Psychotherapy and Politics International
*Psychotherapy and Politics International, 10*(2), 171–178. (2012)
Published online 22 May 2012 in Wiley Online Library
(wileyonlinelibrary.com) **DOI:** 10.1002/ppi.1271

## Documents From the Front Line

This section is intended to include material of a non academic, practical and immediate nature, representing ongoing psycho-political process – including manifestos, course hand outs, leaflets, petitions, round-robins and ephemera of all kinds. All contributions will be gratefully received.

# Ebb and Flow: One Year on from *The Turning Tide: Pluralism and Partnership in Psychotherapy in Aotearoa New Zealand*

KEITH TUDOR, AUT University, Aotearoa New Zealand

ABSTRACT *These notes provide an update on the situation regarding the state registration of psychotherapists in Aotearoa New Zealand, and the attempts of the Psychotherapists Board of Aotearoa New Zealand to extend its "regulatory regime", without consultation, to include scopes of practice, such as educator/trainer, beyond the clinical scopes of practice, and not to approve supervisors who are not registered health practitioners and who are critical of statutory regulation. Differing approaches to and politics of regulation are presented in relation to a taxonomy of models of regulation. Finally, in the fight against the state control oand regulation of psychotherapy, the author reports some good news! Copyright © 2012 John Wiley & Sons, Ltd.*

## INTRODUCTION

In Aotearoa New Zealand, since 2007, the title "psychotherapist" has been protected under the *Health Practitioner Competence Assurance Act 2003* ("the *HPCA*" or "the Act") and, thereby, restricted to those practitioners who register with the Psychotherapists [sic] Board of Aotearoa New Zealand ("PBANZ" or "the Board"), which is the relevant "responsible authority" under the Act.

The move to the state registration of psychotherapists was not without controversy. The New Zealand Association of Psychotherapists (NZAP) had, for some years, sought occupational

Correspondence to: Keith Tudor, AUT University, Auckland 1142, Aotearoa New Zealand.
E-mail: keith.tudor@aut.ac.nz



DOI: 10.1002/ppi

recognition of psychotherapists, though not whole-scale regulation of the field of psychotherapy (see Dillon, 2011). Furthermore, the proponents of such recognition did not research the relevant literature available then about the regulation of psychotherapy (e.g., Dawes, 1994; Hogan, 1979; House and Totton, 1997; Mowbray, 1995; Wampold, 2001; see also Bailey & Tudor, 2011), and, as a result, did not anticipate the issues and problems that occur when the state and its regulatory authorities gain control and power over a profession – and that were and have been well documented.

The story of the moves towards the registration of psychotherapists in Aotearoa New Zealand, as well as critiques of regulation, registration and the *Act*, have been collected in a book published last year (Tudor, 2011), which is reviewed in this issue (House, 2012). Given the international interest in and debates about the professionalization and regulation of psychotherapy, as well as other psychological and "health" professions (see, for instance, Parker & Revelli, 2008; Postle, 2007), the situation in this country is a critical and poignant case study of state control, psychotherapy practice – and resistance – in a post-regulation landscape. As Bernie Neville put it in his endorsement for the book, it "provide[s] us with an invaluable aid to our understanding of the challenges and pitfalls of regulation. To those of us not yet subject to regulation, Tudor gives a clear warning to be careful what we wish for."

## SCOPES OF PRACTICE

The regulation and protection of a professional title under legislation (usually that which is ostensibly concerned with the protection of the public) always involves some definition of title in terms of practice or scopes of practice. Under the New Zealand *HPCA Act 2003*, the relevant responsible authority is required to consult the profession about such scopes of practice (Section 14 (2)). Whilst the Psychotherapy Board did consult about the (then) proposed scopes – "adult psychotherapist", "child and adolescent psychotherapist", and "interim psychotherapist" (see Psychotherapists Board of Aotearoa New Zealand, 2008b) – at no point in the consultation time between October 2007 and September 2008 did the Board consult about its proposed extension of the definition of scopes of practice (or roles). Moreover, it added an important note about the definition of practice – "Practice is not confined to clinical practice and encompasses all roles that a psychotherapist may assume such as client care, research, policy making, educating and consulting" (Psychotherapists Board of Aotearoa New Zealand, 2008a) – *after* the close of the consultation. As it has transpired, that which the Board did not consult about has been far more encompassing and consequential than that about which the Board *did* consult. Moreover, by thus extending the scopes of practice in the way it did, the Board was, ironically, in breach of the very *Act* it administers!

