NURSING AND MIDWIFERY IN AFRICA

How can the law help to create a better practice environment?

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Introduction

• Why regulate health professions?
• Why get involved in the process of legislation review?
• Regulation as a mechanism to strengthen the profession of nursing and midwifery
• The process
• Some policy and legislation ideas for the regulation of Nurses and Midwives in Africa
What is regulation?

The full range of legal instruments by which governing institutions, at all levels of government impose obligations or constraints on private sector behaviour, Constitutions, parliamentary laws, subordinate legislation, decrees, orders, norms, licences, plans, codes and even some forms of administrative guidance can all be considered as “regulation”

Organisation for Economic cooperation and Development (OECD)
Why regulate health professionals?

- Sound stewardship, good governance and effective health workforce management

- Two suggested strategies are:
  - Develop regulatory systems and processes for the accreditation, licensing and certification or credentialing of all categories of the health workforce, including professional codes of practice and cross border recognition of health worker competencies; and
  - Promote professional and regulatory body responsibility for self regulation and continuous quality improvement (WHO 2009)

- Statutory regulation of health professions is a mechanism to protect the public by setting minimum standards of education, experience, clinical and ethical competence for entry into a profession.
Why get involved in review and amendment of legislation?

• CPD can address quality in the profession
  – Create a process
  – Make it mandatory for nurses and midwives
  – Use mechanisms such as codes, regulations etc
  – Change it as more is learned about what works

• Any thing else that you might want to achieve as a profession that would be helped by entering the debate about health laws especially those regulating health practitioners?
Regulation as a mechanism to advance the profession of nursing and midwifery

• Create a better structure for the profession to take its place in the mix of players which are needed to address Africa's health needs for the next 10 to 20 years
  – Nurses, nurse practitioners, midwives, community health workers, traditional birth attendants
  – Enhance nursing practice by creating nursing levels which can prescribe and dispense a range of drugs needed in the clinical settings in which nurses work, usually without doctors
Regulation as a mechanism to advance the profession of nursing and midwifery

• Create a system which protects the public by dealing with poor performers
  – Fair and applies natural justice
  – Can also be used to further educate profession on what not to do

• Enhance the power of the profession to take its place at the policy table
  – Advise the government on HRH issues
  – Participate in health planning
  – Use experience of the profession to inform health system strengthening
  – Advocate for resources
  – Explain the need for various education policies
Are current laws supporting current nursing and midwifery practice in Africa?

- Based on older British laws to regulate health practitioners
- Drafted at a time when health issues and ideas about professional practice were quite different
- Medical model in urbanized, industrialized society
- Little or inadequate statement of purpose or objectives
- No African focus
- Principal acts prescribe education and other requirements when a more flexible instrument might be used (Mauritius)
  - Standards prescribed in regulations or codes which can be more easily amended
  - Can incorporate by reference in law to codes such as IMC if that is a preferred policy approach
Are current laws supporting current nursing and midwifery practice in Africa?

• Process for undertaking investigations might be more flexible and better tailored to the nursing profession
  – Are council members trained in the process of investigation?
  – How many prosecutions are carried out??
  – For what?
  – are the outcomes communicated back to the profession or the public?
  – Are outcomes used in education and standard setting?

• Role of Council in prescribing requirements for CPD needs to be clearer
  – Role of Council and relationship to government and policy making could be clearer
  – Council could have broader policy role – national health strategy

• Relationship with public service disciplinary process could be clearer
Policy issues - Maintaining professional competence

• Recency of practice, i.e. refuse to renew registration if the nurse has not had sufficient nursing experience in the past 5 years to be able to practice as a nurse
• Continuing professional development
  – Point system
  – Minimum number per year
  – Over a five year cycle with a yearly minimum
• Points for different activities such as
  – QA activities;
  – practice related CPD; and
  – teaching and research.
Policy Issues - Prescribing rights for Nurse Practitioners

- Nurse Practitioners are registered nurses educated for advance practice
- What criteria for NP endorsement, educational requirements, continuing competence, accreditation of courses and transition period?
- Standards/competencies which are nationally consistent (if relevant) and internationally compatible
- Amend nurses legislation and drugs and poisons legislation to enable:
  - Limited rights for nurse practitioners to prescribe scheduled drugs
  - Establish lists of drugs in each category of nurse practitioner
- Particular application for
  - Primary health care
  - Rural and remote care
Policy issues - Some alternative sanctions

- Warning letter which does not constitute a finding of unprofessional conduct
- If the practitioner agrees, an undertaking not to repeat conduct is drawn up and signed by the practitioner placed on his/her file and sent to the complainant
- Enable requirements for
  - Counselling
  - Further education in specific areas
  - Conditions on registration
- Appointment of case manager
- Case management meetings would be conducted on a ‘without prejudice’ basis.
- The conduct of the case management meetings would be at the case manager's discretion, but could include the seeking and exchange of witness statements.
- The case manager could also ask questions of parties and expert witnesses to establish areas of agreement and to narrow issues in dispute.
What cohorts of workers are left out?

- Community health workers?
- Do community health workers deliver primary health care in setting where care is shared with registered nurses?
- Traditional medicine practitioners?
- Do traditional medicine practitioners assist women giving birth?
How widespread is traditional medicine?

