

Putting the Brakes on Self-Regulation

by Richard Steinecke
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Is the golden age of self-regulation in Ontario coming to an end? A decade ago the province was cranking out new self-regulating professions at a rate of more than one per year. Legislation creating self-regulatory bodies for early childhood educators, trades, traditional Chinese medicine practitioners, kinesiologists, psychotherapists, naturopaths (who were already regulated under antiquated legislation) and homeopaths was enacted.

However, since then enthusiasm for creating new self-regulating professions has definitely waned. Media reports, commentators and some political parties have actively questioned the wisdom of creating many of the new regulatory bodies listed above. After significant attention in the media, the validity of the traditional Chinese medicine Registration Regulation was, unsuccessfully, challenged in court. Indeed, the prudence of using existing self-regulatory bodies was called into question by an independent audit of denturists and, by some media, in the case of the regulator of propane in Ontario. The only new self-regulating profession to receive statutory support in the last few years was human resources professionals, and that was through a private member's Bill.

For health professions, there is an advisory council that reviews proposals to create a new health profession. Since early 2006 it has consistently

recommended against the creation of new self-regulators, including for personal support workers, physician assistants, dental assistants and most recently, paramedics.

The Health Professions Regulatory Advisory Council (HPRAC) has established criteria for considering such applications. It considers whether the proposed regulation of the profession “meets the risk of harm threshold and whether it is otherwise in the public interest”.

HPRAC's report on paramedics, completed in December but released publicly earlier this month, is a useful case study. Intuitively one would think that the work paramedics do, dealing with severe medical conditions and trauma in uncontrolled settings, creates a significant risk of harm. The interpersonal aspects of their work, coping with stressed people on what is often the worst day of their lives, are undoubtedly challenging. Also, the profession is evolving in innovative ways including performing increasingly invasive techniques in the field (rather than just the “stabilize and transport” model of old) and expanding into community health care.

However, HPRAC's criteria refer not just to the “risk of harm” by incompetent or unprofessional practitioners but to the risk of harm that arises from maintaining the existing regulatory scheme. Paramedics are currently indirectly regulated under the *Ambulance Act*. HPRAC acknowledges that the current regulatory scheme is quite complex in that:

- The Ministry of Health and Long Term Care sets standards for education, evaluation and

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continuing education and oversees the rest of the system.

- Municipalities enforce standards, provide some continuing education and maintain standards for the operational end of delivering paramedic services.
- Base hospitals provide ongoing quality assurance including administering certification programs, provide clinical continuing education and provide medical support to paramedics.
- All of the above entities handle complaints related to their areas of responsibility.

HPRAC concluded as follows:

Changing the regulatory regime from indirect regulation by government to self-regulation by the profession is not in the public interest. Public safety and quality of care are sufficiently upheld at this time through the current oversight system.

HPRAC also concluded that the evolution of the profession could be managed within the current regulatory regime.

HPRAC recognized that the current complaints system for paramedics was both uncoordinated and not transparent. In addition, there was no assurance of formal procedural fairness as one would find in a self-regulating enabling statute. Its diffused nature also prevented the use of complaints data for quality assurance purposes. However, HPRAC thought that these issues could be adequately addressed by reforming the existing regulatory regime by

standardizing the complaints process and making it more transparent.

HPRAC also recommended that the evolution of the profession, particularly in the expansion to community care, would benefit from providing title protection under the current legislation.

The HPRAC report on paramedics reinforces the recent trend away from expanding statutory self-regulation of professions. Professions wishing to become self-regulating will have to make a strong case in the current environment.

The HPRAC report can be found at: <http://www.hprac.org>.