Professional Registration:

What does it mean in the New Zealand medicolegal milieu?

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■ Adviser with MPS, 8yrs

■ Previous CD of Women’s Health, Auckland City Hospital, 5 yrs
Today’s menu:

1. Professionalism—the what and why
2. Professional registration—some pros and cons
3. Professional indemnity—ethics and scope
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What is professionalism?:

There are identifiable professional behaviours or skills which can be considered “professionalism” which, if we reflect upon these and develop them, will:

- Enhance our inter-professional relationships
- Meet the expectations of the teams within which we work
- Improve the quality of care we provide
- Increase patient satisfaction
- Reduce the likelihood of complaint
Objective measurable professional behaviour deficits correlate closely with professional behaviours that are found deficient in professional disciplinary processes.

Rogers and Ballantyne…J Med Ethics 2010; 36: 250-4
Measured behaviours:

Med student behaviours predictive of subsequent discipline:

1. Poor reliability/responsibility/conscientiousness (e.g. poor attendance, no follow-up on assigned tasks etc)

2. Lack of humility in self-assessments (performance over-rated in comparison with examiner’s evaluation)

3. Diminished capacity for self-improvement (e.g. failure to accept constructive criticism; poor attitude)

4. Reduced initiative and motivation

Stern et al. The prediction of professional behaviour, Med Educ 2005; 39: 75-82
Domains of professionalism

1. Responsibility (e.g. clinical conscientiousness, record keeping)

2. Self-awareness and capacity for reflection

3. Honesty and integrity

4. Relationships with and respect for patients

5. Collaborating and working with colleagues

But most of all…

1. Relationships with patients and staff are paramount

2. Complete tasks conscientiously

3. Document them well

4. Reflect and learn
Adverse outcomes in hospitals

- Severe adverse outcomes occur in about 2% of admissions
- Half are preventable
- Few are due to staff negligence

_Barraclough 2002, de Vries et al 2008_
Operations performed on Fridays were associated with a higher 30-day mortality rate than those performed on Mondays through Wednesdays:

2.94% vs. 2.18%;
OR 1.36; 95% CI, 1.24–1.49)
Trainees and outcome variation:

Anaesthesia registrars in first 4 months at the Alfred Hospital, had worse patient outcomes than in the subsequent 8 months of the year

Speaking up for safety…

…is an important part of professionalism.

- Difficult to express that you think a mistake is about to be made—especially if by someone senior to you!
  - “What if I am wrong?”
- Prior to surgical safety check-lists, in almost all cases of wrong surgery, someone in theatre thought it was but was not able to assert it
  - In health we have not normalised “respectful assertive communication”
...not by doing this!

CO-PILOT CHECKLIST
1. DON'T TOUCH ANYTHING
2. KEEP YOUR MOUTH SHUT
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## Registration pros and cons

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Statutory bar to proceedings if covered by ACC
...to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions.

- Through determination of scope of practice within which he/she is competent
- And provision of:
  - Competence assessment mechanisms
  - Accountability (eg disciplinary) mechanisms
  - Protected quality assurance activities
Notification of (allegedly) substandard competence:

1. Another health practitioner

2. HDC

3. Employer: resignation or dismissed from employment for reasons relating to competence

Possible orders:

- Competence programme
- Conditions on practice
- Examination
- Counselling
Don’t be criminal!

- If convicted:
  - Courts provide a notice of conviction to the registration authority
  - Referred to a professional conduct committee
  - Then possibly the HPDT
- The most common reason for “strike off”
If you avoid criminal behaviour, renew your APC and refrain from sex with your patient(s) you are unlikely to be struck off.
Medicolegal risks:

Complaints more frequent for:

- Males more often complained about than females
- Women patients complain more often than men
- When expectations are not met
- Majority ethnic groups complain more often
- Urban over rural
- Proceduralists over non-proceduralists
- Transactional relationship over longitudinal relationship
HDC complaints:

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<th>Complaints closed 2009/10</th>
<th>=1,524; 556 individuals, remainder group providers</th>
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<tr>
<td>Outside jurisdiction</td>
<td>131</td>
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<tr>
<td>Advocacy referrals</td>
<td>162</td>
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<tr>
<td>Referred back to provider</td>
<td>217</td>
</tr>
<tr>
<td>Withdrawn/resolved by parties</td>
<td>49</td>
</tr>
<tr>
<td>Referrals to other agencies</td>
<td>359</td>
</tr>
<tr>
<td>Formal investigation</td>
<td>51</td>
</tr>
<tr>
<td>Resolved by mediation</td>
<td>5</td>
</tr>
<tr>
<td>Section 38(1)</td>
<td>550</td>
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Totals: 918 606
So smile:

The New Zealand medico-legal environment is a relatively benign one

(cf other jurisdictions)
But!

- Receiving complaints is hurtful; even when we are exonerated
- Exoneration is about standard of care
- Reducing the likelihood of complaint is about determining what patients value in the professional relationship:
  - Communication/humanity
  - Expectations being met

What does this mean in your context?
Currently not covered by ACC:

- Secondary victims
  - eg: PTSD in husband who witnessed murder of wife by ‘AWOL’ psych patient (under MHA)
- Pregnancy
  - eg: Failed sterilisation; failure to diagnose/screen
- Exemplary damages
So don’t be alarmed! (You won’t be sued)

...almost definitely...
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Benefits of MPS Membership

… can broadly be defined as:

Advice, assistance and representation with medicolegal issues arising from professional practice
MPS
Benefits and services - summary

- Professional advice, assistance and indemnity
- Run by health professionals for health professionals
- Education and risk management
- Casebook and other publications website
- Access to counselling as a result of adverse incident
The ethics of mutual society indemnity

Benefits to patients

- Supporting high quality communication skills
- Supporting safety; improving risk
- Fair and efficient resolution of complaints and other disputes
The ethics of mutual society indemnity

Benefits to Government and hospitals

- Supporting professional standards
- Less defensive medicine and overall costs
- Improved professional satisfaction and morale
- Development of medicolegal expertise
Files Opened By Type 2006-2010

- Complaint: 18.9%
- Adverse incident report: 2.5%
- Registration Body: 3.4%
- Criminal: 0.5%
- Defamation: 0.6%
- Inquest: 14.2%
- Terms of employment: 5.1%
- Ethical: 6.4%
- ACC: 4.9%
- HDC: 16.5%
- Privacy Commissioner: 0.3%
- Advice: 26.2%
- HDC: 16.5%
- HBL: 0.5%
About MPS

- Mutual society; not for profit
- Long tradition - founded in 1892
- Over 275000 members in 40 jurisdictions
- New Zealand expertise with international experience and backing
- Occurrence based discretionary cover
- Ethos – protecting professionals and patient safety
Discretion

- Discretion means
  - Extension of benefits rather than restriction
  - Flexibility to respond to members’ needs
  - No small print exclusions
  - Decisions made by health professionals, for health professionals
Discretion

- Discretion must be exercised in compliance with common law:
  - Fairly
  - Without discrimination
  - Not capriciously
  - Consistently
Join our peloton?

When not racing, most elite cyclists walk around in a peloton to cut down on wind resistance.