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A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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International Approaches to the Corporate Practise of Professions Part 1

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Regulators are grappling with how to respond to increasing corporate or private equity influence on the practice of professions.

The traditional methods of public protection are to prohibit corporations from practising the profession (or, at least, corporations not owned by registrants) and requiring registrants to retain control over professional decisions (i.e., exercise professional judgment without being influenced primarily by monetary considerations). However, increasingly creative business structures threaten to compromise professional autonomy. These include:

- Using management services organizations for administrative tasks that effectively influence professional autonomy.
- Contractual arrangements (e.g., leases) with provisions that affect professional decision-making (e.g., advertising of the facility in which registrants work; financial incentives such as payments based on professional billing or profits).
- Hiring a registrant for a leadership position whose role includes making policies, procedures, and setting performance measures that influence professional autonomy.

One observer gives this example:

> … contractual promises of clinical independence only matter if they are reflected in the actual day-to-day operations of the practice. It's also how I get to ask my favorite question: you're in the dental chair, your dentist has a quota for crowns to hit every month, and it's the end of the month. You probably need a filling. Do you

> want them to have that quota in their head?

He goes on to say:

> Organizations will generally say that the clinician has complete independence. The difficult questions are in the gray areas. Staffing, scheduling, bonus structures, referral restrictions, utilization management, marketing, and algorithms can all influence clinical decisions that affect the patient…. Take any one of those things individually and it may simply be good business management. But collectively, they can start to affect what is in the patient's best interest.

Conversely, there has been a push in many jurisdictions to allow corporate ownership or private equity investments in professional practices based on the view that the advantages (e.g., investment in technology, economies of scale, efficient processes, access to services) outweigh any disadvantages. For example, Forbes suggests that the private equity takeover of US law firms feels inevitable.

This article provides a compilation of some ideas and reflections we have come across (which are far from exhaustive) from around the world on the topic.

Canada

In Canada, corporate ownership of professional practices is usually either prohibited or severely restricted. In addition, registrants have a professional obligation to ensure that their business structure does not interfere with their professional obligations. For example, in *Spirou v College of Physiotherapists of Ontario*, 2024 ONSC 964 (Div Ct), the Divisional Court upheld that registrants were accountable for the business practices (e.g., billing) of the entity that they owned or managed.

Consolidation of practices of some professions does seem to be gaining steam.

For instance, there have been reports of pharmacy registrants being pressured by some entities to meet targets for costly services that may not always be needed.

A concern about insurers only covering the dispensing of medications from preferred providers (which would potentially skew access to services) resulted in legislation prohibiting the practice.

Similarly, practical restrictions on the community pharmacy sale of veterinary drugs have been addressed through regulatory means.

The regulator for dentistry in Ontario conducted a major review of the issue and developed an action plan to educate and support dentists to ensure that their business practices preserve their professional judgment while leaving room for pilot projects for innovative approaches.

In British Columbia, recent legislation provides regulators with greater power to act against professional corporations that harm the public interest. However, it does not address management service organizations.

Another proposal suggests that unregistered owners of health clinics be

regulated and be required to receive training in health privacy law, billing rules, and mandatory reporting requirements.

In Quebec, concerns have long been expressed that simply restricting ownership of professional corporations is insufficient. Modest proposals have been developed that would permit, but still regulate, registrants to practise through non-profit corporations.

Other provincial regulators are experimenting with "sandboxes" which condone the provision of services (under terms and conditions) to those who would not otherwise receive them.

In short, regulatory responses in Canada have been tentative and are mostly directed at specific concerns that have arisen.

United Kingdom

The UK seems farther along the corporate ownership / management continuum than Canada, especially for law firms. A private equity advocate argues that the advantages of such structures include making investment in AI achievable, enhancing the use of technology, organizational efficiency, and succession planning.

However, a recent survey by the UK optometry regulator notes significant pressures on registrants arise from the commercialization of their practice.

> Respondents were asked to indicate whether they had experienced specific types of time and commercial pressure over the last 12 months. The results highlight some notable concerns around commercial pressures that may compromise patient care. The most common issue was insufficient time for conducting sight tests, with 48% of optometrist respondents reporting that the standard time allocated for conducting a sight test was sometimes or frequently insufficient to provide safe patient care. Similarly, 38% of all respondents reported feeling pressured to see a high volume of patients every day, also impacting their ability to deliver safe care.
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> A third (33%) of respondents said they sometimes or frequently felt pressured to sell certain types of glasses or contact lenses, while 30% reported feeling pressured to meet commercial targets at the expense of patient care. A quarter (25%) had sometimes or frequently experienced being asked to overbook clinics, and 22% had felt pressured to sell products or services they believed were not needed by the patient.

