



Who is regulating the regulators: Quis custodiet ipsos custodes?

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Quis custodiet Ipsos custodes?

- Two Millenia ago.
- The Roman Poet Juvenal posed the question “Who watches the watchers?”
- The effectiveness of watchers is based on both power and independence.
- Ensure watchers are properly trained and are wise (Plato)



But Some Would Have Us Believe

- From a systematic standpoint, regulators being government-granted monopolies with a captive “client” base, are unregulated. There is no robust regulation of their performance. There is no quality-assurance regulation of the job these regulators do. They are not accountable to the public in a meaningful way. In theory, agencies are regulated by the political process, but the political process is so ineffective at regulating regulators that the regulators are *de facto* unregulated.

Baetjer (2015)

Cato Journal 35:3 pg 634



Acting in the Public Interest

	19 th to mid-20 th Century Perspective	1960s to 1990s Perspective	21 st Century Perspective
Dimensions of considering an Acting in the Public Interest argument	<ul style="list-style-type: none"> Standards of practice Standards of qualification Elevating the profession Addressing public information deficit Entry Barriers Competence of practitioner Access to services 	<ul style="list-style-type: none"> Service quality Practitioner competence Efficiency of the system Cost effectiveness Best for the patient and the public Better coordination of services More flexible to patient need. Increased patient choice Lay representation on boards Oversight by government Equity of access 	<ul style="list-style-type: none"> Costs of regulation Increased efficiency Increased cost effectiveness Reduction in entry barriers to mobility Promoting competition Regulation <u>proportionate</u> to risk. Promoting alternatives to the licensure model
Synopsis	Benefits both profession and the public. Quality to the forefront but some concerns over access, choice and entry barriers.	Professions cannot be trusted to act in the public interest and therefore need oversight. Balance between quality, cost and access	Public interest tied to efficient provision of services through minimum regulatory intervention

Holding the Regulator to Account - Challenges

- Technical complexity of subject with contestable evidential base
- Dynamic nature of work
- Lack of measurement criteria
- Timeframe for impact
- Overlapping responsibilities –
 - Scale and shifting typology of accountability (Independent – Umbrella; legislative – administrative)
- Opacity of some processes (informal settlements)
- From rule-based to principle-based
- Right touch regulation (The new dark-arts)



Why Regulate the Regulators

- To prevent abuses of monopoly power
- To prevent anti-competitive actions;
- To protect public interest;
- To ensure the regulator operates within the bounds of their scope;
- To bring about improvements to efficiency, effectiveness and quality; and
- To ensure discretionary powers are exercised in the interest of the public

Dimensions to consider

- Operational
- Routine
- Informal
- Elections
- Board Member Responsibilities
- Strategic
- Targeted
- Formal
- Appointments
- Board Member Day-job Responsibilities



The How – The Current Reality

Specific

- Complaints
- Regulatory Impact Assessment
- Peer Review
- Freedom of Information Request
- Benchmarks with Best Practices
- Judicial Review
- Media Reports
- Board Appointments/Removals
- Audit Reports
- CEO Appointment
- Organizational Competence/Scope

General

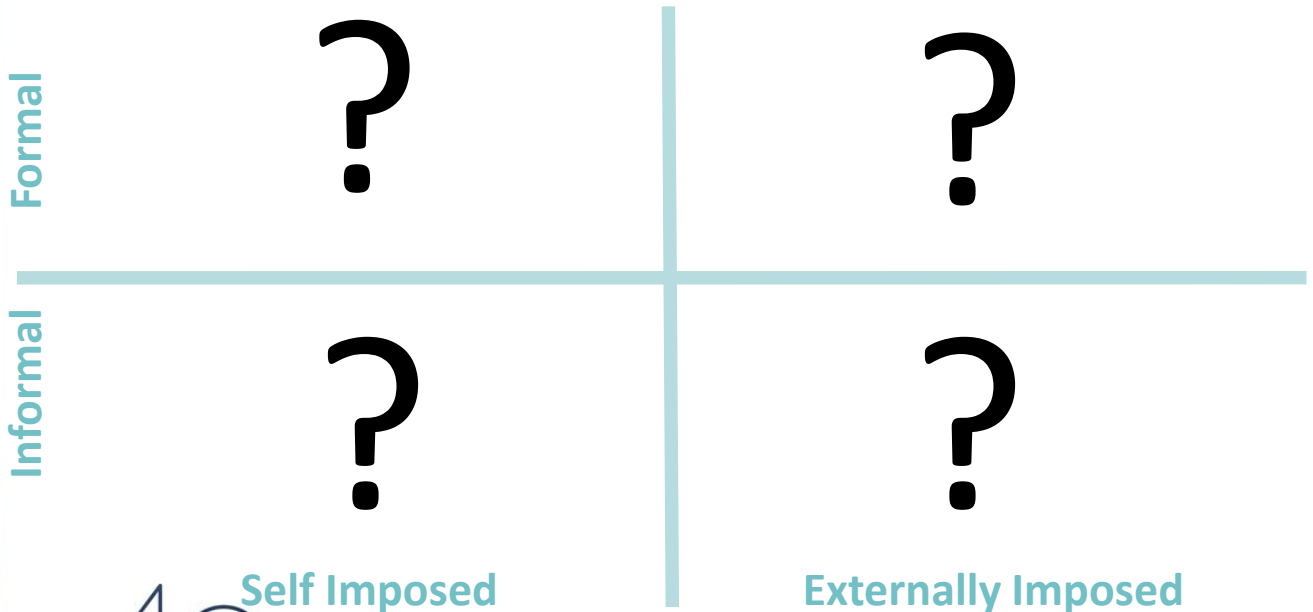
- Annual reports
- Parliamentary Committees
- Lay Board Members
- Consultation Requirements
- Giving Reasons for Decisions
- Ministerial Direction
- Funding Control
- Sunset Reviews
- Super-Regulators