Since then, the Board has, in effect, extended its regulatory authority by introducing other policies.

### The proposed scope of "Visiting Educator"

Because the title "psychotherapist" is now protected, the Board is concerned that no one who is not registered with the Board refers to themselves as a psychotherapist and, in its thinking, this extends to lecturers or educators visiting New Zealand who may be psychotherapists (registered or unregistered) in their own country but who, by definition are not "psychotherapists" in New Zealand. The Board had already taken issue with



DOI: 10.1002/ppi

individuals and organisations advertising overseas speakers who had included the word "psychotherapist" in their biographical details on the advert or flyer for a particular conference or event. In other words, whilst it may be true to say that a person is a psychotherapist, it is no longer legal to say so in New Zealand.

Last year (in August 2011) the Board put out a consultation document regarding a proposed new scope of practice for Visiting Educator. In order to ensure that applicants for registration in this special purpose scope of practice are fit for registration (for instance, to give a lecture or to do some training in New Zealand), the Board asserted that it must ensure that all such applicants are fit for registration (under Section 16) of the *HPCA Act* (see Box 1).

**Box 1.** Section 16 of the New Zealand *HPCA Act 2003*

No applicant for registration may be registered as a health practitioner of a health profession if –

(a) he or she does not satisfy the responsible authority that he or she is able to communicate effectively for the purposes of practising within the scope of practice in respect of which the applicant seeks to be, or agrees to be, registered; or

(b) he or she does not satisfy the responsible authority that his or her ability to communicate in and comprehend English is sufficient to protect the health and safety of the public; or

(c) he or she has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer, and he or she does not satisfy the responsible authority that, having regard to all the circumstances, including the time that has elapsed since the conviction, the offence does not reflect adversely on his or her fitness to practise as a health practitioner of that profession; or

(d) the responsible authority is satisfied that the applicant is unable to perform the functions required for the practice of that profession because of some mental or physical condition; or

(e) he or she is the subject of professional disciplinary proceedings in New Zealand or in another country, and the responsible authority believes on reasonable grounds that those proceedings reflect adversely on his or her fitness to practise as a health practitioner of that profession; or

(f) he or she is under investigation, in New Zealand or in another country, in respect of any matter that may be the subject of professional disciplinary proceedings, and the responsible authority believes on reasonable grounds that that investigation reflects adversely on his or her fitness to practise as a health practitioner of that profession; or

(g) he or she –
- (i) is subject to an order of a professional disciplinary tribunal (whether in New Zealand or in another country) or to an order of an educational institution accredited under section 12(2)(a) or to an order of an authority or of a similar body in another country; and
- (ii) does not satisfy the responsible authority that that order does not reflect adversely on his or her fitness to practise as a health practitioner of that profession; or

(h) the responsible authority has reason to believe that the applicant may endanger the health or safety of members of the public.

In order to ensure that the applicant for the special scope of Visiting Educator meets the mandatory criteria, the Board stated that it will require applicants to provide police checks; International English Language Testing System results (if applicable); and fitness to practise declarations. In addition, the Board will require:

- A certified copy of the first two pages of the applicant's passport;
- A Certificate of Good Standing (if they have previously practised in a country where there is compulsory registration or the equivalent);



DOI: 10.1002/ppi

- A copy of the applicant's curriculum vitae;
- Information on the course of instruction being provided by the applicant while in New Zealand;
- A certified copy of the applicant's qualification/s relevant to the course of instruction being provided in New Zealand; and
- A declaration from the applicant's sponsoring organisation or person confirming that the sponsor knows of no reason why the applicant should not be registered and that the applicant's credentials have been checked by the sponsor. (Psychotherapists Board of Aotearoa New Zealand, 2011)

This represents the thinking and the practice of the regime that now registers psychotherapists and seeks to regulate all aspects of psychotherapy and related activities in Aotearoa New Zealand.

These (18) requirements would place an intolerable burden on any overseas psychotherapist visiting and speaking as an educator/trainer and/or supervisor; and undue bureaucratic and financial requirements on many hosting educational/training organisations, and the likely result is that many overseas colleagues would simply refuse to visit or work on this basis. From discussion with colleagues, including a number of those broadly in favour of registration, I gather that most of the responses from the profession (by last September's closing date) do not favour this proposed title. Unfortunately, the indications from the Board (as at March 2012) are that it is intending still to impose certain conditions on such a visitor.

