



*PROFESSIONAL REGULATION AND THE
ETHOS OF A NURSING REGULATORY BODY*

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1. INTRODUCTION

The primary mission of professions in the world is to serve and protect their communities. The quest for autonomy to secure this is therefore a universal phenomenon. The International Council of Nurses (ICN) has been a vanguard for the regulation of standards for the nursing profession. According to the ICN professional regulation is the means by which order, consistency and control are brought to the profession and its practice.

(Affara and Styles, 1992: p7).

International and national research has shown that professional regulation is about improving standards of education, training and practice. This process is also concerned with the position of a profession in society and the power to govern its affairs. Regulation indicates a set of rules and regulations to govern the profession and empowers the profession as it strives for autonomy and development.

Historically, it has been a commonly held opinion that professions operate within social contact. Professionals engage in a commitment for provision of essential services in an accountable manner. In exchange, they are permitted a substantial degree of self-governance and recognition. This premise is supported by the ICN based on Donabedian's views.

According to Donabedian, there is a "social contract" between society and the professions. Under its terms, society grants the professions authority over functions vital to itself and permits them considerable autonomy in the conduct of their own affairs. In return, the professions are expected to act responsibly, always mindful of the public trust. Self-regulation to assure quality in performance is at the heart of this relationship. It is the authentic hallmark of a mature profession.

(Donabedian, 1976: p.XIII, quoted in American Nurses Association, 1980: p7)

The nursing profession has to accept the challenge that society has the right to quality services. Nursing possesses those characteristics which are considered to be hallmarks of a profession namely

- autonomy
- commitment
- expertise
- accountability

These characteristics endorse the need for an advanced evolving body of knowledge, skill and a value system developed and transmitted through extensive academic preparation and professional socialisation. The maintenance of these characteristics is imperative for the continued credibility and meaningful existence of a profession.

2. PROFESSIONAL REGULATION IN NURSING

2.1 WHAT IS THE PURPOSE OF PROFESSIONAL REGULATION IN NURSING?

The purpose of various forms of regulation ranges from those that are consumer-centred to those that are provider-centered. Along that continuum, regulation may be devised for one or more of the following purposes:

- * to protect the public from unsafe practices
 - * to ensure the quality of services
 - * to inform the public about from services which to choose
 - * to foster the development of the profession
 - * to confer accountability, identity and status upon the nurse
 - * to promote the socio-economic welfare of nurses
- (Affara and Styles, 1992: p8)

2.2 WHAT SHOULD BE REGULATED?

The objects or foci of the scrutiny and control of a regulatory system may be

- * the persons practising the profession
- * the educational programmes preparing the practitioners
- * the health care agency through which the particular professional services are rendered to consumers.

2.3 WHAT FORM DOES PROFESSIONAL REGULATION TAKE?

Professional regulation takes various forms sometimes referred to as credentialing mechanisms. Credentialing refers to processes such as licensure, registration, certification and accreditation whereby qualified agents designate various persons, programmes or practices as having met specified standards.

(ANA, 1980, in ICN, 1986: p7)

Standards play such a major role in these processes that standard setting is often used synonymously with regulation and credentialing. The credential carries with it the right for the person or agency to bear and use a designated professional title, as well as a right to provide the service to the public.

In South Africa the practice of the nurse and the midwife is authorised by professional registration in terms of section 16 of the Nursing Act, 1978 (Act No 50 of 1978, as amended). The scope of practice is prescribed by regulations published in terms of section 45 of the Act and is grounded on the ethical

principles which direct the nursing and midwifery professions. Some of these ethical principles are contained in the rules published in terms of section 35 of the Nursing Act (Act No 50 of 1978), as amended.

The eventual determinant for practice in each profession, is the discretion, decision-making ability and professional integrity of the individual practitioner. As professional practitioners in their own right, it is the duty of each to determine the scope of personal practice in the given situation, and to accept accountability for this.

Concomitant with this is the right of the patient to accessible, continuous nursing of an acceptable standard. However, where the patient's rights are violated by the nurse's negligence, ignorance or by his/her deliberate withholding of nursing service, the Council is legally authorised, in the interests of the patient, to call the nurse to account for his/her acts or omissions by applying professional conduct procedures.