Weak

Strong



The How – Simply The Best?



De Jure & De Facto Independence

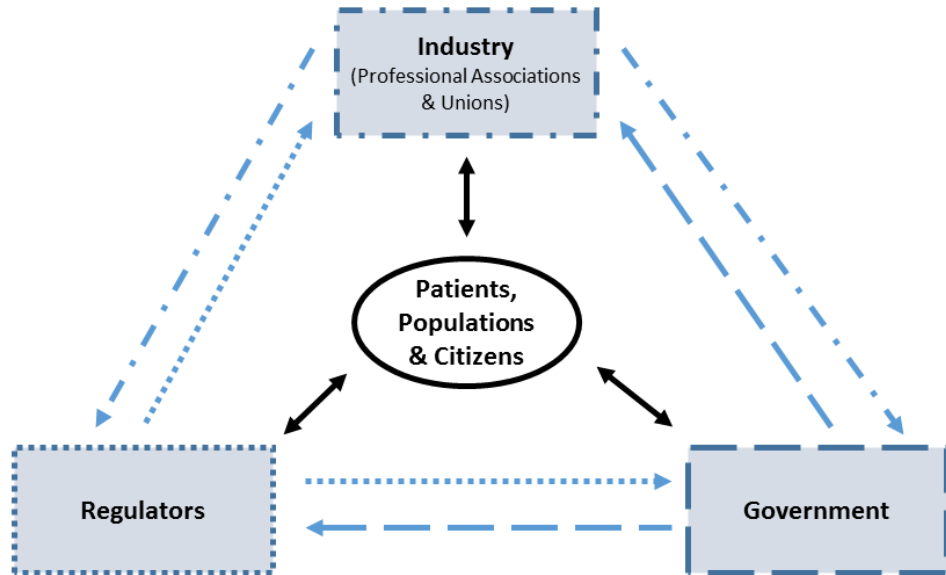
De Jure Independence, is derived from legal and formal arrangements. It often involves the agency being placed outside the bureaucratic chain of command freeing the body from following directives from government (the executive).

Measured by examination of laws, agency statutes and indicated by freedom to appoint and remove senior staff, budgetary control and the degree to which the agency shares power with other entities.

De Facto Independence, refers to the self-determination of agencies to exercise their autonomy and regulatory competence.

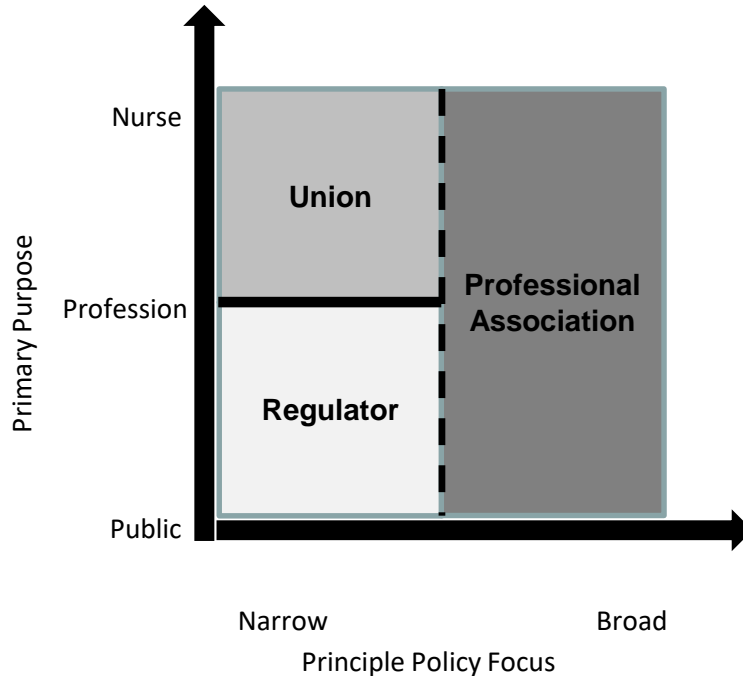
Measured by the degree of control over the appointment of board members and the links and reporting/supervisory requirements to oversight structures. Board appointments that are non-renewable and for longer time-frames.