## The Board's policy on supervision

Whilst the Board did not name the activity of "supervision" in the note it added in its original gazetted notice (PBANZ, 2008b), it has since, in effect, made this another scope of practice restricted to the title of "psychotherapist" by means of its changing policy on supervision.

In the past the Board's policy on supervision has acknowledged that practitioners who are not registered may be Board-approved supervisors. However, it recently turned down applications from two experienced and senior practitioners or – more accurately, in the minefield of protected and state-owned terms – "health care providers" to be considered as "approved supervisors" (an approval they had applied for in order to continue supervising psychotherapists who are registered). One of reasons that the Board declined their applications was because, it wrote (in a letter to one of the applicants and, in the other case, in a letter to the applicant's supervisee) that: "the Board has adopted a position that it is unlikely to be appropriate to appoint an unregistered person as a supervisor in circumstances where that person has been, or appears to be, critical of regulation under the HPCA Act". So now, if a practitioner/health care provider is not registered and, according to the judge and jury that is the Board, critical of regulation, she or he will not be approved by the Board as a supervisor. So much for free speech and the freedom of expression and practice in this "free land". The practitioners concerned are currently taking legal advice. Note also that the Board changed its "position" during the process of these applications, thereby showing its contempt for due process, even its own – and yet, interestingly, it has not changed its official, published policy on supervision (see PBANZ, 2012).



DOI: 10.1002/ppi

## DIFFERENT MODELS, DIFFERENT RESPONSES

Whatever people think about gaining professional recognition through state registration and/or statutory regulation, through particular legislation, it is clear that there are different models of regulation (see Box 2).

**Box 2.** Models of regulation (based on Macleod & McSherry, 2007)

*Self-regulation*
(also known as peer regulation)
e.g., through voluntary membership of a professional organisation or group (see, for instance, Heron, 1997; Totton, 1997), and is the predominant model in most countries.

*Negative licensing*
i.e., being allowed to practice unless listed on a register of practitioners ineligible to practice.

*Co-regulation*
whereby members of a professional association are regulated by that association in conjunction with government, and is the model currently being considered by the New Zealand Association of Counsellors.

*Reservation of title*
whereby a statutory registration authority reserves a professional title (e.g. "psychotherapist") only for those eligible and approved to be registered, which is the model represented by New Zealand's *HPCA Act 2003* and administered by a number of "responsible authorities".

*Reservation of title and certain core practices*
which restricts both title and some activities or practice, usually designated as "restricted activities". In Aotearoa New Zealand, for a brief time, there was a restrictive activity of "performing a psychosocial intervention with the expectation of treating a serious mental illness". However, in April 2008, the Ministry of Health consulted on a proposal to remove or amend this, following which it recommended to the Minister of Health that Cabinet approval be sought to revoke this activity; in December 2009 Cabinet authorised the removal of this restricted activity, an authorisation which came into force in January 2010 (see Ministry of Health, 2010). This was particularly significant as it was the only restricted activity identified by the government as relating to the profession of psychotherapy (see Ministry of Health, 2007).

*Reservation of title and whole scale practice restriction*
which restricts both title and an entire scope of practice to only members of the registered profession and other specified registered health professions.

These models represent a range from the least to the most restrictive. The New Zealand *HPCA Act 2003* represents and legislates the fourth model, i.e., the reservation of title. What is interesting – and problematic – is that, since its appointment in 2007, the PBANZ, the "responsible authority" for psychotherapists in Aotearoa New Zealand, has consistently extended the scope and meaning of the term "psychotherapist", thereby attempting to extend, in its own words, its "regulatory regime" to encompass the field of psychotherapy and related activities such as supervision and, thereby, whole-scale practice restriction (the sixth of Macleod and McSherry's models).



DOI: 10.1002/ppi

This taxonomy is useful in providing a framework within which we can locate very real differences between individuals and organisations regarding registration of title and regulation and, underpinning these issues, differing perspectives about human nature; the desirability and/or necessity of regulation; the "profession" of psychotherapy and professional status; what constitutes knowledge (epistemology) and evidence; the nature, purpose and intention of legislation; the question of protection; personal and professional authority; and the role of the state, particularly with regard to a profession. These are major issues which require considerable thought and debate amongst good and open minds in an atmosphere of free and critical enquiry (at least if we are to operate at a postgraduate level of education and training). Unfortunately, this atmosphere is currently compromised in this country by a social/political and professional environment in which:

- individuals are persecuted and discriminated against for their stance on regulation, and the Board has issued veiled – and, more recently, not so veiled – threats to unregistered practitioners/health care providers;
- professionals are being reported to the Board by their colleagues, and attempts are being made to entrap them, e.g., into referring to themselves as a "psychotherapist";
- colleagues are being bullied by their managers into registering even when, legally, they do not have to do so unless they are claiming to be psychotherapists.