3. A REGULATING BODY

3.1 WHAT IS A REGULATORY BODY?

A regulatory body is an authority/institution entrusted with the responsibility of implementing a particular regulatory mechanism. The authority may be the government authorising a regulatory mechanism such as a nursing council, or a non-governmental authority such as the Red Cross, or a professional organisation itself to administer those functions related to the regulation of professional practitioners.

When the authority is the government, regulation may be seen as external or mandatory. When the authority is the profession, regulation may be seen as internal and voluntary.

However, in some countries the distinction is not clear, because of the relationship of the nursing organisation to the government.

When Parliament authorises a regulatory mechanism, the agent for carrying it out is generally designated in the law or other legal instrument establishing the system. Parliament generally prescribes the power or role of the agent. For example, the law may provide for the ministry of health to qualify nurses and approve health care agencies and the ministry of education and training to approve nursing schools. The government may establish a nursing council or board to administer those functions related to the regulation of nurses. In some instances, the government may focus its regulatory scrutiny upon the schools and, in turn, virtually grant to the schools the authority to qualify their graduates for practice as is the case with universities and technikons.

(Affara and Styles, 1992: p10)

In South Africa, the South African Nursing Council is the institution, commissioned by Parliament through the Nursing Act to regulate nursing practice, nursing education and nursing education institutions.

3.2 THE OBJECTIVES OF A REGULATORY BODY (SANC)

The objects of a nursing regulatory body and in the case of this country the South African Nursing Council are:

1. to assist in the promotion and maintenance of the health standards of the inhabitants of this country;
2. to establish and improve standards of education, practice and professional conduct for nurses, midwives and nursing auxiliaries;
3. to promote liaison and communication both in South Africa and elsewhere regarding standards of nursing education and professional practice;
4. to register persons in terms of Sections 16, 21, 23 and 24 of the Nursing Act (Act No 50 of 1978), as amended;
5. to advise the Minister on any matter falling within the scope of the Act and to communicate to the Minister information on matters of public importance acquired by the Council;
6. to advise the Minister of Health on the amendment or adaptation of the Act so as to support the universal norms and values of the nursing profession and to place greater emphasis on professional practice, democracy, transparency, equity, accessibility and community involvement.

3.3. WHERE DOES THE REGULATORY BODY GETS ITS MANDATE FROM?

In external and mandatory regulation, the regulatory body gets its mandate from Parliament and therefore the public. In internal and voluntary regulation the regulatory body gets its mandate from the profession. It can thus be concluded that the regulatory body gets its mandate from society hence the contract between society and the profession referred to by Donabedian is critical for professional regulation.

In this country the South African Nursing Council was established under an Act of Parliament (Nursing Act No 50 of 1978), as amended. In terms of Section 3 of the Act, the Council controls and exercises authority over all matters concerning the practice of nurses and midwives. In terms of this provision, the Council sets standards for education and practice, which include the following:

- * minimum requirements for education and training with a view to registration; and
- * ethical rules and practice regulations.

The South African Nursing Council gets its mandate from the government and the South African public. Through the establishment of the Nursing Council the nursing profession was granted the prerogative of running its own affairs, hence the Nursing Council also gets a mandate from the profession as well.

3.4 THE FINANCING OF A REGULATORY BODY

A regulatory body is expected to be financially independent and economically viable, if it has to maintain autonomy and objectivity in the execution of its functions, hence the need for licensing fees and revenue generating mechanisms like registration and examination fees.

The State, the public and the profession have to rely on the insight, knowledge, integrity and sense of public commitment of the Council to realise the objects of the Council within the parameters of professional autonomy.

Funds are utilised for the realisation of the set goals and objectives of the Council.

Since its establishment in 1944 the South African Nursing Council has been self-financing without any subsidy from the government or any source.

