



Illegal, Unethical, Dangerous!
Stopping Unlicensed Practitioners.

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Back to Basics

What is a Regulated Profession


- Regulation typically represents the recognition of a profession as such.
- It essentially grants a monopoly to those who become licensed or registered.
- Regulated professions are regulated by the government (i.e., State Health Boards), or they can be self-regulated.



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The Privilege to Self-Regulate

- Self-regulation means that the government has delegated its regulatory functions to those individuals who have the specialized knowledge necessary to do the job;
- Self-regulation recognizes the maturity of a profession and honours the special skills, knowledge and experience that a profession possesses;
- Self-regulated professions include nurses, physicians, chartered accountants, teachers, engineers and lawyers (attorneys);



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The Privilege to Self-Regulate

- A self-regulating organization is the licensing body responsible for setting educational, technical and ethical standards. Generally, the power to self-govern has two aspects: the power to license and the power to discipline;
- Part of self-governance typically involves taking action against people who are not members of the profession, but who are practising that profession illegally.



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Questions for You

- 1) Does your Jurisdiction Have Self-Regulated Professions?
 - a) None
 - b) Some, in various professions
 - c) Health Professions Only
 - d) Non-Health Professions Only
- 2) Who Has Authority to Prosecute Unlicensed Practitioners?
 - a) the Regulator (state or profession self-regulator)
 - b) Government
 - c) Law Enforcement (Police and District Attorneys or Crown Attorneys)
- 3) Does the Regulator Have Any Power to Combat Unlicensed Practitioners?
 - a) Yes
 - b) No



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Legislation Governing Professions

- Legislation typically prohibits the practice of profession unless the individual is licensed under the legislation;
- Restricts the use of professional designations such as "Doctor", "Lawyer", "Professional Engineer" or "Chartered Accountant" by the unlicensed;
- The purpose of such provisions is to ensure that the public is protected from those who are not qualified to practise the professions;
- The legislation for various professions creates a quasi-criminal offence for the unauthorized practice of the profession;
- In addition to charges, legislation also often provides for the possibility of seeking injunctive relief to stop unauthorized practice;



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Legislation Governing Professions

- Legislation typically gives professional organizations jurisdiction over its members with respect to charges of professional misconduct;
- But this type of jurisdiction ought not be confused with jurisdiction over non-members practising without a licence (although some professional organizations have been expressly delegated additional powers by the legislature to seek injunctive relief against non-members to stop unauthorized practice);
- There's a philosophical difference among professions about the vigour with which they pursue illegal practitioners.

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What is unauthorized practice?

In your Jurisdiction/Regulated Profession, do you Encounter:

- a) impersonation/holding out as a professional
- b) Fraud (i.e., insurance fraud)
- c) Practising under suspension
- d) All of the above
- e) Other

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Examples of Unauthorized Practice

- Use of occupational titles: For example, "doctor", "lawyer" or "psychologist" which may be interpreted by the lay public as indicating a special expertise or qualification
- Practising without a licence: A governing body's most effective way to ensure that professional services are provided competently, and with professional integrity, is through licensure. Permission to practice is restricted to those who meet the standards, and the right to practice can be withdrawn from those who breach them
- Practising while under suspension: Typically when the right to practise is temporarily removed (i.e. non-payment of fees, competency or fitness to practice, or discipline/professional conduct penalties)

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If it Looks like Someone is Providing Professional Services, then that Someone is Probably Providing Professional Services

Law Society of Upper Canada v. Dzelme 2014 ONSC 4652 (Myers, J)

- "Quality assessment is reserved for licensed professionals under the Act"
- An injunction was issued against a non-lawyer who ran a website "winningcourtstragies.com"
- Mr. Dzelme argued he was simply providing clients with his own intellectual property



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Unauthorized Practices as noted in various Regulated Professions

Architecture:

