Regulatory Bodies in the Age of Open Information

New transparency initiative a response to changing culture

The public perception of institutions has changed. Citizens no longer have a blind faith acceptance that organizations with a public interest mandate will do the right thing on their behalf.

As a result, many would argue that demonstrating accountability has become paramount to the credibility of organizations charged with protecting the public.

The College is launching a conversation with the public and the profession to determine whether we can become more transparent with our decisions and processes.

This conversation is prompted by a growing recognition that access to more information may assist members of the public in choosing physicians, enhance accountability, and better inform any evaluation of the performance of self-regulation of the profession.

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Mr. Steven Lewis, a health policy consultant and adjunct professor of health policy at Simon Fraser University told Council, in a provocative presentation, that he did not believe that maintaining the status quo was an option for any organization, especially one with a mandate to protect the public interest.

"The culture has changed irreversibly," Mr. Lewis said, in his presentation entitled "The Great Unveiling: How the Age of Open Information Will Affect Regulatory Bodies."

"Public trust has taken a huge hit in the last 20 years," he said, citing the economic meltdown in 2008 and various violations of the public trust by government representatives and agencies.

The result is a citizenry deeply skeptical about the motives of institutions, he said. This has led to a worldwide social movement of transparency and a demand for access to information long kept private. And if that information is not provided willingly, it will often be taken forcibly. If organizations are not opening up, people will be prying open, said Mr. Lewis.

Dr. Rocco Gerace, College Registrar, agrees that we live in a new era of expectations and the practices of medical regulators must reflect this reality. "In our case, the public protection work of the regulator must not only be done, it must be seen to be done," he wrote in his message to the profession on page 5 of this issue.

"Information needs to provide assurance to the public that practitioners are competent and that the public is safe. We need to demonstrate that the system works in order for the public to trust that the system works," wrote Dr. Gerace.

Reviewing our Practices

Over the last year, we have begun the process of reviewing our information-sharing practices. Last December, we decided to post the results of out-of-hospital premises inspections on our website. This provides patients the opportunity to be fully informed about the site where they will receive care.

We also looked at how accessible we made information that was already technically available to the public. What we found was that, while the information was indeed public, it was certainly not accessible.

Dr. Gerace explains: "For years, some of the information that the College has about physicians within our processes has been publicly available – it just hasn't been within easy reach. For example, a notice of hearing was public, but it had to be requested. And if you were unaware of the fact that such a notice is even available, then the information may as well have been sealed," he said.

That is not the level of transparency expected of the College by the public. And it certainly is not what we should expect of ourselves, said Dr. Gerace.

At its most recent meeting, Council voted to improve access to this type of information and added four identified categories of member-specific information to the College website. This includes information regarding the location of medical records, in certain circumstances; notices of hearing; hearing status of Discipline Committee proceedings; and reinstatement decisions.

All would agree, however, that making information that is already public simply more accessible is just the first step.

Creating Foundation for Discussion

Regulatory colleges deal with highly sensitive information, such as complaints and medical information. And, in moving forward and deciding what should or should not be disclosed, we believe we need to tread carefully.

In order to guide discussions about making more information publicly available, a small group of health professional regulators, including this College, developed eight draft transparency principles. The draft principles can be summarized briefly here. (Please go to our website at www.cpso.on.ca to read the full rationales.)

1. Public requires information to trust that the system works;
2. More information improves choice and accountability;
3. Information should be relevant, credible and accurate in order to support #2;
4. How information is provided matters – it must be timely, easy to find and understand, and have context;
5. Remediation protects the public and requires confidentiality;
6. Discussions about transparency should balance the principles of public protection and accountability, with fairness and privacy;
7. More risk requires more transparency; and
8. Consistency – the public should be able to expect to obtain the same kind of information about any regulated health-care professional in Ontario.

Dr. Gerace said he believes that the principles strike a balanced tone, a demonstrated openness to transparency, combined with a thoughtful, careful approach.

For example, he said the principles acknowledge that more information is not always better and that we need to explore all aspects of greater disclosure, including the unintended consequences and potential risks. Such risks might include a reduced willingness for practitioners to acknowledge problems, significant delays in process, including the potential to delay important educational interventions.

Consideration must also be given to the impact of disclosure on the professional reputations of individual physicians. This is a significant issue, said Dr. Gerace, and indeed one that physician organizations have

What kind of information do patients want?

