

Oversight through Publishing Performance Measures

by Erica Richler
January 2021 - No. 252

As one of the last countries still using the self-regulation model for professions, Canada is ripe for regulatory reform. Many provinces, including British Columbia, Alberta and Québec are in the midst of reform right now.¹

One of the key reform proposals has been to establish an independent oversight agency similar to the Professional Standards Authority of the United Kingdom.² However, Ontario is choosing a different, and somewhat unique, path. Last month the Ministry of Health of Ontario made available its College Performance Measurement Framework (CPMF). The CPMF requires the 26 health regulators to collect, report and publish detailed information about their structure and activities in a uniform format. The Ministry will then publish a summary report of the updated information annually.

The Ministry has stated the purpose of the initiative as follows:

¹ See, for example: *A Year of Change: Proposals for Regulatory Reforms Across Canada*, found at: https://m365-emarketing-uploads.s3.amazonaws.com/images/cnar/SML_December_2020.pdf.

² Modernizing the Oversight of the Health Workforce in Ontario, Dialogue Summary, McMaster Health Forum, https://www.mcmasterforum.org/docs/default-source/product-documents/stakeholder-dialogue-summary/workforce-oversight-sds.pdf?sfvrsn=d76e54d5_4.

Measuring college performance will strengthen accountability by linking college activities to outcomes and providing consistent and aligned information across all Colleges. In addition, performance measurement strengthens transparency about the role of the Colleges (e.g., how decisions are made, the impact of those decisions and activities in advancing the public interest, etc.) helping to foster trust in the ability of the health professions to regulate themselves in the interest of the public.

Finally, this work places a focus on areas of improvement (e.g., better support for changing public expectations, patient needs, and delivery of care models) ... and through highlighting best practices, reduces variation in the efficiency and effectiveness with which Colleges carry out their functions.

The CPMF document and reporting tools are the products of hard work by a working group, collaboration with experts in the field, and broad consultation with stakeholders including the regulators themselves.

The information to be gathered and reported is quite detailed. It is organized into seven topics (or domains) each of which has a number of separate standards to be met. Each standard has a number of questions to be answered. For each question the regulator has to identify evidence to support its meeting of the standard. Links to documents of supporting evidence are to be provided. The regulator then indicates whether it fully, partially or does not meet the standard. There is a place for the regulator to offer comments to put the information into context.

The domains are diagrammed as follows:

FOR MORE INFORMATION

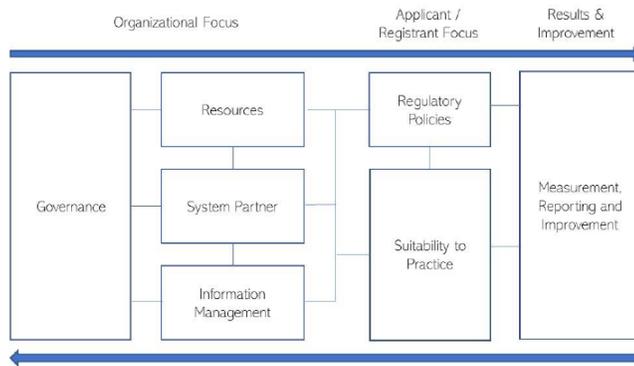
This newsletter is published by Steinecke Maciura LeBlanc, a law firm practising in the field of professional regulation. If you are not receiving a copy and would like one, please contact: Steinecke Maciura LeBlanc, 401 Bay Street, Suite 2308, P.O. Box 23, Toronto, ON M5H 2Y4, Tel: 416-599-2200 Fax: 416-593-7867, E-Mail: info@sml-law.com

WANT TO REPRINT AN ARTICLE

A number of readers have asked to reprint articles in their own newsletters. Our policy is that readers may reprint an article as long as credit is given to both the newsletter and the firm. Please send us a copy of the issue of the newsletter which contains a reprint from Grey Areas.