- A corporation held itself out to be an architecture firm but was not licensed *Giffels & Vallet of Canada Ltd. v. R.*, [1952] 2 D.L.R. 720 (Ont. C.A.)
- A construction company holding itself out as an architectural firm and engaging in architectural acts without having an architectural licence
- A licenced professional engineer had "architect" appearing on his letterhead and on his business cards, acted as an architect for a third party and held himself out to be an architect *R. v. Moll* (1973), 18 C.C.C. (2d) 210 (Ont. Co. Ct)
- An engineer supervised the construction of two buildings, affixed his professional engineering seal to drawings and did not engage the services of an architect *Pestrok v. Denoon* (2000), 184 D.L.R. (4th) 543 (Man. Q.B.); leave to appeal refused 2000 MBCA 79 (C.A. [In Chambers]).



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Unauthorized Practices as noted in various Regulated Professions

Medicine:

- Treating or advising individuals with respect to their health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them
- The College of Physicians and Surgeons applied for and got an injunction from the SCJ, Toronto against Eve Stewart (ran a laser clinic) to prohibit her from performing cosmetic surgery without a license under the Act <http://www.cpso.on.ca/WhatNew/News-Releases/2014/CPSO-obtains-interim-Court-Order-against-person-pr>
- Performing a procedure below the dermis such as administering substances intravenously <http://www.cpso.on.ca/WhatNew/News-Releases/2010/CPSO-takes-action-against-individual-practising-wf>
- Devout Christians who believed in the power of God to heal and who prescribed a program of vitamins and minerals as well as hydrogen peroxide to treat lung cancer *r. v. Kish* (1993), 12 Alta. L.R. (3d) 185 (Prov. Co. Ct.)



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Unauthorized Practices as noted in various Regulated Professions

Dentistry:

- Carrying on the practice of dentistry and charging a fee for the services without have a license; for instance Tung Sheng (David) Wu operated an underground clinic without a license for a decade, despite signing a court order in 2003 to stop practising. He was found guilty of civil contempt of court, and ordered to pay the College of Dental Surgeons of B.C. \$140,000 <http://www.vancouverian.com/health/complaints-about-dentists-practising-without-license-college-says/9095439/story.html>
- Advertising on television as being a duly qualified dentist and entitled to practise as a dentist without a license
- Taking impressions of the bite of a patient and doing work within the mouth of patients for treatment, extraction, or building up or placing crowns without a license



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Unauthorized Practices as noted in various Regulated Professions

Accountancy:

- Using the designation “Certified Public Accountant” without being a registered member within the province in which the individual was practising even though registered in another province
- Preparing financial statements and attaching a letter directing the letter and statements to the shareholders of a company without being properly licensed as a Certified Public Accountant *R v. Veena (2000)*, 150 C.C.C. (3d) 178 (Ont. C.A.)



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Unauthorized Practices as noted in various Regulated Professions

Optometry

- Opticians are required to report any incident of unauthorized practice to the College of Opticians of Ontario. Unauthorized practice is defined as dispensing eyeglasses, contact lenses or sub-normal vision devices without being a registered member of the College of Opticians, the College of Optometrists or the College of Physicians and Surgeons
- An unlicensed professional prescribing eye wear without a duly-qualified optometrist supervising her during the procedure
- A fine of \$1M was imposed for contempt of Court arising from the establishment of a number of sham corporations to dispense eyewear without the involvement of an ophthalmologist or optician *College of Optometrists of Ontario v. SHS Optical Ltd.* (c.o.b. Great Glasses) [2006] O.J. No. 4708 (S.C.J.) affirmed 2008 ONCA 685 (CanLII)



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Unauthorized Practices as noted in various Regulated Professions

Engineering

- An individual who signed and issued cards indicating that he was engaged in control systems engineering was found to have committed an offense for implying that he was engaged in practice of professional engineering while not a member of the engineers' association *R. v. Cuijck*, [2006] 10 W.W.R. 183, 2006 CarswellMan 259 (Q.B.)
- An injunction was granted against an individual who used the term "P.Eng." after his name in correspondence *Assn. of Professional Engineers, Geologists and Geophysicists of Alberta v. Broere Electric Ltd.* [2007] A. J. No. 104(Q.B.)



