

Council – 25 March 2010

**CHRE Report: 'Protecting the public from unregistered practitioners:
Tackling misuse of protected title.'**

Executive summary and recommendations

In February 2010, the Council for Healthcare Regulatory Excellence (CHRE) published their report 'Protecting the public from unregistered practitioners: Tackling misuse of protected title.' This report was commissioned following the 2008-2009 CHRE performance review.

Decision

This paper is to note, no decision is required.

Background information

None

Resource implications

None

Financial implications

None

Appendices

CHRE report 'Protecting the public from unregistered practitioners; Tackling misuse of protected titles.'

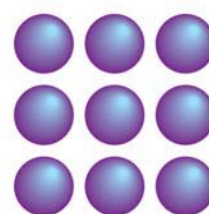
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Protecting the public from unregistered practitioners

Tackling misuse of protected title

February 2010



council for
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excellence

About CHRE

The Council for Healthcare Regulatory Excellence promotes the health and well-being of patients and the public in the regulation of health professionals. We scrutinise and oversee the work of the nine regulatory bodies¹ that set standards for training and conduct of health professionals.

We share good practice and knowledge with the regulatory bodies, conduct research and introduce new ideas about regulation to the sector. We monitor policy in the UK and Europe and advise the four UK government health departments on issues relating to the regulation of health professionals. We are an independent body accountable to the UK Parliament.

Our aims

CHRE aims to promote the health, safety and well-being of patients and other members of the public and to be a strong, independent voice for patients in the regulation of health professionals throughout the UK.

Our values and principles

Our values and principles act as a framework for our decision making. They are at the heart of who we are and how we would like to be seen by our stakeholders.

Our values are:

- Patient and public centred
- Independent
- Fair
- Transparent
- Proportionate
- Outcome focused

Our principles are:

- Proportionality
- Accountability
- Consistency
- Targeting
- Transparency
- Agility

Right-touch regulation

Right-touch regulation is based on a careful assessment of risk, which is targeted and proportionate, which provides a framework in which professionalism can flourish and organisational excellence can be achieved. Excellence is the consistent performance of good practice combined with continuous improvement.

¹ General Chiropractic Council (GCC), General Dental Council (GDC), General Medical Council (GMC), General Optical Council (GOC), General Osteopathic Council (GOsC), Health Professions Council (HPC), Nursing and Midwifery Council (NMC), Pharmaceutical Society of Northern Ireland (PSNI), Royal Pharmaceutical Society of Great Britain (RPSGB)

Contents

| | |
|--|-----------|
| 1. Executive Summary | 1 |
| 2. Introduction | 3 |
| 3. Background | 4 |
| 4. Views from the regulators | 5 |
| General Chiropractic Council (GCC)..... | 5 |
| General Dental Council (GDC) | 5 |
| General Medical Council (GMC) | 6 |
| General Optical Council (GOC) | 7 |
| General Osteopathic Council (GOsC)..... | 8 |
| Health Professions Council (HPC) | 9 |
| Nursing and Midwifery Council (NMC) | 9 |
| Pharmaceutical Society of Northern Ireland (PSNI) | 10 |
| Royal Pharmaceutical Society of Great Britain (RPSGB) | 10 |
| 5. Other views on title misuse | 12 |
| Architects Registration Board (ARB)..... | 12 |
| Royal College of Veterinary Surgeons (RCVS)..... | 12 |
| Variations in title | 13 |
| European Union issues..... | 13 |
| 6. Prosecution authorities | 15 |
| Crown Prosecution Service (CPS) | 15 |
| Crown Office and Procurator Fiscal Service (COPFS)..... | 16 |
| Public Prosecution Service (PPS)..... | 16 |
| Summary | 16 |
| 7. Common barriers to tackling title misuse | 17 |
| Assessing the problem..... | 17 |
| Variations of titles..... | 17 |
| Resources..... | 17 |
| Prosecution difficulties | 18 |
| 8. Conclusions and recommendations | 19 |
| Annex 1: Protected professional titles by regulator | 21 |
| Annex 2: Links to regulators' registers | 23 |

1. Executive Summary

- 1.1 Patients and the public recognise health professional titles because they indicate competence and fitness to practise. There is a risk to patient safety and public protection when unqualified people pass themselves off as registered professionals. Health professional regulators have a duty to ensure protection for patients and the public, and tackling title misuse is an important part of this.
- 1.2 We stated that we would consider the nine UK health professional regulators' pursuit of private or public prosecutions against those who have misused a protected title. Through our work, we sought to understand the size and scope of title misuse, barriers preventing regulators tackling title misuse, including prosecution, and how these may be overcome.
- 1.3 We consulted the nine health professional regulators for their input on the number of prosecutions they had undertaken, about barriers to prosecution, and among other things, what they felt could be done in the future.
- 1.4 We recognise that title misuse is not only a challenge for health professional regulators. Therefore, we looked to regulators from other sectors, as well as other parties dealing with title misuse challenges. For example, we discussed title misuse with the Architects Registration Board (ARB). The ARB were able to provide valuable insight. They have undertaken an audit of public directories to ensure that non-registrants were not listed under titles indicating registration.
- 1.5 We found that the size and scope of title misuse is difficult to quantify. However, some regulators provided figures on complaints and prosecutions involving title misuse. In addition, there is a sense amongst the regulators, that an unknown number of title misuse incidents go undetected. Based on this information, we are concerned with the frequency of title misuse cases, as we believe this is a risk to public safety.
- 1.6 We looked at the UK prosecuting authorities to understand their approach and what could be the difficulties in title misuse cases. We identified two issues. First, the test for prosecution can be difficult to meet as it must satisfy both evidence and public interest requirements. Second, the precedent set by an unsuccessful prosecution can complicate future legal proceedings against title misuse.
- 1.7 In addition to prosecution difficulties, we recognise there are other barriers to tackling title misuse. Resources, both human and financial, present a barrier to pursuing prosecution. To build a case for prosecution, considerable staff time and money are required. Furthermore, we have found that some practitioners will offer services under related variants of titles, which can be misleading to the public.
- 1.8 We believe that although prosecution can be difficult, public protection is the primary concern for regulators. The prospect of unsuccessful prosecution should not prevent other activities that can contribute to this goal. We believe that regulators should be proactive in tackling title misuse and wider issues of unregistered practice.