Better Understand The Forces At Play



Interactions and Relationships between Actors [Modified from OECD (2017)]

Starting A Deeper Analysis



Theme	Regulatory	Professional Organization	Trade Union
Primary Purpose	To protect the public	To advance the profession	To advocate for the nurse (member).
Organizational Nomenclature	Board, Body, Chamber, College, Commission, Council, Division, Order, Orderm.	Academy, Association, Body, College, Guild, Society.	Union, Syndicate, Society
Membership Status Individual Designation	Predominantly mandatory Licensee, Registrant	Predominantly voluntary Member	Predominantly voluntary. Member
Coverage	All those who authorized to practice and use the protected title.	Principally those that have affiliated with the association but often seeks to speak for the profession as a whole.	Those that have affiliated with the union.
Cultural alignment	Impartial and evidentiary approach empowered by legal & societal mandate	Advocate and promote profession	Represent and defend the nurse
Rights and Responsibilities	Curtailed to public protection	Broadly based and self-determined	Generally, curtailed to labor issues and employment matters.
Typical Activities	Set minimum licensure, practice, education and discipline standards, maintain register, enforce discipline.	Advocate for the profession, set aspirational standards, offer advanced credentials	Negotiate terms and conditions, promote positive work environments, protect and defend member rights.
Principle Policy Focus	Regulatory policy	Professional & health policy	Labour policy
Source of Power	Statute/Legislation	Numbers, Visibility, Influence, Position statements.	Numbers, Influence, collective bargaining, withdrawal of labor.
Political Partisanship	No	Sometimes	Usually
Methods of advocacy	Often indirect or alternatively through formal consultative processes and limited to mandate.	Mostly direct and broadly based advocacy and uses a wide range of mobilization techniques.	Mostly direct, focused on benefits, worker's rights and conditions of service, use a wide range of mobilization techniques.
Board Composition	Primarily appointed	Elected	Elected
Accountability	To public via legislative/governmental structures	To members	To members
Continuing Professional Development Purpose	Continuing competence of the practitioner	Career progression and professional development	Benefit to the employee
Continuing Professional Development Role	Validate participation in approved offerings ensure licensee meet requirements.	Provide learning content/opportunities and offer accreditation of learning.	Provide Learning content/opportunities

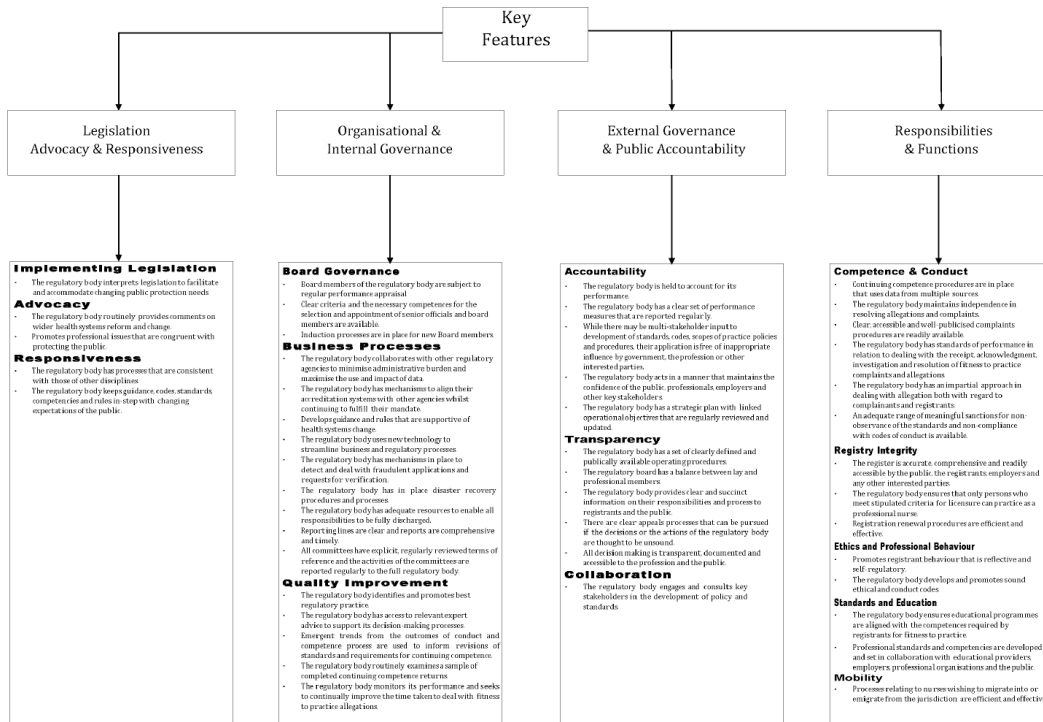
Themes and associated characteristics relating to the three organizational types (Benton et al, 2017)