Mr. Steven Lewis, a health policy consultant and adjunct professor of health policy at Simon Fraser University, told Council that the following is what he thinks patients want to know from their regulatory bodies:

- The complaints history of their doctor and what the College decided in its determinations;
- Which practitioners are repeat offenders;
- Whether a practitioner has acknowledged wrong doing and committed to remedial action;
- Any conditions imposed on practice;
- Intent or desire to integrate regulatory functions with quality improvement and other performance improvement functions.

broached with the College. "We are very cognizant of the issues at stake. That is why this initiative can only go forward with a careful weighing of the merits of transparency against individual rights of physicians and due process. Any analysis undertaken considering the posting of information must involve a thorough evaluation of the impact on public protection and accountability as well as any concerns or any risks posed to physicians inherent in the posting of certain categories of information."

Ultimately, the question comes down to whether disclosing a category of information will advance the public interest – and not all regulatory information will, he said. "The information that a regulator makes available, particularly relating to individual health-care professionals, should only be used because it helps the public make decisions and promotes public trust in the regulator," said Dr. Gerace.

Regulatory information is complex and regulators have a responsibility to provide information clearly and place it in the appropriate context

The protection of the public interest will always be paramount, but we must take into account our duty to be fair to physicians. Both obligations are important and undermining one will not advance the other, said Dr. Gerace.

He is urging members of the profession to become a part of this discussion – and become involved now, at the early stages of this initiative.

"I want the profession to participate in the direction in which we move, and to be involved in whatever changes are made. I urge all of my colleagues to go onto our website and provide feedback to these draft principles. Have we struck the right balance? Do our rationales make sense to you? We need members' thoughtful input and their direction on this critically important initiative," he said. Under our consultation guidelines, the names of participating organizations are posted, but the names of individuals are not. Check our website at www.cpso.on.ca for further details.

Ms. Susan Davis, a public member of Council, says public participation in this conversation is just as critical. "This is a pivotal time in the College's history. We need to hear from the public – early, loudly and often – during this initiative. What do you want to know about your physicians? Indeed, what do you want to know about the regulator of those physicians? Tell us. We want to know."

Mr. Lewis agreed with the College's decision to make the discussion transparent. "How you discuss this issue should be transparent. People may take issue with this discussion, but let them take issue in public."

"The Privacy Train has left the Station"

Few people relish the prospect of having the details of their professional practices exposed. Physicians are no exception. But concerns about being revealed to be fallible should not keep physicians away from conversations about transparency, said Mr. Lewis.

Doctors, he said, are already being judged by patients. "The internet has given everyone a forum for assessing their care experience. The privacy train left the station some time ago."

Doctor-rating sites, he said, are full of information and some patients, in writing about their doctors, have indicated that they have launched a formal complaint.

"So whatever the College discloses is a small subset of what is disclosed informally every day by peers, other team members and patients," he said.

The bottom line is that these conversations are already happening. And those who want to shut them down or otherwise inhibit them will be found to be on the wrong side of history, said Mr. Lewis.

It is not clear, at this point, how many of Mr. Lewis' sentiments are shared by College Council members. But there did appear to be agreement on the importance of context.

Many around the Council table agreed that not only is information without explanation potentially unhelpful, it can be misleading. For example, single incidents relating to health-care providers – even if they do reflect a clinical or conduct error – do not necessarily provide information about the overall competence of a provider.

Regulatory information is complex and regulators have a responsibility to provide information clearly and place it in the appropriate context, said several Council members. Otherwise, any move towards transparency will not achieve desired outcomes.

The Wider Context of Physician Performance

Disclosure and transparency are generic issues that go far beyond regulatory bodies. Complaints and discipline are only a small part of a practitioner's overall history and performance. In the future, said Mr. Lewis, it is conceivable that individual-level quality metrics will be widely available. He pointed to the fact that surgeon-specific mortality rates are now disclosed in England. Such information gives a wider context to physician performance.

"When I choose a physician, I want to see the whole package. Right now, I don't know where my physician finished in his medical school class. I don't know what CME he has done, if, in fact, he has done CME. I don't know very much at all."

But, he said, at some point in the not so distant future, patients will have access to that information, and more.

And when it happens, it will be a good thing for doctors and patients alike.

Full practice profile information will provide the context for assessing overall merit. In fact, he said, the surgeon-specific mortality data published in the United Kingdom is likely a better foundation for informed choice and quality improvement than stand-alone regulatory data.

The movement towards transparency is made easier with patients' growing understanding that neither health care nor its practitioners are infallible. Disclosure of error, now an organizational imperative, has been found to diminish complaints and litigation by increasing trust. It is also one of the richest sources for improvement opportunities.

Thus integrating the transparency agenda and linking it to both improvement and choice may be win-win, said Mr. Lewis.

"I think that, overall, this disclosure movement is going to end up being everybody's friend," he said. MD