- 1.9 Our project arose from a narrow set of questions about pursuing prosecution of protected title. However, based on our work, we have found a need to address the wider issues of title misuse in the interests of patient safety and public protection. Therefore, we have made the following recommendations:
- Regulators should work to increase public awareness about the importance of health professional registration and regulation
 - The regulators should foster relationships with organisations that have a shared interest in preventing title misuse, including other regulators, Trading Standards authorities, and directory listing organisations
 - Where regulators have identified an issue exists with a public listing, such as telephone and web-based directories, they should undertake a periodic audit to ensure individuals listed under a protected title are registered and those that are not will be removed from the listing
 - All the regulators should send 'cease and desist' letters to those who misuse a title, as a first step in tackling title misuse.

2. Introduction

- 2.1 The Council for Healthcare Regulatory Excellence is an independent body accountable to Parliament. Our primary purpose is to promote the health, safety and well-being of patients and other members of the public. We scrutinise and oversee the health professional regulators, working with them in identifying and promoting good practice in regulation, carrying out research, developing policy and giving advice.
- 2.2 In the 2008/09 Performance Review, CHRE stated that we would consider how the health professional regulators' pursue private or public prosecutions against those individuals misusing a protected title.² We noted that the health professional regulators were having difficulties in pursuing prosecution. Additionally, the regulators told us that the penalties that result from successful prosecution are fines that are not sufficient deterrents. Therefore, we were concerned that there might be a risk of inadequate public protection against the number of people who misuse a title.
- 2.3 The project asked us to answer the following questions:
- Is there a significant a problem of people practising without being registered and/or qualified?
 - What are the benefits and barriers the regulators have faced in successfully pursuing private/public prosecutions?
 - How could the barriers be overcome?
- 2.4 We have consulted the UK health professional regulators for their views on tackling title misuse and have contacted the relevant prosecuting authorities across the UK. We have taken perspectives on title misuse into account from other areas of regulation. We have found that there are common barriers across the regulators. Finally, we have identified our conclusions and recommendations.
- 2.5 We recognise that we started with a narrow question. However, given what we have learned through our work, we feel that there is a broader issue to consider, that of the risks to patients and the public of unregistered practice, whatever specific title is used. Our approach has been to focus on the title misuse as a risk to patient safety and public protection. Though there are professional interests in protected titles, such as protecting against competition, our concern is the risk presented to patients and the public. This is reflected in our recommendations. A risk to patient safety and public protection exists when unqualified people pass themselves off as registered professionals. Tackling title misuse is an important part of health professional regulators' duty to protect the public.

² Council for Healthcare Regulatory Excellence. *Performance review of health professional regulatory bodies 2008/09*. [Online] Available at www.chre.org.uk/performance/ (Accessed 25 October 2009).

3. Background

- 3.1 Protected titles are enshrined in legislation and are used by health professionals to indicate their field of practice to patients and the public. For example, protection for the title 'osteopath' comes under the Osteopaths Act 1993. Those with the appropriate registration are authorised to use the title. Anyone who uses the title while not registered is committing an offence. Annex 1 of this report, lists the legally protected professional titles. In contrast, legislation can protect function, which refers to the specific acts performed by a practitioner. In some cases, legislative provisions protect the specific acts that are part of a professional's duties. This means that anyone who performs a protected act without being registered is committing an offence.
- 3.2 Public protection and patient safety can be threatened by the misuse of protected titles. For example, title misuse can lead to physical or emotional harm to patients and the public, or financial loss. Misuse of protected titles can undermine public confidence in health professionals and the regulatory systems established to oversee them.
- 3.3 Prosecutions for title misuse can be either public or private. Public prosecutions are those brought forward on behalf of the Crown. Private prosecutions are made on behalf of an individual or organisation. In public prosecution, the onus is on the relevant Crown prosecuting authority to establish a case and pursue prosecution. Each of the UK prosecuting authorities has an evidence test and a public interest test. In a private prosecution, the onus is on the regulator or individual to build a case and take it forward. If an individual is guilty of committing an offence in relation to title misuse, they are subject to a fine on a standard scale. There are five levels of fines on the scale, up to a maximum of £5,000. This applies in both public and private prosecutions.

4. Views from the regulators

- 4.1 CHRE asked the nine health professional regulatory bodies for their views on pursuing prosecution of protected title misuse. We asked:
- Is there a significant problem with people practising the profession(s) you regulate without being qualified and/or registered? How many?
 - Is the legal apparatus currently available to you sufficient in pursuing public and/or private prosecutions against those who use a protected title without authorisation?
 - What are the barriers to pursuing public and/or private prosecutions?
 - How are those who use protected titles without the legal right to do so, identified? What could be done to improve identification?