## ACTION AND DUE PROCESS

There are those (as above) who are, as it were, on the front line of this debate with regard to the state control and regulation of psychotherapy in Aotearoa New Zealand. There are others who, whilst broadly in favour of state registration, have become increasingly concerned about the behaviour of the Board, especially its lack of consultation with and distance from the profession, as well as its treatment of certain, highly respected colleagues.

The principal group that has led the debate about these issues in Aotearoa New Zealand, which has similar politics to the Alliance for Counselling and Psychotherapy Against State Regulation in the UK, is the organisation of Independently Registered Psychotherapy Practitioners (IRPP) (for a brief history of which see Fay, 2011). Last year the IRPP:

(1) sponsored the printing of more copies of the book, *The Turning Tide*, which continues to sell well and has now been the subject of several positive reviews.
(2) drafted and submitted a complaint about the Board's extension of scopes of practice (see below).

This year, so far, the IRPP:

(3) drafted and circulated amongst the membership of the NZAP a petition calling on the Minister of Health to dismiss the current Board and instigate a process whereby a new Board would have a membership which is partly elected by the profession.
(4) met as a national group at the NZAP Annual Conference to discuss its strategy and organisation.
(5) has continued to support individuals who have been threatened, bullied and attacked; and



DOI: 10.1002/ppi

has continued to ally with Waka Oranga, a collective of Māori psychotherapists who, as an organisation, also oppose the state registration of psychotherapists.

(6) has continued to brief the profession with information which offers an alternative perspective on state registration of psychotherapists and the statutory regulation of psychotherapy than that perpetuated by the Board and, for example, its "fact" sheet on registration (see Psychotherapists Board of Aotearoa New Zealand, 2012).

(7) has prepared for the forthcoming consultation from the Ministry of Health on the *HPCA Act*, which is due for review this year.

Within the profession, and particularly with the NZAP, some colleagues are, for various reasons, reluctant to take action on these issues, preferring to stay "in relationship with the Board". This desire is fuelled by personal histories and relationships, and relies on the conviction of the principal proponent of recognition through state registration, Paul Bailey (see Bailey & Tudor, 2011), who argued, at least within NZAP, that the Board would comprise people who were "Not 'them' but 'us'." Unfortunately, this view conflates and confuses personal and political spheres, and fails to distinguish between a psycho-analysis (of personal and group dynamics and relationships) and a political analysis of the state and its systems, including its regulatory regimes. The Board has, at times, actively contributed to this confusion: its professional members arguing, when under pressure, that they were originally nominated by various groups within the profession and, at other times, asserting that now they do not "represent" the profession.

In response to people questioning its extension of the scopes of practice, the Board has been disingenuous, arguing (at a meeting with NZAP in February 2010) that its scopes of practice were "policy" and, therefore, that it did not have to consult about them – this despite the fact that their "note" was contrary to the explicit requirement (under Section 14(2) of the Act) on "responsible authorities" to consult with their respective professions about any proposed scopes of practice. In response to concerns expressed by the NZAP, the Board has been complacent, stating (in a letter to the NZAP's Council), that it was "satisfied" with the scopes of practice as they stood.

It was only recently, and as a direct result of the IRPP's complaint against the Board, made through the New Zealand Parliament's Regulations Review Committee, that the Board, albeit reluctantly, has now agreed that it will consult the profession about its extended scopes of practice. In its letter to the Chair of Parliament's Regulations Review Committee (dated 9 March 2012), the Board, in the form of its Registrar, has acknowledged that: "with the benefit of hindsight, that it [the Board] could have sought further comments and undertaken further consultation on the 'note' at issue … [and] that it will ensure that its consultation process expressly covers the 'note' in question to gauge views on its inclusion in a revised scope of practice." (p. 4)

This is a minor but significant victory for due process – and, I would argue, due analysis. Finally, over the next six months, it is hoped that the psychotherapy profession will have its say (as it should have done in 2007/2008) over the extent of the state's control over and regulation of psychotherapy and related but distinct activities.

