

CLEAR Regional Seminar
toronto
Ontario College of Pharmacists - March 7, 2013

Investigating Unlicensed Practitioners
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CLEAR Regional Seminar
Wielding the Big Stick: Issues in Complaints, Discipline and Enforcement



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The Problem

- Unregistered / Unlicensed people practicing a profession
- Incidence increasing in some professions
- Public safety risk
- Undermines public confidence
- Registered professionals/employer exposed to liability/discipline

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Is This The Regulator's Problem?

- Why is this the Regulator's Problem?
 - Government has not taken any action – lack of resources, expertise
 - Regulator's duty is to serve and protect the public interest

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The Players

- Classifications:
 - Out of province / country
 - Suspended or revoked
 - Partial or no applicable education/training

Examples:

Paralegal----->Lawyer
Dental Assistant----->Dental Hygienist
PSW----->Nurse
Sales Agent----->Optician

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The Players

- How Are They Discovered?
 - Public complaints
 - Internal concerns raised
 - Poor performance
 - Lack of skill or knowledge
 - Statutory obligation to report termination of employment or suspension/revocation of privileges for professional misconduct, incompetence or incapacity
 - Other

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Decisions

- Policies / Resource allocation
 - Should we address the problem?
 - Allocation of staff
 - Use of resources
 - Public relations
 - Investigation / Legal options
 - Other approaches to consider
 - Registration Committee

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Considerations

- Cost factors
 - Travel
 - Legal counsel
 - Additional investigators or outside help
- Resource allocation
 - Competing priorities

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Legal Remedies

- Cease and desist letters
- Undertakings
- Registration Committee
- Civil injunctions/restraining orders and contempt of court remedies
- Quasi-criminal private prosecutions
- Criminal prosecutions

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Investigation Challenges

- Witnesses
 - Locating
 - Gaining cooperation
- Facility
 - Blocking access to documentation
 - Not providing information in a timely manner

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Investigation

- Whether prosecution or injunction, the approach will generally be the same
- Need evidence of:
 - Holding self out as qualified
 - Using a protected title or designation
 - Performing specific acts restricted to regulated members

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Holding Out and Titles

- Advertising
- Telephone listings
- Internet
- Office signs
- Business cards
- Diplomas on the walls
- Interview former clients and coworkers
 - Always ask them: “What did you believe?”

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Controlled Acts

- Review patient and client charts
- Interview patients and clients
- Interview colleagues
- Direct observation on-site

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Undercover Operations

- Investigator pretends to be a patient / client to get in the door
- Useful for obtaining information such as:
 - Layout of the office
 - If files exist and where files may be stored
 - Volume of patients / clients being seen
 - Others working in the office
- Prevents claims of supervision or delegation being in place
 - Grounds for obtaining search warrant if required

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Undercover Operations

- Challenges
 - Different ethnic communities
 - May need to know someone to get you in
 - May need to be of same ethnic background as subject
 - Small community
 - Everyone knows everyone else
 - May need to make an appointment
 - Need address phone number
 - What if a different area code?

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Search Warrants

- No powers of investigation with IP cases
- Need access to documents / other evidence
- To get a warrant you need to show:
 - RPG there is a basis for the search
 - RPG the evidence you want will prove offence
 - RPG it is located where you want to search
- Write application, swear information to JP

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Search Warrants

- Execute the warrant
 - Search must be reasonable
 - Search should be systematic
 - Photos should be considered
 - May need police to attend
- Warrants must be defensible later

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The Coffee Table Surgeon

Veterinary IP

- Veterinary assistant in Russia
- Advertises mobile vet service – spade / neuter
- Russian translator utilized
- Elaborate deception created by investigator
- U/C executed
- Search warrant on his home
- Drugs, surgical instruments seized
- POA charges and injunction pursued

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The Coffee Table Surgeon

Veterinary IP

- Civil injunction obtained
 - Refrain from engaging in practice of veterinary medicine
 - Refrain from holding self out as Veterinary assistant in Russia
 - Deliver all remaining equipment / drugs to CVO
- Provincial Prosecution
 - Pled guilty to 5/7 charges
 - Fined \$2000.00, 2 year probation order

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If I Book 'Em I Can Treat 'Em

Chiropractor IP

- Chiropractic receptionist turned chiropractor!
- Working out of a library in his apartment building
- Heavy on-line presence
- U/C executed – caught on video
- Did bizarre inexplicable treatment
- Offered gift certificates for referrals

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If I Book 'Em I Can Treat 'Em

- Civil injunction obtained
 - Refrain from holding self out as Chiropractor
 - Refrain from using title “Doctor”
 - Not to perform controlled acts
 - Not to treat or advise a person with respect to their health
 - Costs to be paid to CCO - \$7000.00

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Prevention

- Limit opportunities for deception
- Educate the employers
 - Check all registrations and licenses
 - Record all information and cross-reference yearly
- Educate the members
 - Unless required, do not carry your license with you
 - Report lost or stolen cards
- Database creation
 - Consider publishing it on the Internet, newsletters, and local newspapers

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Thank You!



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