General Chiropractic Council (GCC)

- 4.2 Legislation states that ‘a person (whether expressly or by implication) who describes himself as a chiropractor, chiropractic practitioner, chiropractitioner, chiropractic physician or any other kind of chiropractor, is guilty of an offence unless he is a registered chiropractor.’ An individual convicted of an offence is subject to the maximum fine of £5,000 under the Chiropractors Act 1994.³
- 4.3 The GCC has reported 55 potential illegal uses of protected title to the police since 2002. Registered chiropractors are the initial source of information in most cases. There have been 17 prosecutions for title misuse. The GCC used private investigators to gather evidence before notifying the police in the 55 instances they have recorded. The GCC suggests that to ensure individuals do not continue using a title, after not retaining registration or voluntarily removing themselves from the register, they could be subject to an investigation.
- 4.4 In terms of difficulties in prosecuting, ‘the barrier to public prosecution is the very widespread CPS [Crown Prosecution Service] view that the necessary test is not satisfied in respect of the use of public money.’ However, the GCC believes that the legal framework available is sufficient.

General Dental Council (GDC)

- 4.5 The Dentists Act 1984 protects both the functions and professional titles of dentistry. The Act states:
- ‘A person who is not a registered dentist, a visiting EEA practitioner entered in the list of such practitioners or a registered medical practitioner shall not take or use the title of dentist, dental surgeon or dental practitioner, either alone or in combination with any other word.’⁴*

3 Section 32 of the Chiropractors Act 1994

4 Section 29 of the Dentists Act 1984

The Act continues, 'no person shall take or use any title or description implying that he is a registered dentist unless he is a registered dentist.'

The Act states, in relation to penalties, any person who is in contravention of the Act is subject to the maximum fine of £5,000.

- 4.6 The GDC regulates the entire dental team. This includes the professions of clinical dental technicians, dental nurses, dental technicians, dental hygienists, dental therapists and orthodontic therapists, protected under The General Dental Council (Professions Complementary to Dentistry) Regulations Order of Council 2006.
- 4.7 The GDC has prosecuted unregistered persons practising dentistry, focusing on function rather than title. The GDC views unregistered practice to be a serious offence to public safety. Since 1993, the GDC has prosecuted 49 individuals for unregistered practice, some of which have been repeat offenders. The GDC states that there are a significant number of ongoing investigations of illegal and unregistered practice, which will result in prosecutions.
- 4.8 The GDC is reviewing its policy on title misuse prosecution where there is no allegation of illegal practice. The review of this policy will include the option of taking fitness to practise action against employers.
- 4.9 Illegal practice complaints usually come from patients. The police and, to a lesser extent, whistleblowers are other sources. The GDC says that, 'improved public awareness of the importance and significance of registration, and of protected title,' is the way to improve identification of title misuse.
- 4.10 The GDC recognises a moral responsibility to tackle illegal practice. However, their regulatory powers affect only GDC registered individuals. The GDC does not have powers of investigation or regulation to pursue statutory offences, such as illegal use of protected titles. The GDC states, '(...) when we do bring prosecutions, we are acting as a concerned corporate citizen bringing what is essentially a private prosecution.' In addition, the GDC states that the barriers to prosecution include a lack of evidence and witness co-operation.

General Medical Council (GMC)

- 4.11 The legislation for medical practitioners is the Medical Act 1983. The word 'doctor' by itself, is not a protected title as it is an academic term rather than a professional title. The Act states a person:
*'who wilfully and falsely presents to be or takes or uses the name or title of physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner or apothecary, or any name, title, addition or description implying that he is registered under any provision of this Act, or that he is recognised by law as a physician or surgeon or licentiate in medicine and surgery or a practitioner in medicine or an apothecary, shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.'*⁵
- 4.12 The GMC states, based on the available information, most cases of unregistered practice are doctors that have lapsed registration. There were 262 complaints of unregistered practice in 2008 and from January to October 2009, there had been 134. Of these, 11 in 2008 and 10 in 2009 were investigations following concerns

5 Part VI, Section 49 of the Medical Act 1983

expressed by members of the public about individuals passing themselves off as doctors. The GMC stated, 'in the majority of these cases the complaint related to people holding PhDs or calling themselves doctor for the purposes of establishing credibility.' Information about unregistered practitioners tends to come from employer organisations or pharmacists who check registration.

- 4.13 They have reduced the number of doctors practising with lapsed registration by contacting them before removal from the medical register. The GMC sends 'cease and desist' letters for both lapsed registration and when they believe someone to be passing themselves off as registered. In cases where the GMC has identified a non-registrant offering treatment, prescribing drugs or writing sickness certificates, they refer the matter to the NHS Counter Fraud Service or to the Police.
- 4.14 The GMC does not believe legislative change would help in preventing unregistered practice. Improving the awareness of employers and pharmacists about checking registration would be effective in tackling title misuse.

General Optical Council (GOC)

- 4.15 Under the Opticians Act, the GOC is responsible for protecting the misuse of titles by both individuals and by corporate bodies.⁶ The relevant titles in relation to individuals are: ophthalmic optician and optometrist, dispensing optician, registered optometrist or registered dispensing optician; and in relation to bodies corporate, ophthalmic optician and optometrist, dispensing optician, registered optician. In addition, the Act covers the situation where an individual holds him or herself out as being a student registrant or having a specialty. Though the title is reserved for GOC registrants, non-registrants can perform some of the same activities as dispensing opticians. Those activities which are normally carried out by dispensing opticians and which non-registrants are not able to perform are supplying spectacles to those who are under 16 or who are registered as blind or partially sighted, and the fitting of contact lenses (for which dispensing opticians are required to obtain a specialty qualification).
- 4.16 The GOC state that it is difficult to quantify how many practitioners are practising while unregistered. The GOC has no evidence that there is a widespread problem of individuals practising illegally or misusing protected titles while unregistered, or of corporate bodies misusing protected titles. The GOC receives the majority of complaints about unregistered use of protected titles from registrants. The GOC also takes action where it becomes aware of misuse of protected titles directly (for example in the course of fitness to practise investigations). Complaints are subject to investigation with the intention to pursue criminal proceedings where appropriate. The GOC makes use of 'cease and desist' letters in relation to misuse of professional titles (in a similar manner to some other health professional regulators) and has found in several recent cases that sending such letters has proved an effective strategy.

