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The Slippery Slope - Wilful Conduct and Remediation: Is this Public Protection?

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Remediation?

- Remedial order
- Conditions of practise
- Licence limitation or restriction
- Probation
- Stipulated agreement or undertaking

- Education or training requirements
- Practice restrictions or obligations
- Peer support, review or monitoring
- Substance misuse or other treatment

Justice models



The criminal sentence paradigm

- historic ‘quasi-criminal’ model of regulation
- some sanctions - e.g. suspension and fines - appear to be about punishment and retribution
- the purpose of regulation is ongoing public protection
- remedial action must strike a balance and:
 - be proportionate
 - resolve concerns about the practitioner
 - provide a deterrent effect
 - maintain public confidence

In competence cases, it does work:

Physicians given individual remedial support by the Collège des Médecins du Québec to address clinical shortcomings performed significantly better afterwards.

	Before	After
record keeping	20%	54%
clinical investigation plan	13%	59%
diagnostic accuracy	32%	61%
patient treatment and follow-up	31%	67%

*Goulet , Gagnon and Gingras
J. Contin Educ Health Prof, 27 (2); 2007*

Yeong v General Medical Council (UK)

“Where a medical practitioner violated a fundamental rule governing the doctor/patient relationship... his fitness to practise might be impaired if the public was left with the impression that no steps had been taken... to bring forcibly to his attention the profound unacceptability of his behaviour and the importance of the rule he had violated.

The public might then... not have the confidence in engaging with him which was the necessary foundation of the doctor/patient relationship.

Where... a firm declaration of professional standards... was required, the efforts made by the practitioner to address his problems and to reduce the risk of recurrence of such misconduct... might be of far less significance than in other cases, such as those involving clinical errors or incompetence.”

‘Bad’ professionals and ‘criminal mind’ theory

- Criminal propensity results from low self-control which:
 - develops in childhood
 - is stable and resistant to change in adulthood
- Low self-control leads to:
 - focus on self-interest
 - inability to delay gratification
 - lack of empathy for or sensitivity to other people
 - impulsive and risk-taking behaviour
 - continuing exploitation of opportunity and recidivism

Remediation programs

A limited number of programs exist but two examples are:

- ProBE – operated by the Center for Personalized Education for Physicians
- the Bebeau ethics remediation program for dentists at the University of Minnesota

ProBE programme

Professional/Problem-Based Ethics: educational intervention for a range of ethics violations or unprofessional conduct. Seven sessions, typically run over one weekend:

- the professional healer
- infractions, sanctions and discipline
- clinician - patient relationship: models
- clinician - patient relationship: boundaries
- accountability within professions
- contemporary mechanisms of accountability
- conceptual resources for applying professional ethics

The Bebeau Program

Based upon the 'Four Component' model of morality:

- moral sensitivity:** interpreting the situation as moral
- moral judgement:** judging which of the available actions are most justified
- moral motivation:** prioritising the moral over other significant concerns
- moral character:** being able to construct and implement actions that support the moral choice

Conclusions



- there is not always a clear divide between conduct and competence
- remediation is possible for some, but not all, forms of misconduct
- As professions are 'self-policing', there must be a high degree of confidence in compliance
- public protection is paramount; ineffective remediation will lead to criticism of its use, even in cases where it is entirely appropriate