## PUBLIC GENERAL STATUTES

*Health Practitioners Competence Assurance Act 2003*



DOI: 10.1002/ppi

## REFERENCES


Bailey, P., & Tudor, K. (2011). Letters across "the ditch": A trans Tasman correspondence about regulation and registration. In K. Tudor (Ed.), *The turning tide: Pluralism and partnership in psychotherapy in Aotearoa New Zealand* (pp. 77–95). Auckland, Aotearoa New Zealand: LC Publications.

Dawes, R. M. (1994). *House of cards: Psychology and psychotherapy built on myth*. New York, NY: Free Press.

Dillon, G. (2011). The road to registration: the New Zealand Association of Psychotherapists and its long search for identity and recognition through legislation In K. Tudor (Ed.), *The turning tide: Pluralism and partnership in psychotherapy in Aotearoa New Zealand* (pp. 31–38). Auckland, Aotearoa New Zealand: LC Publications.

Fay, F. (2011). Birth of an independence movement: the Organisation of Independently Registered Psychotherapy Practitioners. In K. Tudor (Ed.), *The turning tide: Pluralism and partnership in psychotherapy in Aotearoa New Zealand* (pp. 199–214). Auckland, Aotearoa New Zealand: LC Publications.

Heron, J. (1997). A self-generating practitioner community. In. R. House, & N. Totton (Eds.), *Implausible professions: Arguments for pluralism and autonomy in psychotherapy and counselling* (pp. 241–254). Ross-on-Wye, UK: PCCS Books.

Hogan, D. B. (1979). *The regulation of psychotherapists* (4 vols). Cambridge, MA: Ballinger.

House, R. (2012). Review of the book [*The turning tide: Pluralism and partnership in psychotherapy in Aotearoa New Zealand by K. Tudor, Ed.*]. *Psychotherapy and Politics International*, *10*(2), 157–160.

House, R., & Totton, N. (Eds.), (1997). *Implausible professions: Arguments for pluralism and autonomy in psychotherapy and counselling*. Ross-on-Wye, UK: PCCS Books.

Macleod, A., & McSherry, B. (2007). Regulating mental healthcare practitioners: towards a standardised and workable framework. *Psychiatry, Psychology and Law*, *14*(1), 45–55.

Ministry of Health. (2007, June). *Regulatory impact statement: Regulation of psychotherapy and establishment of the Psychotherapists Board*. Retrieved 15 October 2010 from http://www.moh.govt.nz/moh.nsf/indexmh/ris-psychotherapy

Ministry of Health. (2010). *How do we determine if statutory regulation is the most appropriate way to regulate health professions? Discussion document*. Retrieved 28 August 2010, from http://www.moh.govt.nz/moh.nsf/pagesmh/9894/$File/statutory-regulation-health-professions-discussio-n-document-jan10.pdf

Mowbray, R. (1995). *The case against psychotherapy registration: A conservation issue for the human potential movement*. London, UK: Trans Marginal Press.

Parker, I., & Revelli, S. (Eds.), (2008). *Psychoanalytic practice and state regulation*. London, UK: Karnac.

Postle, D. (2007). *Regulating the psychological therapies: From taxonomy to taxidermy.* Ross-on-Wye, UK: PCCS Books.

Psychotherapists Board of Aotearoa New Zealand. (2008a, 18 June). *A response from the Board to the consultation*. Retrieved 6 August 2010 from http://www.pbanz.org.nz/index.php?NewsandEvents

Psychotherapists Board of Aotearoa New Zealand. (2008b, 22 May). *Consultation. Scopes of practice and qualification criteria*. Retrieved 6 August 2010 from http://www.pbanz.org.nz/index.php?NewsandEvents

Psychotherapists Board of Aotearoa New Zealand. (2011). *Consultation on proposed scope of practice for Visiting Educators*. Retrieved 30 September 2011 from http://www.pbanz.org.nz/index.php?Previousconsultations

Psychotherapists Board of Aotearoa New Zealand. (2012). *Fact sheet on registration*. Retrieved 30 March 2012 from http://www.pbanz.org.nz/index.php?NewsandEvents

Totton, N. (1997). The Independent Practitioners Network: A new model of accountability. In R. House, & N. Totton (Eds.), *Implausible professions: Arguments for pluralism and autonomy in psychotherapy and counselling* (pp. 287–293). Ross-on-Wye, UK: PCCS Books.

Tudor, K. (Ed.), (2011). *The turning tide: Pluralism and partnership in psychotherapy in Aotearoa New Zealand*. Auckland, Aotearoa New Zealand: LC Publications.

Wampold, B. (2001). *The great psychotherapy debate: Models, methods, and findings*. London, UK: Routledge.




DOI: 10.1002/ppi