⁶ Businesses that are not registered with the GOC can nevertheless lawfully provide "optician's" services, as long as they do not misuse one of the protected titles.

- 4.17 The GOC recognised in 2006 that the use of registrants' fees in order to pursue criminal prosecutions (some of which may have limited prospects of success, and which, even if successful, result in a fine that may in reality act as a poor deterrent for corporate entities) was potentially controversial, and therefore put in place a formal written Protocol setting out the procedure to be followed in investigating criminal offences and determining in each case whether criminal proceedings should be initiated. The Protocol requires the GOC's Investigation Committee to consider whether or not, in the interests of protecting, promoting and maintaining the health and safety of the public, to recommend to the Crown Prosecution Service that court proceedings should be issued in a particular case taking into account various specific matters, including the evidential and public interests set out in the Code for Crown Prosecutors. The Protocol also envisages that the Investigation Committee may decide that court proceedings should be initiated in the name of the GOC.⁷
- 4.18 The GOC notes that a significant barrier in relation to taking action to prevent the misuse of protected titles is that the relevant legislation is not applicable to sole traders or most partnerships (i.e. non-limited liability partnerships). The GOC is aware of a further barrier, relating to the potential challenge in establishing the GOC's jurisdiction in circumstances where a corporate entity that is based outside the UK misuses a protected title.

General Osteopathic Council (GOsC)

- 4.19 The Osteopaths Act 1993 makes the misuse of the title 'osteopath' an offence.⁸ The GOsC has found some practitioners who decided not to join the register when it opened in 1998 continued to practise without registration. The GOsC has prosecuted up to three individuals per year over the past five years. However, not all reports of title misuse lead to prosecution. The GOsC issues letters of warning before proceeding to prosecution and often this stops the illegal title misuse.
- 4.20 Registrants and members of the public alert the GOsC to incidents of title misuse. The GOsC carries out their own investigation, using investigators where appropriate. In addition, the GOsC tracks individuals who continue to practise despite having not renewed their registration. The GOsC sends a warning letter for two reasons. First, to encourage the person to stop misuse. Secondly, it may be helpful in recovering costs against the defendant in the event of a court case.
- 4.21 The legal framework in England and Wales is sufficient, in their view. The GOsC believes the publicity from convictions has been a deterrent from further title misuse. The GOsC has found it more difficult to prosecute in Scotland. In response, the GOsC has been working with Scottish Solicitors and obtained an opinion of Counsel. As a result, the GOsC intends to use civil proceedings to tackle title misuse in Scotland in the future.

⁷ General Optical Council. *Protocol for the investigation and prosecution of suspected criminal offences*. [Online] Available at <http://www.optical.org/> [Accessed 28 October 2009]

⁸ Section 32 of the Osteopaths Act 1993.

Health Professions Council (HPC)

- 4.22 The Health Professions Order 2001 makes it an offence to falsely represent oneself as a registrant, use a protected title without registration, or make claims about practising a regulated profession for example, 'I am a chiropodist' or 'I practise chiropody.'⁹ A person found guilty is subject to a fine up to the level five maximum of £5,000.
- 4.23 The public and professionals bring misuse of a protected title to the attention of the HPC. Occasionally, the HPC will become aware of misuse directly, for example through newspaper advertising. HPC Case Managers gather relevant information about a title misuse complaint. The Case Manager uses the information to establish whether an offence has been committed. To tackle title misuse, the HPC use a three-stage process:
1. The HPC asks the person concerned to explain the alleged conduct
 2. A cease and desist letter is sent if there is clear evidence of an offence
 3. The HPC takes steps in making a decision about prosecution, including witness statements and interviewing the alleged offender
- 4.24 The HPC will pass on the information about a case to the police and trading standards where appropriate. They have worked with the police and other agencies in investigating the unregistered use of a protected title. As an example of cooperation, the Essex Police cautioned an individual for the misuse of 'physiotherapist' in 2007.
- 4.25 The HPC feels their legal framework is sufficient and that there are no barriers to pursuing prosecution. However, the HPC recognise that the threshold for pursuing prosecution is high and the cost of pursuing prosecution without the 'realistic prospect of success' is an inappropriate use of registrant fees. In addition, the HPC believes it is important to note, 'that any fine imposed by a Court is not received by the HPC and that any costs order is highly unlikely to cover the costs of preparing the case.'
- 4.26 The HPC believe that increasing awareness of regulation and protected titles is a better focus for their work. For example, the HPC has used 'banner advertising' on websites to promote the importance of registration. The HPC has built relationships with directory organisations to ensure unregistered practitioners are not in sections referring to a protected title.

Nursing and Midwifery Council (NMC)

- 4.27 The Nursing and Midwifery Order 2001 makes the illegal use of the protected titles 'registered nurse' and 'midwife,' an offence.¹⁰ The NMC provides employers with a registration confirmation service on a regular basis. This is a tool for employers to ensure that their staff are registered.

9 Section 39 of the Health Professions Order 2001

10 Article 44 of the Nursing and Midwifery Order 2001

- 4.28 The NMC reports individuals who misuse a title to the local police. The NMC notifies any employer found to be employing a non-registrant about the importance of checking registration status. The NMC received one report in 2008 that led to a successful prosecution.
- 4.29 The title 'nurse' on its own does not constitute a protected title. As a result, the NMC has stated its concern that other professions using 'nurse' as their part of their title is confusing for patients and the public. They have expressed a particular concern in relation to the title 'registered dental nurse.' The NMC has stated that the levels of education and scope of practice for a registered dental nurse is different from that of a registered nurse. The NMC believes that the public understanding of the role of a nurse is undermined by the use of similar title in a different role.

