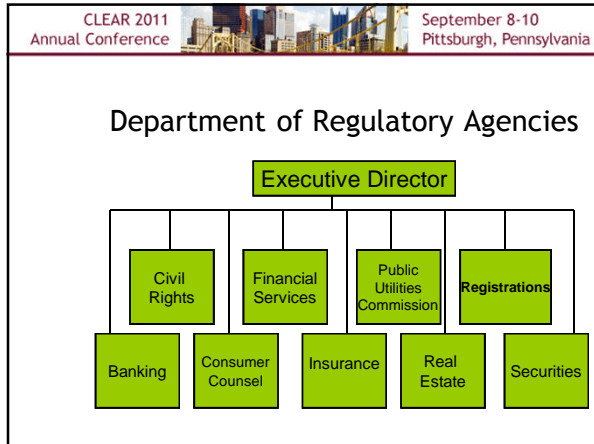
- Division of Registrations, Healthcare Section
- Richard P. Morales, Section Director

- Division of Registrations
- Rosemary McCool, Director

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Overview

- How We Are Organized
- Formal Accountability
- Informal Accountability
- Parting Message



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About The Division of Registrations


- Largest division within DORA
- More than 47 professions, occupations and entities in Colorado
- More than 325,000 licensees and registrants
- Cash Funded
- 200 Staff



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Healthcare Section

- Dentist
- Surgical Assistants/
Surgical Techs
- Nursing Home
Administrators
- Pharmacists
- Veterinarians
- Nurses
- Physicians and PAs
- Nurse Aides
- Podiatrists
- Optometrists

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Formal Accountability

1. The Sunset Process
2. Performance Audit

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Sunset Criteria

1. Is regulation necessary to protect consumers?
2. If regulation is necessary, is this the least restrictive form of regulation?
3. Do the board's rules and policies operate for the public interest?
4. Is the board operating efficiently?
5. Does the board composition represent the public interest and encourage public comment?
6. What's the economic impact of the regulation? Does it stimulate or restrict competition?
7. Do enforcement actions protect consumers? Is the regulation self-serving to the profession?
8. Does the scope of practice encourage optimum utilization of personnel?
9. Are administrative or statutory changes necessary to improve agency operations to enhance the public interest?

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Sunset Process

- Clause & Effect
- Three Phases of the Sunset Process
 1. Research- Everyone gets a bite
 2. Writing- Recommendations
 3. Legislative- It's a process

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Sunset Process- Research

•Data collection	- Professional associations
•Literature survey	- Individual practitioners known to have an interest
•Colorado laws and rules	- Individual citizens known to have an interest
•Local laws and rules	- Local government officials
•Laws and rules of other states	- Federal government officials
•Laws and rules of the US	- Recognized experts, local and national
•Input from interested parties and stakeholders:	
- Trade associations	
- Industry associations	

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Sunset Process- Writing

- Report has three sections:
 1. Background
 2. Statutory Recommendations
 3. Administrative Recommendations

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Sunset Process- Legislative

- Sunset reports generate automatic draft legislation.
- Draft sunset bill must reflect recommendations in the report.
- Sunset bills typically heard early in the session

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Performance Audit

- Colorado State Auditor's Office
- Purpose of the Audit
- Scope of Audit

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The Audit


- Now is really not a good time....
- This is scary..or is it?
- How long are you going to be here?
- Managing the message with staff

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Performance Audit Recommendations


- 18 Recommendations with 37 sub-recommendations
- Opportunity to Provide Feedback
 - Allowed to “word-smith” in first draft
 - Able to influence *how* things were worded

Examples of Recommendations
Agreed to all but one recommendation
Preparing for the Next Audit

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Informal Accountability

1. Defense Bar
2. Consumer Advocacy Groups

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Defense Bar

- Why can't we be friends?
 - Enforcement Process Improvement Committee (EPIC)
 - Defense Bar Members
 - Board Counsel
 - Division Leadership Team & Staff

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EPIC Challenges

- Getting through the fog of litigation
- Be ready to listen...no, *really* listen
- Finding the Common Ground
- Setting Ground Rules
- Time limited
- Paying the Price

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EPIC Win

- We *have* to discipline this person?!
- Confidential Agreements- A great product of collaboration

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Consumer Advocacy

- Citizens for Patient Safety
 - The Michael Skolnik Story
 - Patty Skolnik

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Michael Skolnik Medical Transparency Act

CONCERNING INFORMATION REQUIRED TO BE DISCLOSED REGARDING PERSONS LICENSED BY THE STATE BOARD OF MEDICAL EXAMINERS, AND, IN CONNECTION THEREWITH, CREATING THE "MICHAEL SKOLNIK MEDICAL TRANSPARENCY ACT", AND MAKING AN APPROPRIATION THEREFOR.