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Efforts to Control Unauthorized Practice re: Health Sector: Florida, Nevada and California

Florida

- Department of Health (DOH) works to protect, promote and improve the health of Floridians through integrated state, county and community efforts;
- The DOH unit - the Unlicensed Activity (ULA), protects Florida residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from an unlicensed person;
- Florida's program is funded by a \$5 per health licensee initial and renewal fee which funds efforts to combat unlicensed activity;
- *Recently in news:* ULA in a joint investigation with the Osceola County Investigative Bureau led to the arrest of Gustavo Aranguren Hernan for the alleged unlicensed practice of dentistry.
<http://newsroom.doh.state.fl.us/wp-content/uploads/newsroom/2014/05/061614-Risimnee-ULA-Arrest.pdf>



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Efforts to Control Unauthorized Practice re: Health Sector: Florida, Nevada and California

California

- California's Medical Board has an Enforcement Unit within it;
- The Medical Board's Operation Safe Medicine (OSM) Unit within the Enforcement Program addresses the unlicensed practice of medicine;
- The OSM staff is exclusively assigned to the proactive identification, investigation, and prosecution of unlicensed individuals;
- *Recently in news:* San Diego: an undercover investigation led by the OSM and San Diego law enforcement arrested Robert Oldham Young for conspiring to practice medicine without a license.
http://www.mbc.ca.gov/About_US/Health_Risom/2014/news_release_20140124_young.pdf



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Efforts to Control Unauthorized Practice re: Health Sector: Florida, Nevada and California

Nevada

- In response to a significant number of illegal surgeries, unlicensed health care, and incident reports, including death, the Nevada State Health Division initiated a state-wide review in 2013;
<http://health.nv.gov/PDFs/unlicensedMedicalActivity/RespondingToUnlicensedHealthCareNV-ActionPlanFinal.pdf>
- Nevada Health Division's enhanced efforts regarding reporting of unlicensed health care for example a text service along with free phone lines to report such incidents;
- Co-ordinated efforts to combat this problem - for example the Pharmacy Board, the State Board of Dental Examiners, Cosmetology Board, the State Medical Association.



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Efforts to Control - Special Mention

Massachusetts

- The level of awareness amongst consumers: Currently, Change.org, a website is gathering support to deliver a petition to the Joint Committee on Health Care Financing to: "Stop Unlicensed Mental Health Care Providers in Massachusetts Now! OPPOSE Massachusetts HB 236";
<http://www.change.org/p/stop-unlicensed-mental-health-care-providers-in-massachusetts-now-oppose-massachusetts-hb-236>
- The petitioners are strongly opposed to Section 65F of House Bill 236, which would allow unlicensed psychotherapists who are members of the Massachusetts Association of Independent Psychotherapists to hold themselves out to the public as psychotherapists and thus be exempt from licensure if House Bill 236 were to pass.



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Strategies and Tools to Combat Unauthorized Practice

- 1) Do You as a Regulator Have Sufficient Tools to Combat Unauthorized Practice?
 - a) Yes
 - b) No
- 2) What Tools Have You Found to be the Most Effective?
 - a) Anonymous Tips
 - b) Search Warrants
 - c) Undercover Investigations
- 3) What Remedies Have You Found to be Most Effective?
 - a) Criminal Charges
 - b) Civil Remedies (Injunctions)
 - c) Any order with financial consequences (fine, costs award)




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What do we need?

- We need evidence of:
 - Holding self out as qualified
 - Using a protected title or designation and/or
 - Performing specific acts restricted to those who are licensed.
- Cost Factors
 - Travel
 - Legal counsel
 - Additional investigators or outside help
- Internal resource limitations
 - Training



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Where Do We Get It?

- Documentation
 - Advertising
 - Client files
 - HR files
- Interviews
 - Coworkers
 - Employers
 - Patients / clients



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Where Do We Get It?