Pharmaceutical Society of Northern Ireland (PSNI)

- 4.30 The Pharmacy (Northern Ireland) Order 1976 sets out the legal duties for the practice of pharmacy in Northern Ireland, including the rights of registration. The qualifications and categories for registration are in the Order.¹¹
- 4.31 PSNI does not deal with many title misuse cases. There are some issues with unrelated businesses using the title 'pharmacy'. However, this occurs infrequently and often the businesses in question do not pose a risk to the public, as it is obvious they are unrelated. The PSNI notes the potential for the misuse of 'pharmacist' and 'pharmacy' on the internet. There are websites that offer services or access to medicines, without the appropriate authorisation.
- 4.32 Though the legal framework is sufficient, there are barriers. The PSNI states that it considers the cost of pursuing prosecution in relation to public interest and benefit. The PSNI also states, 'we would be interested to know if there are adequate legal frameworks and agreements for pursuing prosecutions against an individual now resident in another EU/EEA country, or non-EU/EEA country.'
- 4.33 To tackle title misuse, the PSNI suggest that a joint publicity campaign by all regulators to promote the importance of registration would be helpful. They note that this could help improve the identification of title misuse occurrences. It may also prevent businesses from misusing titles.

Royal Pharmaceutical Society of Great Britain (RPSGB)

- 4.34 The titles of 'pharmacy' and 'pharmacist' are legally protected titles. In addition, 'pharmacy technician' will become a protected title as of July 2011. The RPSGB states that, 'due to the nature of pharmacy the scale of the problem of people practising without being registered is relatively small.' The RPSGB find that the majority of their protected title cases involve websites using protected titles.
- 4.35 The RPSGB dealt with 96 cases from November 2006 to November 2007, and 24 cases from November 2007 to November 2008. They note that many incidents of protected title abuse are 'committed inadvertently and resolved informally.' No cases have proceeded to prosecution during this time.

¹¹ Part 3, Section 8 of Pharmacy (Northern Ireland) Order 1976.

- 4.36 The RPSGB has three main methods for identifying title misuse. First, the RPSGB advises the public that checking registration is important, and how they can make a complaint. Second, the RPSGB Inspectorate plays a role in identifying title misuse issues. Third, they work in co-operation with other organisations, including the police and other healthcare organisations. The RPSGB has signed a Memorandum of Understanding concerning information sharing with the Medicines and Healthcare Products Regulatory Agency (MHRA). The RPSGB and MHRA work particularly closely on the misuse of title on the internet. The RPSGB suggests that increasing public awareness and co-operation between regulators and other relevant agencies are effective ways to stop misuse of title.
- 4.37 The RPSGB believes there are no barriers to pursuing prosecution. However, they do note that they must ensure the best use of resources, which has an effect on whether to pursue prosecution. The principal objective of the RPSGB is to maintain public safety and confidence, and therefore the RPSGB focus on securing compliance of registrants, rather than non-registrants. In cases of persistent non-compliance, the RPSGB would take the necessary steps if it were in the public interest.

5. Other views on title misuse

- 5.1 In addition to the nine health professional regulators, we sought views from other organisations with an interest in misuse of title. This has given us some examples of good practice and it has also highlighted gaps in tackling title misuse.

Architects Registration Board (ARB)

- 5.2 Under the Architects Act 1997, the provision for protecting title states, ‘a person shall not practise or carry on business under any name, style or title containing the word ‘architect’ unless he is a person registered under this Act.’¹²
- 5.3 The ARB found that in many of the business directories, non-registrant entries were in sections that would create a public perception of architect qualification and registration. In February 2009, the ARB produced the report of an audit of business directories, British Telecom directory, Yellow Pages and Thomson to identify and remove invalid entries.¹³ The audit was undertaken because the ARB was concerned about a risk to the public and ‘unfair competition with the profession.’ The work found:
- Approximately 1,500 erroneous entries
 - 865 entries were removed from the directories
 - 559 cases displayed incorrect information
 - 10 former architects applied for reinstatement to the Register
 - 3 cases were prosecuted for title misuse.
- 5.4 The ARB recognises that prosecution can be difficult, as it can be problematic to build a case that meets the requirements for prosecution. However, they felt it was necessary, for both the public and their registrants, to take a proactive approach to tackling misuse of title. They note that for the evidential test, they need documents that are, at most, two years old. For the public interest test, they feel that they must show proof of either real damage caused or direct defiance on the part of an individual.
- 5.5 The ARB, as with the health professional regulators, notes that a limitation to their resources can make pursuing prosecution difficult. However, in addition to working with directories, the ARB works with trading standards authorities and the police, in order to tackle title misuse.

Royal College of Veterinary Surgeons (RCVS)

- 5.6 The RCVS is the regulatory authority for Veterinary Surgeons. Registrants of the RCVS use the protected title Member of the Royal College of Veterinary Surgeons (MRCVS). The RCVS relies on individuals to report most incidents of protected title misuse.

¹² Section 20 of the Architects Act 1997.