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Transparency

- New Data Elements Required:
 - Location of Practice
 - Education and Training
 - Other Licenses
 - Board Certifications
 - Practice Specialties
 - Colorado Hospital Affiliations
 - Other Healthcare Facilities and Out of State Hospital Affiliations
 - Business Ownership
 - Employer
- Employment Contracts
- Disciplinary Actions
- Restrictions or Suspensions
- Healthcare Facilities Actions
- Termination of Employment
- U.S. DEA Registration (involuntary surrender)
- Malpractice Claims
- Malpractice Carrier Refusal
- Narrative (Awards, Recognition, Charity Care)

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Parting Message

- Accountability is a good thing
- Be not afraid- Pygmalion Effect
- Engage in the process
- Create opportunities
- Leverage Resources
- Stronger, Faster, Smarter

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Mission

- DORA is dedicated to preserving the integrity of the marketplace and is committed to promoting a fair and competitive business environment in Colorado.
- Consumer protection is our mission.

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Speaker Contact Information


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Marc Seale

Health Professions Council
10 September 2011

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Contents

- i. Scene setting
- ii. Relationships
- iii. CHRE
- iv. Outcomes

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Scene setting

- Nine UK regulators of healthcare professionals
- Different legislation
- Independent of Government
- Self funding
- Role of Professional Bodies vs Regulator
- Review by the Law Commission

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State & Regulators

- Transfer of power
- Accountability
- Independent
- Need for oversight is required & is reasonable

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Effective & Efficient Regulation

- Government must provide
 - Good legislation
 - Up-to-date legislation
 - Good governance arrangements
 - Adequate resources/funding
 - Clarity of objectives
 - Promote profession vs. protect public

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Effective & Efficient Regulators

- Same as Government
- Issue of sub-optimal organisations
 - IT
 - Communications budget

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CHRE

- Council for Healthcare Regulatory Excellence
- Nine health regulators of professionals
- Funding
- Deliverables
 - Annual performance review
 - Fitness to Practise annual review
 - Appeals
 - Other

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Outcomes

- Consumers vs. Regulators vs. Oversight
- Regulators are monopolists

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Examples of Objectives

- Access to data
- Clear processes
- Good services standards
- Consistent & fair decisions
- Economic
- Timely

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Conclusion

- Good regulators embrace oversight
- A regulator who fears oversight has problems

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TRENDS IN REGULATORY OVERSIGHT II:
The Regulator's Perspective
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AS REGULATORS....

- We hold our members accountable
- BUT, we are accountable too.....

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RECENT TRENDS

- Increasing interest in the regulators
- Increased oversight and/or controls
- GLOBAL not local phenomenon



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WHY?

- “One bad apple spoils the lot!”
- Leadership Issues
- Governance Issues



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- Tend to “tar all with the same brush”
- Regulators NOT treated as they are expected to treat
- Perception IS reality
- Conflict of Interest/Role- key factor(s)




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AS REGULATORS...

- Have we lost sight of why we exist?
- Do we all NEED to exist?



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IN ONTARIO, CANADA

- Sweeping changes address “perceived” issues around:
 - Registration practices
 - Conflicts of role/mandate
 - “Is the public interest truly being served?”
 - Governance

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REGISTRATION

- Fair Access to Regulated Professions Act (FARPA)
 - To ensure TRANSPARENT, OBJECTIVE, IMPARTIAL AND FAIR (=accountable) registration practices by all regulators
 - Assumed/implied current practices are problematic
 - Increased regulatory burden/obligations
 - Consensus oft means lowest common standards

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- How is a “Race to the Bottom” in the public Interest?



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HEALTH in ONTARIO

- Regulated Health Professions Act (RHPA) recently amended
- Government may effectively take over a health regulator by appointing a College Supervisor where Minister considers it "Necessary and Appropriate"

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FACTORS CONSIDERED


- Quality of administration/mgt of College
- Administration of RHPA, health profession specific Act, other laws
- Performance of duties/powers of College, Council, Committees, staff
- Due processes built in (notices etc)
- One College independent audit underway

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ISSUES

- Leadership
- Governance
- Conflicts of Interest/Role/Mandate
- Inappropriate Relationships/Boundaries
- Quality (or not) of those who "govern"



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OTHER IMPACTS


- Labour Mobility Acts- federal and provincial
- Ontario and Federal Privacy Commissioners
- Federal Competition Bureau

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CAN THE MARRIAGE BE FIXED?

- Communication and Collaboration are key
- Tighter appointment criteria?
- More appropriate criteria before a new profession is regulated in the 1st place



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POSSIBLE "FIXES"

- Better informed decision-makers
- Better and committed support for all "new" regulators
- Merging of "like" professions/occupations for increased efficiencies and operations
- Mandatory mentoring by those with demonstrated experience/expertise

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