But What About Other Stakeholders?

- Education
- Employers
- Funders
- Patients
- Populations

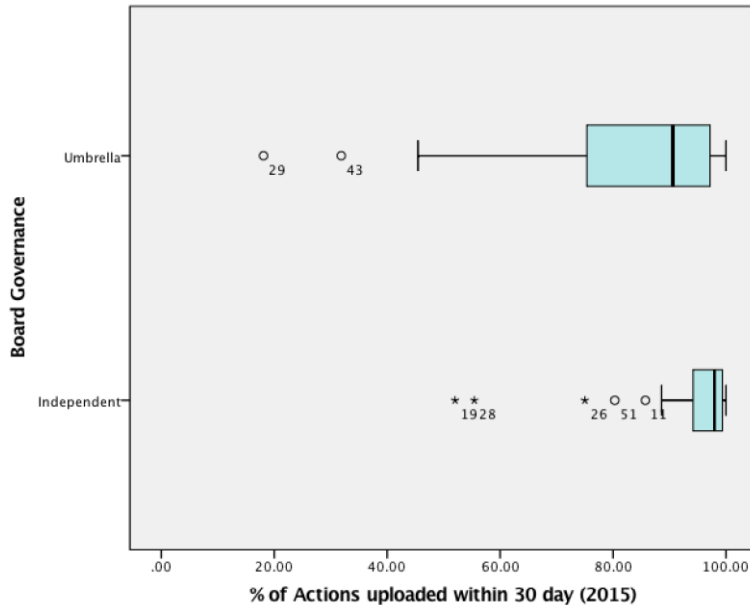


Metrics And Performance



Theme	Issues Compared	Measures	Umbrella Boards	Independent Boards	Statistical Results
Governance	Number of consecutive terms a board member can serve?	2	22	14	$X^2=7.26$ df=2 P=.03
		3	0	5	
		Unlimited	3	5	
Governance	Do statutes known as sunset laws exist for the Board of Nursing?	No	10	17	$X^2=4.705$ df=1 P=.03
		Yes	15	7	
Governance	Who appoints/hires the executive officer?	Board Members	5	23	$X^2=30.5$ df=4 P<.001
		Board Members with Governor input	1	1	
		Governor with no Board input	1	0	
		Governor with Board Member input	1	0	
		Department/division of state no Board input	17	0	
Autonomy	Does Board of Nursing Draft or Approve the budget	Draft	4	9	$X^2=25.498$ df=3 P<.001
		Approve	1	2	
		Draft and Approve	3	13	
Autonomy	Does the BON have a fund balance	Not involved in budgeting process	17	0	$X^2=5.98$ df=2 P=.05
		No	8	2	
		Yes	14	21	
Autonomy	Is the BON financially self-sustaining	Does Not Apply	3	1	$X^2=12.07$ df=1 P<.001
		No	12	1	
Autonomy		Yes	13	23	
Information	Is there a newsletter published by the BON	No	13	3	$X^2=8.688$ df=1 P<.001
		Yes	12	29	
Information	Frequency of Newsletter	1-2 times a year	6	3	$X^2=4.9$ df=1 P=.027
		3-4 times a year	6	18	
Information	Does the Board produce an annual report	No	12	5	$X^2=3.989$ df=1 P=.046
		Yes	13	19	

Boxplot Showing Median, upper & lower quartiles,
Upper & lower limits & outliers by organizational type



Year	Significance	Z	Mann Whitney U
2013	0.006	-2.726	195.50
2014	0.029	-2.180	226.00
2015	0.024	-2.263	221.50

Returning to the beginning

- “[T]he selection will be no easy matter”, he conceded; “but we must be brave and do our best.”

Socrates cited in
Plato’s The Republic, Book II.



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