- Surveillance
 - Following the suspect
 - Observing the location
- Undercover
 - Engage the suspect for services
 - Work along side the suspect
 - Infiltrate agencies




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Challenges

- Non-cooperation
- Determining where an IP may be working
- Suspected collaboration with others
- Ethnic barriers to gaining access
- Identity theft issues
- Jurisdictional issues

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Investigation Strategies

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Non-cooperation

- Exercise powers available to you
 - E.g. search warrant
- Try to get other agencies to apply pressure
 - Other regulatory bodies
 - Insurance companies
 - Police
- Calm fears of them being in trouble
- Appeal to their sense of morality

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Determining Where the IP is Working

- Pretext calls to suspected locations
- Surveillance
- Social media searches
- Photographs - Search via “geo-tagging”




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Suspected Collaboration

- Undercover investigations (U/C)
 - Get hired by the agency you suspect
 - Hire the agency or individual
 - If collaborator is a patient get insurance company to help (possibly threaten to cut off their insurance coverage unless cooperative)




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Ethnic barriers to gaining access

- Use an investigator of same ethnic origin and do U/C investigation
- Surveillance
 - May lead to further options such as search warrant
 - Witness identification and subsequent interviews



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Identity theft issues

- Interview known associates
- Surveillance
- Background checks
 - DOT searches
 - Internet and social media searches
 - Property searches
 - Lien searches
 - Military records



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Jurisdictional Issues

- Try to arrange memos of understanding to cooperate re:
 - Information sharing
 - Investigative resources (e.g. when work is happening across state lines)
 - Applying respective influence
- Consider same approach with Police agencies



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Prevention

- Make it harder for them
 - Get rid of cards for licensure (force people to go online)
 - Educate prospective employers
 - Post lists of know IPs with known aliases etc.
 - Press releases after successful prosecutions



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Legal Considerations

- Authorities to investigate
- Powers of investigation
- Legal options
 - Cease and desist orders / legal undertaking
 - Criminal or quasi-criminal prosecution
 - Injunctions (civil court orders)




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Resource Considerations

- Policy Decisions
 - Should we be doing this?
 - Allocation of staff
 - Use of resources
 - Public relations
- Legal approach
- Internal or external investigators




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Resource Considerations

- Cost factors
 - Travel
 - Legal counsel
 - Additional investigators or outside help
- Internal resource limitations
 - Training



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Recommendations

- To promote communication, collaboration and cooperation within the regulatory community across borders;
- To monitor the problem and continue to identify solutions;
- Periodic outreach to other partners such as committees of the provincial/federal legislature with primary jurisdiction for issues related to health care and professional licensing;
- To involve Attorney General's office and local police forces to play more important role in facilitating and coordinating the information flow between local and federal law enforcement for alignment of assets and building on shared strengths;



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Recommendations

- To support, encourage, and facilitate the governing bodies of the major health care boards to meet regularly to see how they can best to share resources and training as well as discuss on-going efforts to address the issue of unlicensed health care;
- To provide regulatory bodies with fining authorization and inclusion where appropriate for boards to obtain remuneration for investigative costs;
- To press for more power and more resources to conduct unannounced inspections;
- Attend to other concerns regarding possible ramifications surrounding the reporting of unlicensed activities;




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Recommendations

- Intervention: Searches of a professional's office, taking records from the premises, seizing client files and proceeds of criminal investigations;
- Intervention by the governing bodies e.g. peer assessments, spot audits of the members who are suspected to be supporting unauthorized practice;
- Follow up measures wherever action has been taken against unlicensed person to ensure that they do not start illegally practicing again;
- Other suggestions: better reporting of suspicious transactions; use of technology - Anti-fraud software;
- There is no one solution, but the best path going forward includes coordination amongst various regulatory bodies, public awareness and shared resources.



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To Safeguard Public Interest

“...the public has a genuine and very real interest in knowing that the members of the self governing are properly trained and have good ethical standards.”

Ontario, Royal Commission Inquiry into Civil Rights (Report No. 1, Volume 3) commissioner: James Chalmer McRuer (Toronto: Queen’s Printer, 1968-1971) 1171.



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