



NEW ZEALAND MEDICAL ASSOCIATION

8 March 2010

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Dear Allison

How Do We Determine if Statutory Regulation is the Most Appropriate Way to Regulate Health Professions?

Thank you for consulting with us on this important issue.

As a starting point we note that the title of the document suggests a wider framework than what is actually considered. The document heading suggests that consideration is to be given to all health professions – including those already regulated; the discussion itself however is limited to professions not currently regulated under the Act which may wish to do so in the future. In our response we have taken the heading at face value and have considered the need for regulation generally.

We believe there is a strong case for some health professions to be regulated. The practice of medicine, nursing, dentistry, psychologists, optometry & and physiotherapy are all examples where a strong regulatory system such as that set up under the Health Practitioners Competence Assurance Act 2003 (HPCA Act) is appropriate.

There are other health professions where some form of regulation is appropriate, though at what level and in what form is still to be determined. This consultation is directed at the current criteria set up under HPCA Act for establishing a new responsible authority. While it is appropriate to review these criteria – and we agree that they need to be tightened up – we are not convinced that the only way to regulate health practitioners is by way of responsible authority under the HPCA Act. Although there are a number of other health professions that could cause harm – and even serious harm in rare incidences – to have them brought under the regulation of a responsible authority as per the Act may be excessive. Instead a second tier of regulation may be sufficient.

Second Tier of Regulation

A possibility, for example, might be to introduce a form of licence to practice which could be backed up by the Health and Disability Commissioner legislation and strengthened Human Rights Review Tribunal processes. This system is likely to be less costly than setting up a responsible authority and would provide the public with a measure of protection from harm that they currently do not have.

Another alternative to the current regulatory system under the HPCA Act is self-regulation. How successful this would be would depend on the cohesion of the group of practitioners in question, and whether they are able to enforce their decisions on their members. If there are problems in enforcement, however, it may be that some element of state regulation can be brought in to achieve this.

Finally, we note that while we have discussed the issue of a second tier of regulation in respect of other health professions not covered by the HPCA Act, we think that there may be an argument for some currently regulated health practitioners governed by responsible authorities to be covered by this alternative system. We believe, however, that the current system is appropriate for those health professions where the potential for harm is likely to be greater, such as in the case of medicine.

Criteria for Registration under the Current System

In regard to the criteria for registration under the current HPCA system, we believe that this has in the past been too light, and that as currently stated could lead to considerable proliferation of responsible authorities, regardless that this system may not always be necessary.

We are aware that some professions seeking registration under the Act are doing so in part to achieve a perceived status that they otherwise would not have. This is inappropriate and should be firmly discouraged. Linked to that, we are concerned that there may be some professions seeking to promote the therapy they offer via registration but who do not appreciate the limits of the care which they can provide, and do not understand the need to refer the patient on to a different health practitioner when necessary.

We also agree that something more than a "risk of harm" is required.

We note however that the overriding principles and proposed criteria to achieve those principles are inconsistent. That is, the over-riding principles for regulation provide that :

"The health services concerned pose **a risk of harm** to the public, or it is otherwise in the public interest that the health services be regulated as a health profession under the Act"...

On the other hand criterion 1 which is proposed to achieve this principle states

"The activities of the profession must pose **a significant risk of harm** to the health and safety of the public."

We believe that the two need to be consistent and that both should state "a significant risk of harm".

Also on the issue of criterion 1, the notes under this state that :

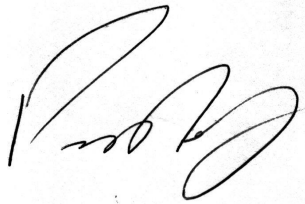
"To be considered under this criterion the members of the profession must be involved in at least two of the following activities:

- invasive procedures (such as cutting under the skin)
- clinical intervention with the potential for harm
- making decisions or exercising judgement which can substantially impact on patient health or welfare, including situations where individuals work autonomously, i.e., unsupervised by other health professionals."

There needs to be caution that "invasive procedures" is not too narrowly interpreted. For instance the document gives the example of "cutting skin"; there are however, many other ways to influence health including by giving chemicals, by "invading the psyche" or by manipulating the social environment. Sometimes the latter two are more difficult to detect and counter.

We hope our comments are helpful. If you wish to discuss any of the above issues further please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Foley', written over a light grey rectangular background.

Dr Peter Foley
Chair NZMA