• A traditional system of medicine has always formed part of most ECSA countries health systems.
• It is estimated that approximately 80% of Kenyans rely completely or partially on traditional healthcare for their needs.
Risk to the public

most health workers competent and caring, however, always a limited number present a risk to the public

- lack of standards of training
- lack of professional competencies
- failure to refer
- unscrupulous health workers making unsubstantiated claims
- the difficulty of members of the public identifying skilled and qualified health practitioners
- Adulteration/contamination of medicines
- Mixing herbal and allopathic medicine
How could such workers be included in the regulatory regime?

• Code of conduct for unregistered practitioners
• More than one code of conduct if necessary to cover large cohorts of health practitioners such as community health workers and traditional birth attendants
• enable prosecution of practitioners falling short of a code of conduct for clinical standards
Some policy ideas for reform of laws

- Include objectives and principles in the Act
  - Principal objective to protect public health
  - Recognize the right to health or seek to implement (some African Constitutions already do so e.g. SA)
  - Recognize the importance of women’s health, MDGs, CEDAW
  - Recognize as an object the implementation of the MDG’s esp. HIV and maternal and child health
  - Recognize the role of traditional health practitioners and CHW’s
Some policy ideas for reform of laws

- Provide clarity in role and powers of Council
  - Setting standards of practice and education with details in codes/regulations
  - Investigation powers
  - Formal hearings to be done by body with nursing expertise
  - Nursing expertise and some community representation on tribunal, no need for doctors
  - Traditional medicine expertise if hearing complaint and traditional birth attendant etc
  - More flexible sanctions
Some policy ideas for reform of laws

• Consider levels of registration for
  – Nurse;
  – Midwife;
  – Nurse practitioner;
  – state enrolled nurse; and
  – community health workers

• Policy development process needs to establish criteria, competencies, education, professional standards etc
Some policy ideas for reform of laws

• consider operation of other laws and need for consequential amendments e.g.
  – Drugs and poisons law for prescribing rights
  – Public sector legislation to ensure compatibility of disciplinary processes for public servants

• Develop, implement and monitor standards of education, practice and CPD requirements
  – Does legislation support policy?
Some policy ideas for the region

- Mutual recognition of registration (laws need to align)
- Emergency recognition of registration
- Laws to enable information sharing about practitioners who have been struck off, including such people in definitions of “Unprofessional conduct”
- Yesterday, every country presentation expressed great interest in learning from experience of others
- Possibly record outcomes of ARC collaboration as a tool for practice
  - Capture ARC work in case studies, examples of processes to amend regulation and examples of CPD approaches, codes of practice
  - ARC recognises sovereignty of countries but could record some core elements of registration laws and creates loose leaf guide to regulatory approaches which includes some examples from other countries and some sample legislative text
Policy and politics

• Don’t expect it to be easy

• What is broader policy environment?
  – What does the national health strategy say about HRH or the profession of nursing?
  – Did cabinet/high level body sign it off?

• How much political clout has the Minister for Health?

• What is the broader legal environment?
  – Does the constitution say anything about health?
  – Are there treaties obliging the country to take certain actions?
  – Human rights conventions mention health, MDG’s
  – CEDAW articles about health care and rural women
Policy and politics

- Is the Minister interested in HRH?
- Have you got a high level champion in the MoH?
- What is the progress of the parliamentary cycle?
- When is an election due?
- Do your stakeholders support you?
- Where is public opinion?
- If the government has expressed interest in a reform agenda, have they allocated funding for implementation? Is it recurrent?
Reviewing and amending legislation

- What is the issue?
- Use description of issues to set terms of reference for review
- Does the MoH and the Minister support the review and any necessary legislative amendment?
- Other stakeholders, association, consumers, academic community?
- Develop consultation and communication strategy
- Note progress of the parliamentary or national assembly (lawmaking entity) cycle, elections etc.
- Consult stakeholders, including consumers on issue as set out in terms of reference
- Develop policy
- “Reality test” proposed changes with some/all stakeholders
Draft law

• Policy is “translated” into a draft law or “bill”
• Approval from other portfolios such as Attorney General, Treasury, Public Service Commission, provincial/rural affairs
• Any costs whether once only or recurrent need to be in the budget
• Consequential amendments to other laws e.g. drugs and poisons, public sector management laws, etc
• Any regulations needed?
• Minister needs to champion bill at cabinet/council
Preconditions for implementation

- Are resources available to implement legislative reform?
- Council to register and hear complaints
- Process to set
  - CPD process
  - Education standards
  - Code of conduct
- Officers to investigate complaints
- A communications strategy
- Training for investigating officers
- Possibly the tribunal goes on circuit in geographically difficult countries
A few lessons from the coalface

• When high level support is expressed for a reform agenda, never ever relax

• Political will must be maintained over a long process and almost anything will destroy it, ministerial reshuffles, change in MoH personnel, outbreak of disease, political scandal, even a coup

• Political will to advance health needs to survive in cabinet with other agendas which are about money, power and political gain
  – Political will to advance health is very fragile
  – Political will to advance women is more fragile

• Always ask how the reform agenda will be funded

• Unfunded reform is not worthless, but its close

• Never relax

• Never give up
Conclusion

• Getting involved in the policy and regulation debate can:
  – Improve quality in the profession
  – Place the profession to meet the shifting demands of practice over the next 10 to 20 years
  – Place the profession at the policy table
• It will be hard
• Important decisions are made in the policy debate
• The voice of the profession of nursing and midwifery must be heard