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How are complementary health professions regulated in Australia? An examination of complementary health professions in the national registration and accreditation scheme

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ABSTRACT

Objectives: This study aims to provide an empirical examination of how complementary medicine practice in Australia is actually regulated under the current national registration model.

Methods: Data was obtained from Australian Health Practitioner Regulation Agency (AHPRA) Annual Reports for the years 2011/12–2014/15 and supplemented by the Chinese Medical Registration Board of Victoria (CMRBV) Annual Reports in 2011/12 for Chinese Medicine complaints. The data analysed includes complaint statistics, stage of closure of complaints and the outcome of complaints concerning Chinese medicine, chiropractic and osteopathy under the National Law.

Results: During 2014–2015 the number of complaints per 100 registrants for was highest for the medical board (4.4), while much lower for the chiropractic (1.5), osteopath (0.7) and Chinese medicine (0.5) boards. For conventional boards, 58% of complaints were closed at the assessment stage, while 57%, 29% and 16% of complaints to the osteopath, Chinese medicine and chiropractic boards respectively were closed at the assessment stage. The decision to suspend or cancel registration of health professionals was 17% from the Chinese medicine board, 14% from the Osteopathy Board, 1.5% from the chiropractor board and 0.6% from the medical board.

Conclusion: It appears that complementary medicine practitioner regulation works at least as well as conventional regulation, and at most complementary medicine boards take a stricter interpretation of misconduct though more research would need to be undertaken to state this definitively. Our findings indicate that the public are using the statutory complaint mechanisms available to them with respect to the three CM groups.

1. Introduction

On 1 July 2010 the Australian Health Practitioner Regulation Agency (AHPRA) became the single national oversight agency for health professional regulation in Australia, under the National Registration and Accreditation Scheme (NRAS) empowered by the *Health Practitioner National Law Act 2009* (collectively referred to as the National Law as enacted in each State and Territory).[1] Ten national health professional boards were established requiring mirror legislation in each jurisdiction and parallel legislation in each State and Territory. The original 10 boards in NRAS regulated 10 health professions that were already registered in all States and Territories across Australia: Chiropractic, Dental, Medical, Nursing and Midwifery, Optometry, Osteopathy, Pharmacy, Physiotherapy, Podiatry and Psychology. Four more health profession boards joined the scheme on 1 July 2012, representing professions that were previously registered in only some States and Territories: Aboriginal and Torres Strait Islander Health Practice (ATSI HP), Chinese Medicine, Medical Radiation Practice and Occupational Therapy. Three of those boards directly regulate and register practitioner groups considered complementary medicine (CM) a broad array of treatments not considered to be part of conventional health care,[2] (Chinese medicine, chiropractic and osteopathy – which together will be referred to as the "CM Boards" in the remainder of this article). Whilst chiropractic and osteopathy have been registered in all states and territories since the 1980s[3] prior to 2012 only Victoria had a board governing Chinese Medicine Practitioners – the Chinese Medicine Registration Board of Victoria, established in 2000. Transition of registration to the Chinese Medicine Board of Australia (CMBA) was

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automatic for those registered with the Victorian Board as at 30 June 2012.[4] The purpose of the boards is to regulate their members under the National Registration and Accreditation Scheme (the National Scheme). This regulation includes: registering practitioners and students; developing standards, codes and guidelines for the respective profession; assessing overseas trained practitioners who wish to practice in Australia; approving accreditation standards and accredited programs of study; investigating notifications and complaints about practitioners; and where necessary, conducting panel hearings and referring serious matters to Tribunal hearings.

The use of CM health services continues to rise in Australia, accounting for as much as half the health practitioner numbers providing primary point-of-care service, half the total health consultations and half of all out-of-pocket spend in Australia.[5,6,7] As CM forms an increasingly significant element of the Australian health milieu a pressing issue facing health regulation is whether all CM providers and services should be regulated in the same way as conventional medicine (or biomedical) providers and services. That is, that they are statutorily regulated by a professional board and overseen by a government regulatory agency. As noted above a select few CM practitioners have recently been included under the umbrella of statutory regulation (chiropractors, osteopaths and Chinese medicine practitioners), however, CM practice remains largely unregulated by government, or is captured under non-specific 'catch-all' legislation (such as the "negative licensing" legislation targeted at unregistered practitioners. This is based around a statutory Code of Conduct and the ability to issue prohibition orders against any healthcare provider in serious breach of that Code).[8,9] There have been calls to register other CM professions − most notably naturopathy and Western herbal medicine.[10]