As we have previously noted, a report by the UK's Competition and Markets Authority (CMA) has broad implications for UK regulated professions with private equity investment (even though the focus of the report relates to veterinary practices).

Over the last dozen years, six large veterinary groups in the UK have increased their representation within the veterinary world from 10% to 60%, mostly through the acquisition of existing practices. Some also operate related businesses such as online pharmacies, specialist centres, crematoria, and out-of-hours providers. "These large groups are ultimately owned or significantly

controlled by corporate and financial entities."

The report summary identifies several concerns arising from private equity's increasing dominance of the market:

- Average prices charged by larger private equity groups are 18% higher than those charged by independent practices.
- Their average net satisfaction score for the cost of services is about half of that for independent practices. Their satisfaction score for quality of services is also lower.
- Internal documents obtained by the CMA indicate that price increases are not linked to quality improvement initiatives but rather the expectation that pet owners will simply bear the cost. Larger groups tend to commercialize the operation of their practices.
- Cost savings achieved by larger groups (e.g., using their purchasing power to reduce medicine costs) are not passed onto consumers.
- The profitability of large groups has increased significantly. "In a well-functioning market, we would expect more of these profits to be competed away through lower prices or greater investment in quality."
- Pet owners have more limited choices than before (e.g., choosing a practice, choosing treatments and referrals, purchasing medicines, out-of-hours services).

The CMA observed:

> At the heart of our concerns is a regulatory system that is out of date and out of step with the current structure of the veterinary industry, and so no longer fit for purpose. For example, there is no mandatory oversight of the businesses which own or control the majority of vet practices in the UK. Veterinary businesses make critical decisions on matters such as staffing levels, working practices, availability of medicines, investment in equipment and consultation length. In the past, when most veterinary businesses were owned by vets who were individually regulated, the lack of regulation of businesses was of less significance. Now that most veterinary businesses are controlled by non-vets, the lack of regulation of businesses that supply such important services is a serious regulatory failure. In addition, the regulatory framework could do more to help pet owners judge the clinical standards and general quality of veterinary businesses. The complaints system appears to us to be ineffective, denying pet owners effective means of redress when things go wrong, and there is no mandatory third-party consumer redress scheme.

The CMA proposes the following strategies for addressing these concerns:

- Larger groups will be required to provide enhanced disclosure. This will include information about all entities that form part of a group, out-of-office care arrangements, and detailed prices for a standard list of services.

- The regulator for veterinarians has agreed with the CMA to collate this information on its website (associated with its public register), which "will make it easy for a new pet owner, a pet owner moving into a new area or someone unhappy with their current practice to make comparisons between practices in their locality." The CMA says: "We expect there to be considerable interest in this data and that pricing outliers, including those businesses which cannot justify higher prices (by demonstrating better quality, for example), will be highlighted, for example by the media or by consumer groups."
- Large practices will be expected to provide written estimates for recommended veterinary services costing more than £500. Once treatment has been provided, itemized bills are to be provided.
- The CMA also says: "we have decided that veterinary businesses must have written policies and processes in place to ensure that vets and veterinary nurses are able to act in accordance with relevant provisions of the [veterinary regulator] codes of professional conduct and supporting guidance, including giving pet owners independent and impartial advice about costs and, where appropriate, a range of treatment options and prices."
- Pet owners will also need to be informed that they can obtain written prescriptions, at a reasonable fee, for any recommended medications and that pharmacies may dispense them at a lower cost than that charged by the practice.
- Large practices must develop an in-house complaints process.
- The veterinary regulator will monitor compliance with and raise public awareness of these requirements.
- The CMA will advocate for updated legislation so that the veterinary regulator has direct authority over veterinary businesses. Its statutory mandate should include promoting competition between veterinary practices. In addition, the regulator should be given additional authority to regulate "veterinary nurses", including defining their scope of practice. The regulator should also explore supporting innovative business models such as offering single services, such as vaccinations, and telemedicine service models.

It appears that this initiative by the CMA may soon be applied to other sectors such as the private dentistry sector and care homes. In addition, it appears that another regulator, the UK Financial Conduct Authority, is also considering a review of consumer credit activities by these entities.

Conclusion

The information we have gathered to date is piecemeal. Discussions and interventions tend to deal with specific concerns or individual professions, with few (the UK being a possible exception) comprehensive proposals.

There is little consensus as to the nature and extent of the concerns with the

corporate practise of professions. There are also divergent views on the best solutions to the issues. Part two of this series will look at reflections and approaches taken in the United States and Australia.

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