3.5 THE OBLIGATION OF THE REGULATORY BODY AND PERSONS ON THE REGISTERS

According to the ICN a system of governance for the professional nurse provides for the following:

- high standards of personal and professional growth and performance of nurses;
- public sanction for nurses to perform to the best of their capabilities;
- participation of the profession in the development of public policy;
- accountability of the profession to the public for the conduct of its affairs;
- proper recognition and remuneration for the contribution of the profession and opportunity for the self-actualisation of its members.

Taking the above issues into consideration it is clear that both the regulatory body and the professionals have certain obligations towards each other in order to ensure effective governance.

3.6 OBLIGATIONS OF THE REGULATORY BODY TOWARDS PERSONS ON ITS REGISTER

1. Admit and keep in its register only persons who have met the requirements for registration and relicensure.
2. Develop, maintain and effectively implement a registration policy.
3. Provide periodic relicensure or credentialing of nurses in order to ascertain continued competence.

4. Remove from its register persons who should be removed and in accordance with the Nursing Act.
5. Protect the practitioner's right to the title, practice and compensation.
6. Ensure that titles of professionals are clear and descriptive and convey a simple message to the public, to consumers and employers as to who is the nurse, midwife, enrolled nurse, nursing auxiliary and nurse specialist and as to the accountability structure.
7. Establish and recommend standards for the profession in the form of definitions, ethical codes, education and service requirements.
8. Periodically review and revise standards of education and service to ensure that they are relevant to practice standards.
9. Ensure that curricula and evaluation measures like examinations and performance reviews are relevant to set standards.
10. Advance nursing practice through fostering and credentialing post-basic specialists and through the development of the knowledge base for all nursing.
11. Promote the participation of related professions in the governing processes so that they provide liaison and technical advice.
12. Ensure that educational requirements reflect and promote innovations in practice and encourage the development of nursing potential through sound comprehensive scientific education.
13. Periodically inform nurses of its activities through well established communication channels.
14. Ensure that nursing service standards reflect changing health care needs and enhance professional capacities.
15. Conduct periodic re-accreditation of nursing education institutions to make sure that they continue to meet the requirements for education and training of the relevant categories.
16. Ensure that nursing education occurs in the same setting, at the approximate level and with similar autonomy as for other professions, so that nursing can participate as a full and responsible partner in the health care team.
17. Promote universal standards of performance and foster professional identity and mobility to the fullest extent compatible with local and international needs and circumstances.
18. Promote growth and self-regulation of its members.

19. Ensure that the components of a comprehensive health care system and the national strategy for achieving health for all by the year 2000 and beyond, and other societal goals and health policies are reflected in the standards.

3.7 OBLIGATIONS OF PERSONS ON THE REGISTER TOWARDS A REGULATORY BODY

1. Maintain registration and licence to practise in compliance with legislative requirements for practice.
2. Maintain standards of personal and professional conduct which reflect credit upon the profession.
3. Maintain knowledge, skills, attitudes and practice in accordance with current health needs and the current state of the art in nursing.
4. Development of own capacities for participating in their self-regulation and for fulfilling this obligation in their service to society.
5. Maintain the highest standards of nursing care possible within the reality of the specific situation.
6. Support the administration, management and autonomy of the regulatory body through self-regulation and regular, timeous payment of licence fees.

3.8 RELATIONSHIP BETWEEN THE REGULATORY BODY AND THE STATE

The State has an obligation to ensure and facilitate competent, accessible nursing care to the public and therefore has a professional regulation responsibility.

As the regulatory body is executing a delegated function, the delegator (government) and the delegatee (regulatory body) should have a good working relationship and support each other.

The regulatory body should however, be given the necessary autonomy and freedom of decision making and policy formulation based on the expertise of its members as long as this is within the ambit of the law.

The regulatory body should continuously keep the State informed about its activities and progress made through annual or bi-annual reports.

The government is the instrument of public policy regarding health care and resources. It is therefore responsible to guarantee nursing access to policy development commensurate with its actual contributions to health care.

3.9 RELATIONSHIP BETWEEN THE REGULATORY BODY AND EMPLOYEE ORGANISATIONS

Employee organisations should provide a forum for discussing and achieving consensus regarding critical matters of health care and professional governance.

Employee organisations also have a responsibility of promoting professional development of nurses in order to ensure that their members maintain good standards of nursing care.

