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Dear Editor

### Regulation of New Zealand Physiotherapists over the past 100 Years

The review of regulation of the physiotherapy profession in New Zealand in the March 2013 centennial issue of the journal (Grbin 2013) only briefly mentions the Acts prior to Health Practitioners Competence Assurance Act (HPCAA), and mostly discusses the HPCA Act under which the profession has only been regulated since September 2003. As an historical review of the regulation of the Physiotherapy profession and the practice of Physiotherapy in New Zealand, there are some key omissions and milestones important to note.

The Physiotherapy Act 1949 regulated the profession in New Zealand for fifty-four years of the past 100 years, and was surprisingly forward thinking in some respects for that time. It introduced further Disciplinary Powers (section 24) to those under the previous Masseurs Registration Act 1920 (MRA) and its Amendments, being those for "gross negligence or malpractice or grave impropriety or misconduct", as well as for physiotherapists "convicted of an offence punishable by imprisonment". These were quite apart from the "fitness to practice" sole provision mentioned in the recent review (Grbin 2013) for mental illness, (under the 1949 Act those for disability were clearly stated under section 22 "Notification of Disability and suspension of registration" as provisions for physiotherapists deemed to be "unable to perform his professional duties satisfactorily due to mental or physical disability" by a medical superintendent of a hospital or a medical practitioner (1964 amendment)). The 1949 act also protected more than the title of "masseur" or "massage expert" as protected in the 1920 MRA, adding the protection of the use of the names and titles "Physiotherapist" and "Physical Therapist", as well as the use of "any written words, initials, or abbreviations of words intended or likely to cause any person to believe that he is registered under this Act or is engaged in the practice of physiotherapy or any branch of physiotherapy or that he is qualified to practise physiotherapy or any branch of physiotherapy". This was at a time well before the appearance of the numerous non-registered and "alternative health" practitioners, massage and exercise therapists who have emerged in more recent years. The NZSP and successive Boards advocated strongly over many years for a review of the 1949 Act to better protect the public of New Zealand, particularly in the areas of discipline, fitness to practice, and also the need to link ongoing competence to the issue of Annual Practising Certificates.

Servicing of the Board's activities / administrative functions under the 1949 Act was all undertaken by the Department of Health / Ministry of Health. The Chair of the Board was always the Director General of Health (or his nominee), and even the Registrar was an employee of the Health Department/Ministry of Health, being the Advisory Physiotherapist until the restructuring of the Ministry of Health in 1991, which removed the roles of Advisory Physiotherapists, and therefore the positions of Registrar and Deputy Registrar were no longer physiotherapists but employees of the Ministry, who serviced several Boards. The membership of the Board was prescribed under the Act, as it was under the MRA 1920, and there were no lay persons,

the only non physiotherapists being the Chair and two medical practitioners. Until the HPCA Act came into force, the 1949 Act underwent several Amendments and changes to Regulations. The fifty pound penalty stated in the recent review (Grbin 2013) had actually risen to \$10,000 (still inadequate) by the time the 1949 Act was replaced by the HPCAA.

A significant omission in the Grbin (2013) account of the history of the legislation is The Physiotherapy Amendment Act 1999. Without the enactment of this important legislation, the Physiotherapy Board would neither have had the capacity nor capability for the many huge changes and operational functions it would be facing following the enactment of the HPCAA. In 1996, the Health Occupational Registration Acts Amendment Bill (HORAAB) was drafted, its purpose being to amend eleven health occupation regulation statutes, including the Physiotherapy Act 1949. This proposed legislative amendment was to be a prelude to an "umbrella Act" that would cover all NZ Registered Health Practitioners, the blueprint for this proposed Act being the Medical Practitioners Act 1995, which included provisions for the review of ongoing competence, physical and mental fitness to practice, scopes of practice, registration of specialisation and the ability to restrict or supervise practice. The HORAAB was passed in the house on 6 October 1999 and came into force seven days later and amended the 1949 Act again as the Physiotherapy Amendment Act 1999.

The changes this enabled were major – the Board's status changed to a "Body Corporate with perpetual succession" with the "rights, powers and privileges" and "all the liabilities and obligations of a natural person of full age and capacity". It removed the Ministry of Health employed officials (the Chair and Registrar) from the Board, amended the prescribed composition of the Board to eight members from nine, included two lay members for the first time, removed the right of Board membership of the heads of the "approved training schools" (amending this to "not more than one person involved in teaching physiotherapy"), gave authority for the Board to elect its own Chair and Deputy Chair for the first time in the history of the regulation of Physiotherapy, and gave authority for the Board to employ and appoint its own staff, including a requirement to appoint a Registrar and Deputy Registrar, and the ability to employ any other staff or agents. Under this Act, the Board was, for the first time, able to operate independently from the joint Occupational Registration Boards Secretariat housed in the Ministry of Health, and select and employ its own dedicated staff, which considerably improved responsiveness, efficiency and effectiveness of the Board's operational activities, and allowed the Board to prepare the operational infrastructure and develop governance policies to support the Board's activities and be ready for the additional requirements and functions under the proposed HPCAA. The Physiotherapy Amendment Act 1999 also increased the level of fines, required an Annual Report to the Minister of Health, and made the Board financially independent of the other Boards. It required the Board to open a bank account and appoint a Chartered Accountant as auditor of the financial activities of the Board, permitted the prescription of a range of fees, permitted the imposition of a disciplinary levy on all practitioners, and permitted the Board to use modern technology and media to hold meetings and make binding decisions.

The first CEO/Registrar of the Physiotherapy Board commenced his employment in March 2000, and the first lay members were appointed by the Minister of Health in October 2000.

Grbin (2013) mentions the development of the 1999 "entry level competencies for physiotherapists" document. However, it should be noted that this document was based on a full revision and update of the first "Registration Requirements – Competencies and Learning Objectives" published by the Board in 1988, from which the Schools of Physiotherapy developed their first four year degree curriculae. This original document proved to be extremely important as evidence of the need for the Physiotherapy undergraduate training in New Zealand to require a funded four year degree to meet these competencies, rather than three years (which the Ministry of Education would only fund). The Board undertook a detailed project and sought documented opinion from Australian and British senior Physiotherapy Educators, as physiotherapy students had to fund their fourth year until the Board's efforts achieved success in gaining the funding of the fourth year in 1998.

The Grbin review (2013) clearly sums up the value of appropriate statutory regulation, as now provided by the HPCAA, which addresses the deficiencies in prior legislation. The review also reinforces the need for the Board to have a more active role in workforce planning to better meet the changing health needs of the NZ public, as well as keeping the physiotherapy workforce informed of any lessons learned and recommendations from adverse outcomes or near misses, thus ensuring continuous quality improvement.

## REFERENCES

- Department of Health (1949) The Physiotherapy Act 1949 (and Amendments) <http://legislation.knowledgebasket.co.nz>
- Grbin M (2013) Regulation of New Zealand Physiotherapists over the past 100 years. *New Zealand Journal of Physiotherapy* 41(1): 07-10.
- Ministry of Health (1999) Memorandum to Members of all Boards from Sonia Thistoll on passing of Health Occupational Registration Acts Amendment Bill
- Ministry of Health (1995) Medical Practitioners Act (1995)
- Ministry of Health (2003) Health Practitioners Competence Assurance Act 2003
- Physiotherapy Amendment Act (1999) <http://legislation.knowledgebasket.co.nz>
- Physiotherapy Board (1988) Registration Requirements Volume 1 – Competencies and Learning Objectives
- Slane B H Privacy Commissioner (13-05-2006) Health Occupational Registration Acts Amendment Bill <http://privacy.org.nz>

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