

Statutory regulation: Friend or foe?

by Karin Mont MARH, ARH Chair



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The irony – The statutory regulation (SR) of homeopaths is once again in the news, so this presents a timely opportunity to evaluate the purpose and function of SR. Though SR is intended to offer protection to the public, we know that in reality it cannot guarantee public safety: Harold Shipman and Beverley Allit were both serial killers, working under the auspices of SR. Conversely, nurse Margaret Hayward attempted to *protect* vulnerable and elderly patients from systematic neglect and abuse, yet she was expelled from the nursing profession and vilified by her peers. Human error will continue to claim lives, such as the recent tragic death of the premature baby given an overdose of salt in his saline drip.

Outside of healthcare regulation, the FSA failed to intervene against the dubious activities of some of our major banks, resulting in a global recession of unprecedented magnitude. SR fails to deliver on public safety, its primary objective, and the cost of its implementation is now proving to be unsustainable long term. A recent DoH publication entitled '*Extending Professional and Occupational Regulation*' (July 2009), acknowledges that changes must be made. The report endorses the primary purpose of regulation to be the securing of '*safe, effective, high quality and respectful care*' for individuals, but it also concedes that regulation should be *proportionate* to the risk posed to the public. It even suggests that some professions currently regulated by statute may be eligible for deregulation. The underlying message is that a profession will only have SR *imposed* on them if they can be proved to represent a significant risk to public safety. On the other hand, if a profession *requests* SR, it needs to verify that it poses a significant risk to public safety. *In other words, homeopathy will have to redefine itself as a dangerous profession, in order to be eligible for SR!*

The announcement – We have recently learned that the Society of Homeopaths (SoH) intends to apply for the SR of homeopaths. ARH, a significant stakeholder within the profession, has not been consulted about this proposal. Surrendering our autonomy to the state has potentially serious ramifications for the homeopathy profession, both here in the UK, and in the rest of the world, where our actions are often regarded as setting the standards to which other countries should aspire. This places a tremendous responsibility on us to make the right decisions for the right reasons, and any choices we make regarding the regulation of homeopathy must be informed choices. *As homeopaths, we are the custodians of a complex, finely balanced discipline, and we have a duty of care to ensure we preserve the integrity of homeopathy, complete with all its nuances, for the ongoing benefit of our patients.* This leads to an absolutely crucial question; *what benefit can SR bring to homeopathy?*

The justification – SoH state that: SR ... '*best protects standards and the public*'. This is misleading. The *sole* function of SR is to protect the public. The regulator only upholds generic standards applied across the

spectrum, to all the professions it regulates. Standards, which pertain specifically to the homeopathy profession, fall beyond the remit of the regulator, and will *not* be protected by SR. By their very definition, standards are '*work in progress*'. They change as a profession evolves, and as the recent revision of National Occupational Standards for Homeopathy (NOSs) confirmed, the practice of homeopathy is already based upon quality criteria. These standards meet the requirements generally considered necessary to uphold the principles of best practice, and we use them to inform how we regulate our profession. *We already have a high standard of voluntary self-regulation in place, so therefore the public is currently protected when they consult with a registered homeopath.*

The history lesson – The House of Lords' Select Committee on Science & Technology (2000), categorised homeopathy as a Group One therapy, together with osteopathy and chiropractic (both statutorily regulated when the report was published), and acupuncture and herbal medicine. The Report actually considered homeopathy to be well regulated, and to pose little risk to the public. This situation remains unchanged, though a great deal has happened since 2000, and the world has moved on. Some significant incidents the last decade has seen include the destruction of the twin towers on 9/11, two major wars, a devastating tsunami, several powerful earthquakes, and now a severe global recession, the full consequences of which are as yet unknown. There has been one other significant happening since 2000: ARH was established! *The existence of ARH, a dynamic, proactive register, has strengthened and enhanced standards already in place, and introduced an important new dimension to the profession.*

The experience of others – Since the Lords' Report, there have also been changes in the proposed implementation of SR, as the acupuncturists and herbalists found out to their cost. Both therapies decided to apply for SR shortly after the Report was published, but neither has completed the process. They have jumped through all the required hoops to be granted autonomous SR but, in February 2007, the goal posts shifted. The Department of Health (DoH) published a White Paper entitled '*Trust, Assurance, Safety – The Regulation of Health Professionals in the 21st Century*', in which it was made clear that no new statutory bodies would be set up to regulate healthcare. If they still wish to be statutorily regulated the acupuncturists and herbalists now have to join the Health Professions Council (HPC), a factor which has caused a growing number of herbalists to withdraw their support from the process.