3.10 RELATIONSHIP BETWEEN THE REGULATORY BODY AND THE EMPLOYERS OF NURSES

Employers have the right to join in monitoring the standards for the profession for which they provide the work setting and with which health care goals must be shared.

They have to articulate their own institutional standards, also subject to public sanction and nursing's part in meeting those standards.

In serving society to their best ability, health care systems must provide an optimum milieu for achieving the maximum potential and satisfaction of nurse employees.
(Affara and Styles, 1992; p39)

Employers also have a responsibility of promoting professional development of nurses in their employment.

They have a joint responsibility of ensuring that nurses in their employment are licensed practitioners, practising within the scope of practice of their respective categories.

4. PRACTITIONERS OF THE NURSING AND MIDWIFERY PROFESSIONS

In South Africa the nursing and midwifery professions are practised by persons registered by the Council in terms of Section 16 of the Act. The categories in which registered persons appear are the following:

4.1 Professional nursing category

These are the persons who have complied with the educational requirements for registration by the Council as nurse or midwife and whose practice is directed by the appropriate

- * regulations relating to the scope of practice of persons who are registered under the Nursing Act, 1978 (Government Notice R 2589 of 30 November 1984), as amended;
- * rules setting out the acts and omissions in respect of which the Council may take disciplinary steps (Government Notice R 387 of 15 February 1985), as amended; and
- * regulations relating to the conditions under which registered midwives may carry on their profession (Government Notice R 2488 of 26 October 1990).

Persons in this category function within the relevant ethics and legislation, as independent nursing practitioners in the health team. An independent practitioner who is legally authorised and competent to practise in his/her own right. It is expected of such a person to judge a patient situation, to take decisions rationally, to act and accept responsibility therefor. This implies the legal and moral duty to give account for that for which responsibility has been accepted.

4.2

Supplementary nursing categories

These are persons who have complied with the minimum requirements for registration by the Council as an enrolled nurse or enrolled midwife or nursing auxiliary and whose practice is directed by the relevant -

- * regulations relating to the scope of practice;
- * rules relating to acts and omissions; and
- * regulations relating to the conditions for practice.

Persons in this category function within the above-named ethical and legal framework under the direct or indirect supervision of the registered nurse or registered midwife.

Direct supervision is not always possible. Indirect supervision implies a planned system of directed help and support for nursing action in the physical absence of the registered nurse or registered midwife. Pre-requisites for this type of supervision are availability of the supervisor for consultation and guidance and contact between the care giver and the supervisor by means of a system of communication, for example by telephone or radi .

At this level of practice the person accepts accountability for his/her own acts.

5. THE REGISTRATION POLICY OF THE COUNCIL

In terms of section 16 of the Act, the Council has the authority to register persons who comply with the prescribed requirements.

The purpose of registration is to establish an identifiable corps of persons whose education and practice are controlled by the Council. Measures exist to keep the register and roll up to date and to remove from them the names of those persons found incompetent or otherwise ineligible for nursing or midwifery practice.

5.1 CATEGORIES OF REGISTRATION AND ENROLMENT

The following categories of persons appear on the register of the Council:

- Registered nurses
- Registered midwives
- Registered student nurses
- Registered student midwives
- Enrolled nurses
- Enrolled midwives
- Nursing auxiliaries
- Pupil nurses
- Pupil nursing auxiliaries

5.2 REGISTRATION A PREREQUISITE FOR PRACTISING

1. No person is entitled to practice within the Republic the profession of a registered nurse, a registered midwife, an enrolled nurse, an enrolled midwife or a nursing auxiliary, or to practise within the Republic as a student nurse or a student midwife or as a pupil enrolled nurse or a pupil nursing auxiliary, unless he/she is in terms of the Act registered as the case may be, as a nurse, a midwife, as a student nurse, a student midwife, an enrolled nurse, a pupil nurse or a pupil nursing auxiliary, unless he/she is registered as such.
2. Every person who wishes to be registered in terms of the Act shall apply to the Council and, shall submit the qualification which in his/her submission together with such proof of identity of and the authenticity and validity of the qualification submitted as may be required by the Council.
3. If the Council is satisfied that the qualification and the other documents submitted in support of the application satisfy the requirements of the Act, it shall upon payment of the prescribed fee, register the applicant and issue a registration certificate, authorising the applicant, subject to the provisions of the Act and to any other legal provisions, to practise within the Republic the profession in respect of which he/she has applied for registration.

