Perspectives

Time to debate one-click transparency

Ray Moynihan explores dilemmas over public access to records on professional misdemeanours

These days, it seems technology starts to answer the questions it raises, even before we've had time to properly formulate them. As social media and sophisticated software force previously unimagined forms of transparency deep into the fabric of our lives, asking where to draw the line between professional privacy and the public right to know feels somehow old-fashioned. Yet, the answers will affect the future of health care, its massive workforce and the population at large. Australia's new national register of over half a million health professionals now offers the possibility of searching someone's entire track record with one click. The extent to which we embrace this new opportunity is the subject of an emerging debate that's likely to generate a lot more attention.

A powerful piece of investigative journalism from the new *Global Mail* outlet has laid out some of the groundwork for this debate, citing examples of past egregious conduct which fails to appear on practitioners' current registration records.[1] One case involved a nurse being repeatedly violent to nursing home residents; another featured a pharmacist moving large amounts of flunitrazepam, popularly known as a "date rape" drug; a third involved a doctor using cocaine with, and making sexual advances to, a receptionist and being convicted of criminal charges. As the *Global Mail* made clear, there is no legal requirement for past suspensions or reprimands — even for serious misdemeanours — to be part of the current registration record of a practitioner. What the new law does require is transparency about ongoing restrictions on a provider's registration — which is, of itself, a major improvement on the old situation where many adverse findings were effectively secret.

"The level of trust in regulators needs to be high", says Joanna Flynn, chair of the Medical Board, one of the 14 boards that sit within the new Australian Health Practitioner Regulation Agency, in an interview. "If it looks as if we're hiding anything it could diminish that trust." She points out that the new register's site also has links to external legal databases with previous decisions of courts and tribunals, though these can be difficult to track down. As to the question of whether everything in a practitioner's track record should be easily available at the push of one button, "that's for a wider debate", Flynn told me. The new agency's chief executive officer, Martin Fletcher, agrees. "I think there's an important debate to have about transparency. There's no right or wrong answer", he said when I interviewed him, adding that the register is in place to protect the public, not punish practitioners.

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The clear tension here is between professionals wanting to protect their reputations and move on from past problems, and the public wanting to make the best decisions about who they want to care for them. "The debate is live, fraught and controversial", said Ian Freckelton SC, a barrister and law professor at Monash University with long experience on health tribunals, in my interview with him. He says community expectations have changed significantly in the past decade, and there is a need to balance complex issues of privacy, rehabilitation, access to information and informed decision making by patients — which can be more complex still when involving a practitioner's individual health condition. "This is something we're just forming our views on."

There does seem to be an informal consensus about the need for a formal public consultation on the extent of transparency on the new national register. Should there be full one-click transparency of the entire track record, or should practitioners' entries be cleared of problems they have demonstrably overcome? "We believe in rehabilitation", said Merrilyn Walton, when I interviewed her. Her default position is full transparency, but with the opportunity for material to come off the registration record on a case-by-case basis. A former consumer watchdog and now board member for the new registration agency, she told me in her capacity as professor of patient safety at the University of Sydney that she'd like to see widespread public consultation: "We need to talk about this". There seems little doubt we'll soon be doing a lot more talking about the merits and limits of one-click transparency.

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1 Coutts S, Tozer J. Misleading healthcare register puts patients at risk. *The Global Mail* 2012; 6 Feb. http://www.theglobalmail.org/feature/misleading-healthcare-register-puts-patients-at-risk/25/ (accessed Feb 2012). ❑