¹³ Audit of Directories Project Report and Executive Summary. Architects Registration Board. 12 February 2009

- 5.7 The Veterinary Surgeons Act 1966 is the relevant legislation for the RCVS. Section 19 of the Act makes it an offence to practise or hold oneself out as practising, or as being prepared to practise veterinary surgery, without registration. Section 20 makes it an offence if non-registrants take or use the title of veterinary surgeon or any name, title addition or description implying that he is so registered.
- 5.8 The RCVS has no statutory powers to prosecute these offences, though they could undertake a private prosecution. If a non-veterinary surgeon commits the offence, the RCVS states that this is a criminal matter and a complaint is made to police. There are a small number of incidents reported each year. However, the RCVS informed CHRE that six individuals have been convicted for portraying themselves as veterinary surgeons in recent years. The RCVS notes that title misuse is often a case of previous registrants continuing to use the title without registration.
- 5.9 The RCVS states that there are title misuse incidents that involve non-UK veterinary surgeons that practising abroad while using the MRCVS title. These involve former registrants who move abroad and continue to use MRCVS while in another country. Currently there is an investigation taking place in Hong Kong, and the RCVS have made a formal complaint to the Hong Kong Veterinary Board.

Variations in title

- 5.10 The Society of Chiropractors and Podiatrists (SCP) is the professional body and trade union for chiropractors and podiatrists. Membership in the SCP is limited to those who are qualified for registration with the HPC and they represent around 10,000 professionals.
- 5.11 The SCP are concerned about the unregulated foot care market.¹⁴ 'Foot Health Specialists' have been known to offer 'the services of chiropractic or podiatry' in the absence of registration with the HPC. These titles, though not illegal, may confuse patients of the public. This also can contribute to undermining confidence in the profession and regulation.
- 5.12 The SCP told us of a title misuse incident where an individual offered chiropractic services without registration with the HPC. Through local newspaper advertisement, an article in a magazine, and a Yellow Pages listing, the non-registrant practitioner gave an impression of being a registered chiropractor. When notified by a registrant of this misuse, the HPC contacted Yellow Pages to remove the individual from the listing but did not contact the practitioner directly.

European Union issues

- 5.13 Labour mobility in the European Union (EU) presents a challenge to protecting titles. With practitioners from other Member States coming to practice in the UK, there is a need to ensure they are fit to practise. If they are deemed qualified for registration, then they are able to use a UK recognised protected title.

¹⁴ Society of Chiropractors and Podiatrists Correspondence. 29 October 2009.

- 5.14 Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 is on the recognition of professional qualifications. Article 52 focuses on professional titles. The directive makes the provision that in order to practise an individual must use the appropriate title in the host Member State. It states:
- 'If, in a host Member State, the use of a professional title relating to one of the activities of the profession in question is regulated, nationals of the other Member States who are authorised to practise a regulated profession ... shall use the professional titles of the host Member State, which corresponds to that profession in that Member State, and make use of any associated initials.'*¹⁵
- 5.15 The Directive ensures that where registration is required, an individual cannot move to another Member State and use a protected title without first being registered with a regulator. It states:
- 'Where a profession is regulated in the host Member State by an association or organisation ... a national of Member State shall not be authorised to use the professional title issued by that organisation or association, or its abbreviated form, unless they furnish proof that they are members of that association or organisation.'*¹⁶
- 5.16 We note that there are different provisions that apply in situations of temporary registration, concerning protected title. Health practitioners from other Member States can qualify for temporary registration with UK health professional regulators. In these instances, the temporary registrants use the title of their home Member State.

15 Directive 2005/36/EC of the European Parliament and Council of 7 September 2005. Section 1 of Article 52.

16 Directive 2005/36/EC of the European Parliament and Council of 7 September 2005. Section 2 of Article 52.

6. Prosecution authorities

6.1 The relevant prosecuting authority across the UK considers cases for prosecution. The prosecuting authority takes a public prosecution forward, if the case meets the set out criteria, which are the evidence and public interest tests. CHRE contacted the relevant prosecuting authorities to understand the reasons why a case of misuse of protected title would not go forward.

Crown Prosecution Service (CPS)

6.2 The CPS is the principal prosecuting authority for England and Wales and is responsible for advising the police on cases for possible prosecution, reviewing cases submitted by the police, determining charges (except for minor cases), preparing cases for court and presenting cases at court.¹⁷

6.3 The CPS told us that prosecution of unregistered use of a protected title is not common. Crown Prosecutors follow the Code for Crown Prosecutors ('the Code'), 'so that it can make fair and consistent decisions about prosecutions.'¹⁸ The Code states, '(...) Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.' The decision to prosecute is in accordance to the full code test, which has two stages: evidential and public interest. The evidential test is that prosecutors must be satisfied that there is enough evidence to provide a realistic prospect of conviction. Regulators have highlighted a lack of evidence as a difficulty in pursuing prosecution. The public interest test is that, 'the public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction.'

6.4 The Code lists some of the many common public interest factors. There are some examples that would apply to health professionals and the misuse of protected title. Included in these are:

- If the offence was committed against a person serving the public
- If the defendant was in a position of authority or trust
- There are grounds for believing that the offence is likely to be continue or repeated
- If a prosecution would have a significant positive impact on maintaining community confidence.

6.5 The Code lists some common factors against prosecution. Relevant to title misuse are that it is less likely that prosecution will proceed if, 'the courts is likely to impose a nominal penalty,' and, 'if the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).'

17 Crown Prosecution Service. Website. <http://www.cps.gov.uk/about/>

18 The Code for Crown Prosecutors. Crown Prosecution Service. 2004. Page 1.

Crown Office and Procurator Fiscal Service (COPFS)

- 6.6 The COPFS is the prosecuting authority for Scotland. The COPFS told us they view unauthorised use of a protected title as a serious matter. The COPFS considers the evidence available on a case-by-case basis, in order to make a decision on proceeding with prosecution.
- 6.7 If an evidential base for prosecution is established, the COPFS considers a number of factors to proceed with prosecution. The factors include the sufficiency of evidence, seriousness of the offence, the age of the offender, any previous offences, and the length of time since the incident occurred. Additionally, the interests of the victims, witnesses, are considered. The overriding consideration is whether prosecution is in the public interest.
- 6.8 The COPFS does not believe that there are any insurmountable barriers to prosecuting cases of this nature. Where prosecution is appropriate, the COPFS will prosecute.