5.3 REMOVAL OF NAME FROM THE REGISTER AND RESTORATION THEREOF

The Council may direct the registrar to remove from the register the name of any person -

- (a) who has been absent from the Republic during the three years immediately preceding such removal;
- (b) who has failed to notify the registrar, within a period of three months as from the date of a written enquiry sent by the registrar to the address appearing in the register in respect of such person, of his/her present address;

- (c) who has requested that his/her name be removed from the register in which case such person may be required by the registrar to lodge with the registrar an affidavit or affirmation to the effect that no professional conduct or criminal proceedings are being or are likely to be taken against him/her;
- (d) whose name has been removed from the register, record of any university, hospital college, society or other body from which that person received the qualification by virtue of which he/she was registered.

6. PROFESSIONAL CONDUCT

Nursing is recognised worldwide as one of the professions necessary for orderly, meaningful communal life in a society.

The distinctive characteristics of a profession are:

- * service to the community;
- * control over who may practise the profession, by means of registration;
- * the setting of minimum requirements for the education of those wishing to practise the profession;
- * personal accountability for practice; and professional conduct mechanism for those practitioners who do not conform to the norms of the profession and its standards.

The South African Nursing Council is the institution in South African society which is commissioned by legislation to ensure a safe nursing and midwifery service. The regulating of professional conduct, along with process of registration form part of the mechanisms which the Council has at its disposal to attain this goal. The aim of regulating the professional conduct is to eliminate unprofessional conduct by individuals within the profession. This is achieved, inter alia, by suspending such a practitioner's right to practise, or by giving the person the opportunity for rehabilitation over a specified period of time.

Professional conduct enquiries originate, amongst others, from complaints or records of court cases or inquests involving nurses or midwives, which are received by the Council. All such documentation is referred to the Committee of Preliminary Investigation for consideration. The Committee may take one of three decisions:

- * to refer the case to a Professional Conduct Committee for a formal hearing;
- * that there be no prima facie case for a hearing or
- * that further information be obtained for reconsideration by the Committee.

In the case of a professional conduct hearing, the matter is heard by a Professional Conduct Committee constituted on the principles of peer group control and public representation and functioning in terms of regulations made under the Act. The Act also provides for the appointment of a legal assessor at any professional conduct hearing to advise the committee on matters of law, procedure or evidence.

Any person registered under the Act who, after inquiry, is found guilty of unprofessional conduct shall be liable to one or other of the following penalties per charge -

- (a) a caution or reprimand or a reprimand and a caution;
- (b) suspension for a specified period from practising or performing acts specially pertaining to his/her profession;
- (c) removal of his/her name from the register; or
- (d) in the case of a student nurse, student midwife, pupil nurse or pupil nursing auxiliary, extension of the prescribed period of education and training; and
- (e) a fine.

Any person whose conduct is being inquired into under Section 28, shall be afforded an opportunity by him-/herself or through his/her legal representative of answering to the charge and of being heard in his/her defence.

7.

INTERNATIONAL TRENDS

In every country in the world, nursing is regulated in some or other form. In countries such as the United Kingdom, the Republic of Ireland, Australia and New Zealand and many African countries, the regulatory bodies are very similar to ours. The state boards in the United States of America control the profession in the various states and are, like the above-mentioned regulatory bodies, financially independent and self-supportive. In areas such as Central and Eastern Europe, Israel and the South American States, the profession is directly controlled by the Department of Health.

There is obviously no single perfect system for all countries but the core ideal of autonomy should apply internationally.

8.

CONCLUSION

Professional regulation not only serves as a form of quality control guaranteeing a certain level of competence of practitioners and services, but also concerns a certain legitimacy to nurses by recognising their place within a country's health structure.

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