

Compassion and Kindness in Regulation

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Finding space for kindness: public protection and health professional regulation

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Introduction

The primary aim of health professional regulators is safeguarding public interest, but this cannot be undertaken effectively unless attention is paid to the well-being of all those involved. The unintended consequences of regulatory processes on health professionals include heightened stress, anxiety, shame and, at times, self-harm and even suicide [1–4]. Both professionals and complainants express high levels of dissatisfaction with current regulatory processes that often seem slow, antagonistic and blame focused [5], leading some to question whether legalistic, ‘one-size-fits-all’ regulatory practices are the best way to ensure public safety in all circumstances.

Within healthcare, there has been increasing attention paid to incorporating kindness into daily practice [6, 7]. Are there also ways of integrating kindness into regulatory practice while still maintaining a strong focus on patient safety? Kindness is not about sugar-coating or wilfully ignoring risks to protect practitioners. It is instead a recognition that health professionals work in complex systems and teams, often resulting in heightened cognitive and emotional load, sometimes leading to stress and burnout. Kindness in regulation is about developing humane approaches that maintain a strong focus on risk and patient safety while considering practitioner well-being.

Recommendations

Within the regulation of health professionals, three actions could embed kindness:

- (1) Develop a more nuanced approach to regulation, using better risk assessment to differentiate complaints. One example of this would be where complaints about

have processes, tools or language to differentiate these. In low-risk matters, this might mean identifying alternative dispute resolution mechanisms to better manage both patients’ needs and expectations and practitioners’ professional self-identity and commitment to improvement.

- (2) Find ways to identify and address the ‘pain points’ in the regulatory process.

Just as patient experience measures now play a critical role in healthcare quality improvement, regulators need better feedback mechanisms.

Hearing the voice of practitioners and complainants highlights where to focus improvement efforts. Practitioners and complainants ask for clear, respectful and non-legalistic communication with regular and transparent updating. They also emphasize improved timeliness, as protracted investigations are at the heart of their frustrations. When regulators prioritize these improvements, they are laying the building blocks of kindness in regulation.

- (3) Collaborate as part of the broader patient safety system and tackle the narrative of blame.

Modern healthcare involves complex, interdependent systems and teams, but health professional regulation largely focuses on an individual practitioner. When a concern is raised, it is often about the last person to see the patient in an interprofessional chain of care. Regulators need to consider ways to take better account of the context in which a health professional works, including the place of team-based errors, systems design and clinical governance.

Much has been written about the damage caused by a narrative of blame within healthcare organizations which seeks to find fault and punish, driving problems underground and

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Why “kindness”?

- Regulators must serve and protect public interests and safety
- “The regulated” - and “the public” - are not a group of interchangeable widgets
- Unintended consequences of impersonal regulatory practices include: stress, shame, anxiety, subversion, hostility, antagonisms and even self-harm and suicide
- Professionals – and complainants – express high levels of dissatisfaction with current practices that are seen as slow, antagonistic, blame-focused and one-size-fits-all
- If what we’re currently doing is sub-optimal...why do we keep doing it this way?

Kindness is...

- A cultural and tonal shift in all aspects of regulatory practice
- Focused on recognition of realities of “competency drift”
- Emphasizes collegial, respectful, humane, and civil discourse and approaches with all stakeholders – including “the regulated”
- Designed to reduce cognitive and emotional load associated with interactions with regulatory bodies to support practitioner well being
- Objective is to prevent small problems from becoming big problems through a culture that encourages disclosure, asking for help, acceptance of responsibility, and the capacity to apologize

Kindness need not be....

- Sugar coating
- Ignoring
- Placating
- Avoiding
- Sweeping under the carpet
- Favouring the professional at the expense of the client/patient
- Disproportionately low penalties, sanctions or remedies that equate to “wrist-slapping”
- Its own problematic one-size-fits-all solution

Kindness in regulation = risk management

- Nuanced and individualized approach to interactions with all stakeholders
- Shift from bureaucratized, tone-deaf, proceduralism
- Effective use of data to support risk assessment based approaches
- Openness to alternative dispute resolution mechanisms
- Reduction in administrative hurdles/workload
- Move from a blame-and-shame narrative to one focused on understanding, learning, and conversation
- Humane, civil, collegial communication

Summary

- “Kindness” is central to human existence – yet has traditionally been viewed as incompatible with administrative and regulatory structures
- No reduction in accountability or scrutiny is required in order to be kind
- Transparency, openness, fairness, and impartiality are all aspects of kindness...as is effective, collegial communication and meaningful attention to process improvements

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- The role of the legal representatives for the Regulator

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- Learning the hard way - the absence of compassion and kindness
- Compassion and kindness – the result

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- Engagement with Respondents – why does it matter?
- Engagement with Complainants/Victims – why does it matter?
- Engagement with Witnesses – why does it matter?

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- **President of the High Court of Ireland, Mr Justice David Barniville:**
 - Lack of courtesy in solicitor correspondence “exasperating”.
 - Urged new solicitors to always be polite and courteous, avoiding rudeness and condescension.
 - Aggressive correspondence – almost invariably counterproductive – and likely to provoke serious judicial criticism.

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- **Practical examples:**
 - Timing of correspondence
 - Form of initial approach
 - Tone of correspondence
 - Language used in correspondence
 - Proposals for additional support
 - Logistics – thinking outside the box

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- **Practical examples continued:**
 - On the day
 - Post Inquiry
 - Going above and beyond

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- Day to Day Compassion and Kindness:
 - Team culture
 - Constant learning
 - Part of essential regulatory toolkit

Thank you



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