Grey Areas

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION



Take one example. Domain 6 deals with suitability to practice, which addresses the core function of a regulator to ensure that practitioners are competent and ethical. Standard 13 reads: “All complaints, reports, and investigations are prioritized based on public risk, and conducted in a timely manner with necessary actions to protect the public.” Measure 13.1 under this standard reads: “The College addresses complaints in a right touch manner.” The proposed evidence to support whether this measure is met reads as follows:

The College has accessible, up-to-date, documented guidance setting out the framework for assessing risk and acting on complaints, including the prioritization of investigations, complaints, and reports (e.g. risk matrix, decision matrix/tree, triage protocol).

The regulator then assesses whether it has met this measure in whole or in part.

The above example is probably one of the more straightforward ones. Standard 7 reads: “The College responds in a timely and effective manner to changing public expectations.” That standard does not have a

measurement statement and calls only for a narrative discussion of what the regulator does.

Some standards with measurement statements are difficult to quantify. For example, measure 9.1 reads:

All policies, standards of practice, and practice guidelines are up to date and relevant to the current practice environment (e.g. where appropriate, reflective of changing population health needs, public/societal expectations, models of care, clinical evidence, advances in technology).

The evidence of meeting that measure is entirely process orientated, including that each policy is regularly reviewed and that any updates include the following components:

- i. evidence and data,
- ii. the risk posed to patients / the public,
- iii. the current practice environment,
- iv. alignment with other health regulatory Colleges (where appropriate, for example where practice matters overlap)
- v. expectations of the public, and
- vi. stakeholder views and feedback.

In fact, that is a criticism of the CPMF. Harry Cayton has stated that he is skeptical about the CPMF because it focusses on process and not outcome.³ However, he also says that the CPMF is an important step.

³ Listen to the 12:40 mark of the podcast *Health Profession Regulation – Is Ontario’s Current Model Working?* found at: <http://santishealth.ca/podcasts/episode-10-health-profession-regulation-is-ontarios-current-model-working/>.

Grey Areas

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

It is, after all, quite difficult to measure outcomes for most regulatory activities. In addition, Standard 15 specifically requires regulators to monitor, report on, and improve their performance and requires each regulator to identify and measure key performance indicators (KPI).

The Ministry has also noted that:

...there are currently no benchmarks that set expectations for regulatory excellence that have been identified through jurisdictional scans or literature reviews. The purpose of the first iteration of the CPMF is to provide the public, the ministry and other stakeholders with baseline information respecting a College's activities and processes regarding best practices of regulatory excellence and, where relevant, the College's performance improvement commitments.

The reported results will help to lay a foundation upon which expectations and benchmarks for regulatory excellence can be refined and improved and may stimulate discussions about regulatory excellence and performance improvement.

Some of the standards appear to create obligations that are not contained in the enabling legislation. For example, Standard 1, measure 1 asks about whether the regulator has competency and suitability criteria for a candidate to be eligible for election to its Board. This concept is not included in the legislation despite a number of recent amendments dealing with governance and the Minister has never requested that the regulators establish such a requirement. These are difficult concepts to introduce into an election process and will likely take years to implement. Yet the first reporting period for this measure is 2020.

Other standards, while not directly required by the enabling statute, can perhaps be inferred from it. For example, Standard 5 reads "The College actively engages with other health regulatory Colleges and system partners to align oversight of the practice of the profession and support execution of its mandate."

The Ministry is taking a quality improvement approach to this initiative. It will provide a factual summary of the information but will not rank the regulators or point out poor performers. It anticipates using the information to:

...lay a foundation upon which expectations and benchmarks for regulatory excellence can be refined and improved and may stimulate discussions about regulatory excellence and performance improvement...

The ministry may use the results, where warranted, to inform discussions with individual Colleges regarding proposed improvement commitments, best practices, and potential areas for alignment with other Colleges and system partners.

The CPMF will create a lot of work for the regulators to compile the information in a format consistent with the Ministry requirements and to implement changes to meet the new expectations. However, this is currently an alternative to the creation of an independent oversight body, which likely would require even more effort.

The Ministry has not posted the CPMF documents on a website, but they are available upon request from:

Regulatory Oversight & Performance Branch
Ministry of Health
438 University Avenue, 10th floor
Toronto, ON M5G 2K8