Public Prosecution Service (PPS)

- 6.9 The PPS is the prosecution service for Northern Ireland. For prosecution to proceed, a case must satisfy the test for prosecution.¹⁹ The PPS told us they have not prosecuted anyone for title misuse.
- 6.10 The test for prosecution includes an evidence test and a public interest test. According to the Code for Prosecutors, 'it is not the rule that all offences for which there is sufficient evidence must be prosecuted – prosecutors must exercise their discretion as to whether a prosecution is required in the public interest.'
- 6.11 The Code lists some of the public interest considerations for prosecution. Of the considerations, some relate to health professionals, for example, where the defendant was in a position of authority or trust and the offence is an abuse of that position. The code for the PPS is similar to that of the CPS, and the reasons against prosecution are similar.

Summary

- 6.12 For all the UK prosecuting authorities, the test in place for prosecution to proceed is difficult. This is necessarily difficult given that verdicts establish precedents. If prosecutions for the title misuse do not result in a conviction, there could be a precedent set making future prosecution difficult.

¹⁹ Public Prosecution Services. Code for Prosecutors.
http://www.ppsni.gov.uk/Site/1/Documents/Publications/Code_for_Prosecutors_Revised_2008v1.pdf

7. Common barriers to tackling title misuse

- 7.1 Each individual regulator has different barriers to address in tackling title misuse. However, of the diverse issues regulators are faced with, there are some commonalities. Based on what we have learned through the course of this project we can identify common barriers for the regulators in tackling title misuse.

Assessing the problem

- 7.2 The regulators cannot easily quantify the size and scope of the problem. Some of the regulators have provided statistics in relation to title misuse. However, those regulators can only account for what they have identified. It is not possible to quantify the number of possible offenders. It is possible that there are many individuals making claims that they are authorised to practise going undetected. These could be taking place in high street shops and on the internet.

Variations of titles

- 7.3 The potential for harm to patients and the public requires awareness of the difference in practice between registered professionals and unregistered practitioners. The specificity of protected titles in legislation can allow individuals to use variations of titles without needing to register. In the case of practitioner psychologist, as the HPC has stated, 'only adjectival titles (counselling psychologist, clinical psychologist etc) are protected because regulation only applies to those working in applied fields with contact with patients, clients and services users.' Therefore, someone could use the title 'business psychologist' or 'golf psychologist' without registration, as these are not protected.
- 7.4 Protected titles create a boundary for professional practice, in that titles are reserved for registrants, and cannot legally be used by non-registrants. However, this does not stop people from practising in an unregulated way. There are examples of practitioners, including some who have been struck-off by a former regulator, who use non-protected titles. They may even state correctly that they are trained in a field of practice, and offer services to the public, without using a protected title.

Resources

- 7.5 Regulators identified resources as barriers to protecting title. To identify all potential misuses of a protected title is a considerable demand. This would require significant staff time, and perhaps even dedicated employees. In addition to human resource demands, the financial demand for investigation and prosecution is substantial. The possibility of unsuccessful prosecution is a concern in allocating resources needed for pursuing prosecution. There is concern that it is inappropriate to spend registrant fees for pursuing prosecution that may not result in a conviction.

Prosecution difficulties

- 7.6 The regulators noted that having a prosecution taken forward is a barrier. Some expressed views that they cannot produce the information required by prosecuting authorities. In addition, satisfying the public interest test proves difficult. We have identified two points for consideration.
- 7.7 First, the test for prosecution is difficult to meet. The test in place for a prosecution to proceed must satisfy both evidence and public interest needs. However, we believe that the test for prosecution must be difficult because of the future impacts of court decisions. Therefore, we do not make any recommendations that would require change to the test for prosecution.
- 7.8 Second, unsuccessful prosecutions can make future legal challenges based on title misuse, difficult. If a case was to proceed and not result in a conviction, the precedent set may make future prosecutions more difficult. This affects the practicability of prosecution as a means to tackling title misuse.

8. Conclusions and recommendations

- 8.1 The obligation of health professional regulators is to protect patients and the public. In this respect, it is appropriate to make proportionate and targeted efforts to protect their given professional titles. Prosecuting those who misuse a protected title is an important step in patient safety and public protection. However, prosecution is not the only means of tackling title misuse. We believe that regulators should take other proactive measures in the interests of patient safety and public protection.
- 8.2 There are two reasons for this assertion. First, professionals register in order to practise and have the right to use a protected title. Professionals rely on public assurance in their title to ensure their patients are confident in their abilities as a health care provider. Second, protecting a title assures public confidence in a given profession.
- 8.3 Insofar as statistics are available from the health professional regulators, we are concerned with the scale of misuse that has been identified. In addition, there is cause for concern about an unknown number of incidents of title misuse. We believe that given the number of identified and potential incidents, the issue of title misuse must be a serious concern for regulators. Individuals passing themselves off as registered pose a threat to patient safety and public protection. In the interest of the public's safety and confidence in health professionals, it is imperative that measures are taken by regulators and others to tackle title misuse and unregistered practice.
- 8.4 The methods for overcoming barriers to private and public prosecution of title misuse are practical, rather than technical. The legal framework available to the regulatory bodies is sufficient to pursue prosecution of title misuse in our view. Though it can be difficult to meet the test for prosecution, we do not believe this requirement needs to change. It is necessarily difficult to prosecute because the consequence of an unsuccessful prosecution threatens the ability to prosecute in the future, as a precedent would be set.
- 8.5 However, prosecution is not the only means to achieve public protection in relation to title misuse. The possibility of unsuccessful prosecution should not stop regulators taking other measures to protect patients and the public. Regulators must be proactive in protecting the public, including in tackling title misuse.
- 8.6 The health professional regulators noted that greater public awareness would be an important step in tackling unregistered practice. This would be a simple measure to implement. Targeted messages to patients and the public about the importance of registration could come in form of website based notification and pamphlets. Registered professionals should make concentrated efforts to let their patients know about registration. Annex 2 gives a list of website links to the regulators' registers.