A familiar story – The threat of 'imposed regulation' was used to coerce the herbalists into applying for SR in the first place, with any dissenting view being either suppressed or ignored. As we know from our own sad experience with CORH, suppression of any kind can have serious consequences. Because concerns raised at the

beginning of the process were not properly addressed, there is now division amongst the herbalists, which is growing in momentum. Many herbalists now see their ability to practise their discipline in all its complexity to be under threat. The 'one size fits all' approach underpinning SR will impact upon herbalists' traditions, their medicines, their suppliers, and could ultimately see their profession subsumed by the all encroaching pharmaceutical industry, with disastrous consequences for herbalists worldwide. The slow creep has already begun, with the Medicines and Healthcare Regulatory Authority (MHRA) proposing to change Section 12(1) of the Medicines Act 1968, so that only a *statutorily* registered herbalist could formulate and dispense a herbal tincture at their clinic, or instruct a chemist to make up a herbal tincture for a patient. ***If accepted, this proposed amendment would also affect the homeopathy profession, potentially preventing us from prescribing herbal tinctures altogether.***

An opportunity to influence decisions – Acupuncturists, herbalists and other interested CAM professions, have now been invited to participate in a consultation exercise entitled *A joint consultation on the Report to Ministers from the DH Steering Group on the SR of Practitioners of Acupuncture, Herbal Medicine, Traditional Chinese Medicine and Other Traditional Medicine Systems Practised in the UK*. ARH will be making a formal response, and we strongly recommend that our members do too, because this is your chance to influence the decision making process. Responses to the consultation are required by 02 November 2009, and a template for completion can be found on http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_103567. Meanwhile, a small but well-informed group of practising herbalists have decided to take their own action before it is too late, and we can help them by signing a petition. The petition is entitled '*Support Herbal Medicine*', and it is preceded by a comprehensive explanation of its purpose, so please visit <http://www.gopetition.com/petitions/support-herbal-medicine.html> and champion this important cause.

Hidden perils – The chiropractors are currently going through a very difficult time, and this is directly linked to the fact that they are statutorily regulated. In May 2009, one of CAM's more notorious detractors publicly accused chiropractors of offering 'bogus' treatments. This was one outrage too many, so the British Chiropractic Association (BCA) sued for defamation and they won their case. Shortly afterwards, the CAM detractors launched a well coordinated attack against the regulatory arm of the profession, the General Chiropractic Council (GCC), and lodged over five hundred complaints against registered chiropractors in a twenty four hour period. These complaints, which were also passed on to the Advertising Standards Authority (ASA) and / or Trading Standards (TS), focused on any claims for treatment made by practitioners on their websites or in other promotional material that could not be substantiated with chiropractic research. When a chiropractor is under investigation, they do not have to pay a registration fee, and given that annual registration for chiropractors costs £1,000, five hundred complaints will potentially deny the GCC of £500,000 in fees. Add to that the cost of managing the complaints procedure, and you can see that the chiropractors are in serious danger of bankruptcy. ***Because chiropractors are statutorily regulated, strictly speaking the GCC is obliged to investigate every***

complaint, even if in reality, that complaint has no actual bearing on the safety of patients. This is one of the 'side effects' of SR that is seldom mentioned.

The Health Professions Council (HPC) – The HPC offers SR to healthcare professionals working within the NHS, and was established in 2002 to replace the Council for Professions Supplementary to Medicine (CPSM). They currently regulate 14 different professions, covering a range of diverse skills such as chiropody, art therapy, physiotherapy, dietetics and radiography. About 200,000 practitioners are registered with HPC, and their stated primary objective is: '*To safeguard the health and well-being of persons using and needing the services of registrants*'. The standards to which registrants are expected to comply, reflect the focus on public safety, and are not designed to enhance developments within any individual profession. Their Annual Report 2008 highlights the sheer scale of the bureaucracy required to implement the unwieldy processes associated with SR. HPC's main council comprises 40 members. In addition there are seven sub-committees, plus the vast administration needed to support HPC's activities. Under the circumstances, it is hardly surprising that HPC's accounts for the year ending March 2008, showed an operating loss of around £1 million. ***Homeopaths are now being asked to surrender our autonomy to an organisation currently running at a significant financial loss!*** Furthermore, HPC's purpose and function is not conducive to promoting the interests of our profession in any form. Given the circumstances, how can anyone view this as an advantageous step for homeopathy?

