Transparency Principles

The following principles are the framework for future decisions by regulatory[1] colleges related to making more information available to the public.

> **Principle 1: The mandate of regulators is public protection and safety. The public needs access to appropriate information in order to trust that this system of self-regulation works effectively.**

In carrying out its legislated mandate, a regulator has a duty to "serve and protect the public interest".[2] Regulators must earn and maintain the trust and confidence of the public that they are working in their best interests.

Information needs to provide assurance to the public that practitioners are competent and that the public is safe. The public protection work of the regulator must not only be done, it must be seen to be done.

> "In judging whether to place our trust in others' words or undertakings, or to refuse that trust, we need information and we need the means to judge that information. We need to know what we are asked to accept and who is soliciting our trust".[3]

> **Principle 2: Providing more information to the public has benefits, including improved patient choice and increased accountability for regulators.**

Public expectation about access to information about all public agencies has changed dramatically, particularly as a result of exponential increases in internet use.

Regulators must assume that the public is as capable of using regulatory information to make decisions as they are to make informed decisions about their health care treatment. This means that the public is entitled to make decisions others wouldn't agree with.

> "Respect for individual autonomy, responsibility and decision-making is deeply entrenched...we believe that people, given sufficient information, can make their own personal assessments of the risks and benefits of transactions".[4]

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[1] Any reference to 'regulators', 'regulatory' or 'health professions' in this document refers to regulated health professions, health professionals and regulators as set out in the *Regulated Health Professions Act*, 1991 (RHPA).
[2] Clause 3(2) *Health Professions Procedural Code*, under Schedule 2 of the RHPA.
[3] O'Neill, Onora (2002) "Trust and Transparency" Lecture four of the Reith Lectures 2002 – A Question of Trust by BBC Radio. Available at http://www.bbc.co.uk/radio4/reith2002/lecture4.shtml.
[4] Ripken, Susanna Kim. (2006). "The dangers and drawbacks of the disclosure antidote: toward a more substantive approach to securities regulation" *Baylor Law Review*, 58, 139-204 at p. 195. The author also notes

The more transparent an organization is, via its web site or other means, the more it is willing to allow citizens to monitor its performance and to participate in its policy processes.[5]

"Transparency stimulates a 'culture of openness' within organizations, which is thought to have a positive effect on trust."[6]

Principle 3: Any information provided should enhance the public's ability to make decisions or hold the regulator accountable. This information needs to be relevant, credible and accurate.

Any information, whether about processes, outcomes, or members, provided to the public should enhance public confidence and/or safety. A successful transparency policy will result in public trust in the organization that sorts, processes and assesses the information before any disclosure is made.[7]

The public needs enough information to understand how and why the regulator makes the decisions it does and to evaluate its performance. Patients also need information in order to make informed choices about health care professionals.

More information does not always make it easier to make choices. If increased transparency is understood only to mean providing more and more information, it may lead to a flood of information that results in public uncertainty rather than trust.[8]

Because information about what is not available can be as important as what is available, it is important to be clear about what is not on the public register and why.

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evidence suggesting that when people are given too much information in a limited time, information overload can result in confusion, cognitive strain, and poorer decision-making. (pp. 159-160)

[5] Curtin, Deirdre, and Meijer, Albert Jacob. (2006) "Does transparency strengthen legitimacy?" *Information Policy* 11(2): 109-122.

[6] Grimmelikhuijsen, 51. In making this statement, the author refers to:
Hood, C. (2006) "Beyond exchanging first principles? Some closing comments" In Hood, C. and Heald, D. (eds). *Transparency: The Key to Better Governance*? Oxford: Oxford University Press, 211-226.

[7] Grimmelikhuijsen notes that "giving citizens 'good reasons' to trust is not only a matter of providing them with knowledge. We also need to develop a sense of realism about the effects of transparency." (Grimmelikhuijsen, 67). He also notes that "trust…is not only determined individually but is largely shaped in a broader societal context". (Grimmelikhuijsen, 67).

[8] Peters, E., Klein, W, Kaufman, A., Meilleur, L, and Dixon, A. (2013) "More is Not Always Better: Intuitions About Effective Public Policy Can Lead to Unintended Consequences" *Social Issues and Policy Review* 7(1):114-148.

> **Principle 4: In order for information to be helpful to the public, it must:**
> - **be timely, easy to find and understand.**
> - **include context and explanation.**

Transparency involves not only providing information, but doing so in a way that is helpful to the public.

Comprehensibility and timeliness are crucial elements of transparency.[9]

All information should be provided in an accessible way, for example, on websites, and be easy to find. Efforts should be made to simplify and clarify information in order to make it easy to understand. Information also needs to be available as soon as possible.

Context is extremely important. Limited information or information without explanation is potentially unhelpful and could be misleading. For example, single incidents relating to health care providers – even if they reflect a clinical or conduct error - do not necessarily provide information about the overall competence of a provider. Single events are also not necessarily predictive of future behaviour.

