

## REGULATION LESSONS TO BE LEARNED FROM OTHER JURISDICTIONS

By Andrew Tapp

WITH PEO WORKING toward an evidence-based approach in its regulatory efforts, it's often instructive to review how regulation is accomplished in other jurisdictions. Two reports released last summer offer PEO food for thought: *Rethinking Regulation*, a report by the Professional Standards Authority (the UK's independent body on the well-being of healthcare users) and *Occupational Licensing: A Framework for Policy Makers*, a report from the U.S. Department of the Treasury, the Council of Economic Advisors, and the Department of Labor.

### RETHINKING REGULATION

*Rethinking Regulation* examines the problems of health regulation in the UK and proposes new ways of solving them. The main issue with regulation there, according to the report, is a lack of knowledge on how regulations impact public safety. Regulatory bodies in the UK have evolved piecemeal over hundreds of years in response to a variety of circumstances and, consequently, are often very different from each other. This diverse system is not only expensive and hard to quantify, but also slow to change. Regulations are products of government and changing them takes time. Change in the healthcare system, by contrast, is happening at an ever-accelerating rate.

To begin fixing the system, the authors advocate using risk as a common measure for determining the necessity of regulation, and that "organizational and other arrangements should accordingly be constructed on a proper assessment of the risks that arise from the practice of the different professions." Using this method of "regulatory assurance," the amount of regulatory force employed goes up in proportion to the risk presented by the regulated profession. For example, it may only take an official code of conduct to protect the public from the practice of personal care workers, but doctors should still be subject to legislation. The authors are working on a reliable "risk matrix" tool for measuring professional practice risk that will help ensure professions are regulated correctly.

The role of a regulator is to set the correct standards for competence and behaviour, and ensure these standards are met. As there is little evidence that standards alter the behaviour of regulated professionals, regulators must also embrace a preventive role, determining what behaviours and outcomes



are desired and what interventions are needed to produce them. The authors provide some examples of tools that could be used to achieve this, such as the creation of "reflective spaces" where professionals can talk about issues without fear of recrimination, and including registered professionals themselves in the process as the regulators' eyes and ears. Overall, a regulatory system should be flexible, transparent, based on shared ideals, trusted, efficient and focused on evidence.

PEO has already started to implement some of the changes recommended in this report. For example, in PEO's strategic plan we're placing an emphasis on evidence-based regulatory policy and on considering regulation alternatives other than legislation. We should keep this report's recommendations in mind as we continue to improve engineering regulation and implement changes, such as a recommendation from the Elliot Lake Commission of Inquiry that advocates creating a structural engineering specialist designation.

We must ensure these changes are implemented transparently, efficiently and in a way that doesn't cause harm. For example, while the practice of engineering in general is "high risk," the rationale for subjecting it to a high level of regulatory

force (statutory regulation), subjecting a subset of engineers to further force could lead to *over*-regulation, which results in unnecessary costs, demotivated professionals and, perhaps, even increased public harm. In this situation, the use of less forceful regulatory tools, such as volunteer registers of accredited professionals, may be sufficient to maintain public safety when used to distinguish between groups of professionals that are already subject to stringent regulation.

## OCCUPATIONAL LICENSING

*Occupational Licensing: A Framework for Policy Makers* reviews the history of occupational licensing in the United States, outlines the problems facing it, and presents some possible solutions. The report is broad, covering all licensed occupations in the US, and shows how the percentage of Americans in these jobs has grown from about 5 per cent in the 1950s to over 25 per cent today.

While the report is clear that licensing can benefit consumers and the public when it is warranted, the report also describes what can make licensing undesirable when unneeded. Licensing can lead to reduced employment in licensed professions, lower wages for unlicensed workers with similar levels of education and experience, and an increase in the cost of consumer goods and services, anywhere from 3 to 16 per cent. Already disadvantaged groups are also disproportionately affected by licensing; immigrants in licensed professions often have trouble finding employment in the US, and those with criminal records (by some estimates as many as one in three Americans) can be denied a licence even if their infraction had nothing to do with the profession.

Which professions are licensed, and even how these professions are licensed, varies enormously state to state. These professional licensing differences lead to poor professional mobility between states (a problem that has mostly been solved in Canada), and also prevents a professional from taking advantage of new technology. For example, a licensed healthcare worker in one US state may wish to fill a needed service gap in others through telepractice, but must first acquire a licence for every state in which a patient resides. Additional barriers include differing scopes of practice between states and state-specific educational certification that limit the options professionals have for obtaining licences or fulfilling professional development requirements.

The report details several ways to improve licensing:

- use alternative forms of professional regulation for low-public-risk professions;
- ensure licence requirements are tied to public safety;
- develop simpler licensing processes;
- allow professionals an unrestricted scope of practice; and
- prevent licensing from rendering certain groups (immigrants, veterans, those with criminal records unrelated to their profession) unemployable in their field.

The authors also believe licensing schemes should be subject to extensive cost-benefit analysis and sunrise and sunset reviews, stressing that sunrise reviews might be the more important of the two as it is far more difficult to eliminate licensing systems than implement them. The report also states that there should be more public representatives on licensing boards, and professional mobility should be improved through harmonizing state requirements and forming arrangements that make it easier for professionals to practise in multiple states.

Canadian licensing, in general, and PEO, in particular, has already made some progress toward achieving these goals, especially in the area of practice mobility. The report's emphasis on carefully analyzing the cost-benefit of regulatory change is also mirrored by PEO's commitment to evidence-based policy. As PEO considers making changes to how licensing works in the province, care must be taken to ensure these changes do not increase licensing's burden.  $\Sigma$

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