Recommendation: Regulators should work to increase public awareness about the importance of health professional registration and regulation through targeted messages.

- 8.7 Some regulators stated they work with other organisations to ensure public protection. The HPC passes on information to police and passes on information to agencies such as Trading Standards. The NMC reminds employers of the need to check registration status when they have employed a non-registrant. Fostering relationships with directories, the police and trading standards, as examples, can engage a wider community that has an interest in tackling title misuse. Involving more organisations could increase the prospect of stopping individual instances of title misuse.
- Recommendation: The regulators should foster relationships with organisations that have a shared interest in preventing title misuse including other regulators, employers, Trading Standards authorities, and directory listing organisations.**
- 8.8 It is important that information directories have listed individuals correctly. Given that the public use telephone and online directories to locate professionals, it is crucial that sections listed with a protected title include only registered professionals. The experience of the ARB indicates that an audit of directories is useful in tackling title misuse. This ensures that the public is safe from inaccurate information that leads them to access an unqualified practitioner.
- Recommendation: Where regulators have identified an issue exists with a public listing, such as telephone and web-based directories, they should undertake a periodic audit to ensure individuals listed under a protected title are registered and those that are not will be removed from the listing.**
- 8.9 Action by the regulators is required when they have identified an individual as misusing a protected title. Some regulators have noted that contacting an individual for title misuse can be effective. For example, the GOsC noted that they send a 'cease and desist' letter to an individual found misusing a title. It is plausible that notifying an individual that they are misusing a title and that the appropriate authorities are aware, will stop title misuse.
- Recommendation: All the regulators should send 'cease and desist' letters to those who misuse a title, as a first step in tackling title misuse.**
- 8.10 It is crucial that protected titles retain meaning and integrity in the eyes of the public. Therefore, proactive measures to protect the use of professional titles are fundamental given the challenge presented in pursuing prosecution. If the misuse of title persists unchecked, the public is at risk of harm and regulation is at risk of losing public confidence. In making decisions about protecting titles, regulators should focus on the safety of patients and the public, rather than professional interests.

Annex 1: Protected professional titles by regulator

| Regulator | Protected professional titles | |
|-------------|---|--|
| GCC | <ul style="list-style-type: none"> • chiropractic • chiropractic practitioner • chiropractitioner | <ul style="list-style-type: none"> • chiropractic physician • any other kind of chiropractor |
| GDC | <ul style="list-style-type: none"> • dentist • dental surgeon • dental practitioner • clinical dental technician • clinical dental technologist • denturist • dental nurse | <ul style="list-style-type: none"> • dental surgery assistant • dental technician • dental technologist • orthodontic therapist • orthodontic auxiliary • dental hygienist • dental therapist |
| GMC | <ul style="list-style-type: none"> • physician • doctor of medicine • licentiate in medicine and surgery • bachelor of medicine | <ul style="list-style-type: none"> • surgeon • general practitioner • apothecary • titles implying GMC registration |
| GOC | <ul style="list-style-type: none"> • optometrist • dispensing optician | |
| GOsC | <ul style="list-style-type: none"> • osteopath • osteopathic practitioner • osteopathic physician | <ul style="list-style-type: none"> • osteopathist • any other kind of osteopath |
| HPC | <ul style="list-style-type: none"> • art psychotherapist • art therapist • dramatherapist • music therapist • biomedical scientist • chiropodist • podiatrist • clinical scientist • dietitian • dietician • occupational therapist • operating department practitioner • orthoptist • paramedic • physiotherapist • physical therapist | <ul style="list-style-type: none"> • practitioner psychologist • registered psychologist • clinical psychologist • educational psychologist • forensic psychologist • occupational psychologist • sport and exercise psychologist • prosthetist • orthotist • radiographer • diagnostic radiographer • therapeutic radiographer • speech and language therapist • speech therapist |

| | |
|--------------|--|
| NMC | <ul style="list-style-type: none">• registered nurse• midwife |
| PSNI | <ul style="list-style-type: none">• pharmacist |
| RPSGB | <ul style="list-style-type: none">• pharmacist• pharmacy technician |

Annex 2: Links to regulators' registers

| Regulator | Link to register |
|-------------------|--|
| GCC | gcc-uk.org/chiro_search.cfm |
| GDC | gdc-uk.net/searchregister/ |
| GMC | gmc-uk.org/information_for_you/patients_and_public/index.asp# |
| GOC | optical.org/en/our_work/Registration/search_the_registers.cfm |
| GOsC | osteopathy.org.uk/information/finding-an-osteopath/ |
| HPC | register.hpc-uk.org/lisa/onlineregister/RegistrantSearchInitial.jsp |
| NMC | nmc-uk.org/aNewSearchRegister.aspx |
| PSNI | psni.org.uk/search-the-register/search-for-pharmacist.php |
| RPSGB | rpsgb.org.uk/ |

Council for Healthcare Regulatory Excellence

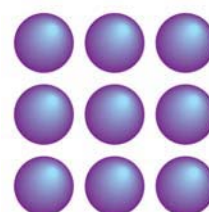
11 Strand
London
WC2N 5HR

Telephone: **020 7389 8030**

Fax: **020 7389 8040**

Email: **info@chre.org.uk**

Web: **www.chre.org.uk**



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