The costs – We are told that registration with HPC is cheap at only £76 per annum. This is thoroughly misleading. Remember, SR *only* provides regulation, everything else we require, including insurance which is mandatory, involves additional fees. We will also have to cover the costs of setting up SR in the first place. This is likely to be included in the fees paid for initial registration. Then there are CPD requirements, which may need to be verified by a formal audit. In order to meet HPC education criteria, course providers will have to modify how they deliver training in homeopathy, which could potentially impact upon their resources at a time when student recruitment is in decline. ***All costs, both hidden and obvious, must be clearly identified before expecting our profession to consider making radical changes to how we are regulated.***

A mature profession – Homeopathy has come a long way over the last ten years, but if we really wish to achieve meaningful recognition for our profession, we have to be prepared to stand on our own two feet. Appending ourselves to an outmoded, often dysfunctional, model of regulation will not silence our detractors or gain us acceptance by the 'establishment'. Different factions do exist within our profession, but rather than acknowledge this fact, some seem desperate to hide behind the questionable façade that SR purports to confer. Surely, if we can accept our differences and work to develop our commonalities, we will eventually succeed in making homeopathy more accessible to the public. ***This must be the preferred option, rather than setting out to prove that homeopathy constitutes a threat to public safety!*** True, SR does secure the title 'homeopath'. However, the price for that protection means surrendering the soul of homeopathy to a system only intended to control function. Homeopathy and homeopaths deserve better. □

Statutory regulation at a glance

by Karin Mont MARH

We are led to believe that statutory regulation (SR) awards a profession with unique benefits. In fact all but one supposed advantage can also be achieved via voluntary self-regulation (VSR). Homeopathy already has a high standard of VSR in place, so why would we choose to surrender our autonomy to a system specifically designed to control function? Below is a brief summary of some of the key statements put forward to extol the virtues of SR. The veracity of each claim is considered, in an attempt to differentiate between fact and fiction. Here are some of the key points.

- **SR protects the public** – untrue. SR cannot guarantee public safety. Serial killers Harold Shipman and Beverley Allit both worked in SR professions. Conversely, nurse Margaret Hayward attempted to protect vulnerable patients from systematic abuse, but was expelled from her profession and vilified by her peers. Human error will continue to claim lives, such as the recent tragic death of the premature baby given an overdose of salt in his saline drip.
- **SR will be imposed on us** – untrue. SR is expensive to maintain, and consistently fails to deliver on its primary objective, which is to protect the public. A profession will only have SR imposed on them if they can be proved to represent a significant risk to public safety. On the other hand, if a profession requests SR, it will need to verify that it poses a significant risk to public safety. **In other words, homeopathy will have to redefine itself as a dangerous profession, in order to be eligible for SR!**
- **SR provides homeopaths with a chance to work within the NHS** – untrue. The NHS currently costs the taxpayer £110 billion a year. Drastic spending cuts are forecast for the future, so the introduction of any new provision, including homeopathy, will only occur if it can be proved to deliver safe, effective and cost efficient healthcare. In the competitive world of bidding for contracts, SR will offer no advantages over VSR. Homeopaths will have to learn how to market their skills.
- **SR protects standards within a profession** – untrue. The sole function of SR is to protect the public. The regulator only upholds generic standards applied across the spectrum, to all the professions it regulates. Standards, which pertain specifically to the homeopathy profession, fall beyond the remit of the regulator, and will **not** be protected by SR. Our current system of VSR is well placed to both maintain and further develop existing standards.
- **SR is cost effective** – untrue. SR only provides regulation, so insurance, services, support and CPD all have to be acquired at extra cost. SR is expensive to set up, so the cost of initial registration will need to reflect that investment. The Health Professions Council (HPC) is the body that would oversee SR for homeopaths, and their accounts for the year ending March 2008 shows a massive deficit. Given the current economic climate, how much longer will HPC be able to function?
- **SR will increase the status of homeopathy** – untrue. Our patients already recognise our worth. They come to us because they have experienced homeopathy first hand, and they know it works. SR will not silence our detractors, because they are not interested in engaging in balanced debate. SR does not promote the professions it regulates. Public awareness of homeopathy's potential will only change if we undertake our own PR, something we do anyway, as a self-regulated profession.
- **SR protects the title 'homeopathy'** – true. Only practitioners registered with the HPC would be allowed to call themselves a homeopath if the profession was regulated by statute. However, SR poses significant threats to the integrity of homeopathy, a complex, finely balanced discipline, so it is likely that many practitioners would choose not to register at all, and continue in practice using a different name. This could potentially create a new cohort of unregulated practitioners, which in turn would impact upon the notion of public protection.

Our current system of VSR is balanced, developmental, effective, professional, and self-funded. It has worked well over the last ten years, so surely we should invest our energy and resources in building upon what is already in place. What do you think?

Please send your feedback to info@a-r-h.org.