Concerns have been raised both as to the effectiveness of the application of statutory registration to the three groups of CM practitioners already included in the national registration and accreditation scheme (NRAS), as well as whether further CM professions should be included under the scheme.[8] Opponents of extending statutory provisions to regulation of CM suggest that this may be seen as legitimation of CM by the government. There is also a concern that CM boards would not actively pursue CM practitioners breaching professional standards.[9,11] However, previous analysis of the Victorian experience of registering Chinese medicine suggests that – under that model at least – there was an overall beneficial effect of regulating Chinese medicine practice.[12] A comparative analysis of negative licensing legislation (a statutory Code of Conduct for unregistered practitioners, developed largely as a response to bringing CM practitioners under some regulatory jurisdiction) and statutory registration also suggests that it may be best suited as a complementary measure to statutory registration of CM practitioners, rather than a replacement for it.[8]

Despite the controversy and debate surrounding statutory registration of CM there has been scant critical or empirical examination of the integrity and effectiveness of the administration and process of the regulation of CM practice under the current national registration model. One of the focuses of health practitioner registration in Australia and overseas is the ability for patients to make complaints regarding inappropriate or unethical treatment by practitioners and to provide an avenue for practitioners to be held accountable when these complaints are shown to be valid. As such, complaints against practitioners are the initiators of investigation by regulatory boards (though in limited circumstances the regulator can take action in the absence of a complaint). Previous Australian studies have demonstrated that the types of complaints received by CM and conventional boards are broadly similar.[8,9,12,13] Therefore, in an attempt to answer the concern of whether CM boards are actively discharging their public health duties, this article focuses upon the "pointy end" of the administration of health practitioner regulation – that is: complaint statistics, stage of closure of complaints and the outcome of complaints under the National Law – to determine whether CM boards are actively pursuing their public health goals of protecting the public, and compares the integrity of administering these processes in CM boards to those in conventional health disciplines.[21]

1.1. Healthcare complaints in Australia

Australia's approach to health care complaints involves notifications being made to statutory bodies with discretionary powers to determine how to investigate, dismiss or initiate disciplinary proceedings in relation to the complaint.

In all States and Territories, except NSW, complaints are referred to the health professional registration Boards for consideration and/or investigation. Under the National Law legislation, the Boards have various options for dealing with or referring the complaint. The fact that in most States and Territories it is the Board that decides which path the complaint takes means that an important element of decision-making is made by a Board mainly comprised of health professionals from the same profession as the practitioner who is the subject of the complaint. This means that a crucial aspect of decision-making is by peer review even after the implementation of the National Scheme.[15]

The possible stages at which the investigation may be closed are at or after: assessment of the complaint; investigation of the complaint; assessment of the health or performance of the practitioner; panel hearing; or Tribunal hearing.[16] Complaints move through these stages based on their significance or severity. The grounds for referring a matter to a Tribunal (the final stage) for adjudication are if the Board believes a health professional has engaged in misconduct or their registration was improperly obtained; or if a health, performance and professional standards panel established by a Board requires them to do so. If a matter is referred to a State Tribunal, it is the professional board that brings disciplinary proceedings in the Tribunal against the practitioner. In NSW complaints can be made to either the New South Wales Health Care Complaints Commission (NSW HCCC) or the relevant professional council. If it is decided that the complaint may amount to professional misconduct, then it is referred for disciplinary action by the NSW HCCC to the NSW Civil and Administrative Tribunal.[16]

A decision to take no further action (NFA) can be made at any stage of assessment or investigation. Under Section 151 of the National Law, the grounds on which an AHPRA Board can decide to take no further action are: (a) the Board reasonably believes that the notification is frivolous, vexatious, misconceived or lacking in substance; or (b) given the amount of time that has elapsed since the matter the subject of the referred matter occurred, it is not practicable for the Board to investigate or otherwise deal with the referred matter; or (c) the person to whom the referred matter relates has not been, or is no longer, registered by the Board and it is not in the public interest for the Board to investigate or otherwise deal with the referred matter; or (d) the subject matter of the referred matter has already been dealt with adequately by the Board; or (e) the subject matter of the referred matter is being dealt with, or has already been dealt with, adequately by another entity.

Boards' conducting panel hearings can refer matters to Tribunal hearings. Tribunals are empowered to adjudicate only the most serious disciplinary matters and have the power to cancel health professionals' registration. Allegations against health professionals must be proved on the balance of probabilities and to the tribunal's reasonable satisfaction.

2. Methods

2.1. Selection of professional boards

There are 14 health professions that are regulated under the National Registration and Accreditation Scheme, including 3 CM Boards and 11 conventional Boards. Each health profession that is part of the National Registration and Accreditation Scheme is represented by a National Board. For this study, we have obtained and analysed data from all 3 CM Boards and all 11 conventional Boards.