The Health Professions Regulatory Advisory Council, in its report "*Adjusting the Balance*" (March 2001), had concerns about the "quality and validity of some of the available information when used as an indicator of the quality or calibre of a health professional. Further, consumers will vary in their views as to what information is relevant."[10]

Regulatory information is complex. Regulators have a responsibility to provide information clearly and place it in the appropriate context. Otherwise transparency may have an effect on the public's behaviour, yet not be effective in terms of desired outcomes.[11] Regulatory bodies can help to provide context by providing clear information about what information may mean and does not mean.

> **Principle 5: Certain regulatory processes intended to improve competence may lead to better outcomes for the public if they happen confidentially.**

Most people who come forward with a problem about a health care provider have a common objective: ensuring that the problem does not happen again to someone else.

Regulators share that objective. The goal of regulatory processes is to ensure, maintain and improve the quality of health care for the people of Ontario.

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[9] Grimmelikhuijsen, 53.

[10] Health Professions Regulatory Advisory Committee (HPRAC) (March 2001) *Adjusting the Balance: A review of the Regulated Health Professions Act* Available at http://www.hprac.org/en/reports/resources/RHPA_Review_2001_Report.pdf.

[11] Weil, David, Fund, Archon, Graham, Mary, and Fagotto, Elena (2006) "The Effectiveness of Regulatory Disclosure Policies" *Journal of Policy Analysis and Management* 25(1): 155-181, at pp. 165, 167.

Regulatory functions, such as registration, quality assurance, and enforcement of professional conduct, are designed to protect the public and ensure patient safety. These functions are supported by many processes. Some of them are designed to enhance public protection through the use of confidential, remedial approaches. These processes are valuable and should not be lost in the pursuit of transparency.

Remediation is a critical component of public protection. Education, retraining, assessment and monitoring are the best methods to reduce the likelihood that past conduct/problems will be repeated.

Regulators strive to do this by improving the performance of individual members of the profession. Publishing the outcome of remedial processes may be perceived as punitive and diminish their educational effectiveness.

Patient safety literature shows that identification of errors is most likely to occur, and in fact sometimes only occurs, when health professionals have a safe place to identify, discuss and address problems. These 'safe harbours' create an environment in which true improvement can occur.[12]

Regulators have reason to believe that a remedial approach works. Only a very small fraction of health care providers are the subject of multiple actions at the committee level.

Principle 6: Transparency discussions should balance the principles of public protection and accountability, with fairness and privacy.

A regulatory college's accountability to the public, and its public protection mandate, must be balanced with fairness and privacy principles. [13]

There may be unintended consequences and potential risks to the public of making more information available. These might include a reduced willingness for providers to acknowledge problems and significant delays in process, including the potential to delay important educational interventions. This needs to be explored.

While the protection of the public is paramount, regulators need to take into account their obligation to provide procedural fairness to members. Both duties are important and undermining one does not, in the long run, advance the other. [14]

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[12] Linthorst GE, Kallimanis-King BL, Douwes Dekker I, Hoekstra JB, de Haes JC, '*What contributes to internists' willingness to disclose medical errors?*' Neth J Med. 2012 Jun;70(5):242-8.
[13] HPRAC

"What makes a profession is the public interest inherent in its operation. Many of the challenges in regulation stem from the reality that securing the public interest requires hard choices to be made:

- limiting access does not secure a monopoly but ensures quality control;
- protecting privacy helps ensure professionals can take certain risks and make unpopular decisions necessary for meeting their professional obligations and the public interest;
- standards that are not black and white reflect the reality that some ethical questions truly involve "shades of grey" that cannot be solved through zero tolerance measures or absolute or inflexible rules." [15]

Principle 7: The greater the potential risk to the public, the more important transparency becomes.

Information about the most serious behaviour or clinical competence concerns is already available to the public as required by the Regulated Health Professions Act.

It is critical for the most important information that patients use to assess risks be the easiest for the public to process and evaluate.

Principle 8: Information available from Colleges about members and processes should be similar.

The public should be able to expect access to the same kind of information about any regulated health care professional in Ontario.

Consistency of information about professionals is critical for interprofessional care and for the maintenance of the integrity of self-regulation.

The RHPA is the legislative framework for all of Ontario's regulatory health professions. In addition to setting out general objects and specific processes, it governs what information is currently made public[16] or kept confidential[17]. Amendments made to the RHPA in 2009 made significant changes to increase information available to the public and make it accessible on College websites.

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[14] Steinecke, Richard. (July 2003) "Will the Real Public Interest Please Stand Up?" Grey Areas 65. Steinecke, Richard. (November 2004) "Too much Transparency?" Grey Areas 81.

[15] Anand, Raj (June 6, 2013). "Accountability, Transparency and Professional Ethics: Today's Challenges for the Ontario College of Teachers" Presentation at the Annual General Meeting of the Ontario College of Teachers.

[16] s23(2)(14) *Health Professions Procedural Code*

[17] s36 *Regulated Health Professions Act*