Special report on the rates of compliance with obligations set out by HRPA on the part of members and registered students
September 30, 2017

Executive summary

The compliance we are referring to in this document is the compliance on the part of members and registered students with obligations imposed by the professional regulatory body. This must be distinguished from HRPA’s compliance with the various rules and obligations that apply to it. For professional regulatory bodies, the term ‘regulatory compliance’ can refer to either and the two meanings can be confused. The two meanings of ‘regulatory compliance’ do have a link in that ensuring the compliance of members and registered student with the obligations set out by HRPA is a component of HRPA’s compliance with its statutory mandate. This report focuses on the compliance of members and registered student with the obligations set out by HRPA.

At HRPA, compliance rates other than the compliance rate for the Continuing Professional Development requirement are very low: ranging from 1.7% for the requirement to notify the Registrar of bankruptcies and insolvency events to 38.3% for the requirement for members and registered students in independent practice to obtain adequate professional liability insurance and to notify the Registrar of such. On the other hand, by way of contrast, the compliance rate for the Continuing Professional Development requirement stands at 97.4%.

The essential difference between the Continuing Professional Development requirement and other requirements is that the Continuing Professional Development requirement has a reasonably robust verification mechanism and the clear-cut consequences for non-compliance. This is not the case for the other requirements.
Of course, the target compliance rate for all requirements is 100%. Actual compliance rates are usually in the high ‘90s, as it is for our Continuing Professional Development requirement. HRPA still has a long way to go to reach these compliance rates.

The best explanation for the low compliance rates at this time is that most members and registered students still do not think like true professionals and still do not think of HRPA as a true professional regulatory body. Although the implementation of more robust verification mechanisms (e.g., practice inspections, audits) would be wise, at this point the major thrust should be to educate members and registered students as to their duties and obligations as professionals and that compliance with the requirements set out by their professional regulatory body is an intrinsic part of professionalism.

**Why is compliance so important?**

Compliance is extremely important for professional regulatory bodies. Compliance refers to the degree or extent to which members and registered students abide by the rules established by the Association. Compliance rates act as a ‘nexus’ for a number of causal threads related to effectiveness as a professional regulatory body. Compliance rates are:

- An indicator of maturity as a profession,
- An impact multiplier,
- An indicator of level of professionalism amongst registrants,
- An indicator of respect for the professional regulatory body on the part of registrants

At HRPA, compliance rates are especially important because they are probably the best indicator of where we are in the transition from *unregulated profession* to *regulated profession*.

![Unregulated profession → Regulated profession](image1.png)

To be somewhat simplistic about it, in the transition from unregulated profession to regulated profession, members and registered students are going to have to get used to being regulated and the professional regulatory body is going to have to get used to regulating the professionals it registers. Compliance rates provide an overall measure of where HRPA registrants are along this transition.

Compliance rates are also an impact multiplier. Rules are established by the professional regulatory body to promote and protect the public interest. To the extent that there is non-compliance, the rule is commensurately less effective in promoting the public interest. For instance, if there is a compliance rate of 50%, then only 50% of the impact on the promotion and protection of the public interest can be expected.

Compliance is also an index of professionalism. The only real difference between true professions and other skilled occupations is the existence of a professional regulatory body that holds regulated professionals accountable for their competence and conduct. Having to comply with rules established by a professional regulatory body is the mark of true professionalism.
The paradox of compliance

The idea is that professional regulatory bodies do not want the professionals they regulate to simply comply with practice standards and rules of professional conduct when they are ‘watched’ by the professional regulatory body but to internalize those rules such that such standards are rules are applied even when not ‘watched.’ It is a simple reality that there are many aspects of professional practice and conduct that professional regulatory bodies cannot ‘watch.’ Professional regulatory bodies depend on the professionalism of the professionals they regulate to protect the public.

The extent to which regulated professionals comply with standards and rules only when there is a mechanism in place to monitor compliance should be a cause for concern.

The challenge for professional regulatory bodies is to encourage intrinsic motivation to comply with standards and rules. Of course, professional regulatory bodies cannot stop from enforcing standards. In fact, most professional regulatory bodies have a statutory duty to enforce standards of qualification, of practice, of conduct, and of competence. It would also be irresponsible for a professional regulatory body to simply trust that the professionals they regulate are compliant with standards and rules. However, professional regulatory bodies must do this in such a way that does not erode the intrinsic motivation of professionals.

What members and registered students are required to do at HRPA?

Requirements can be divided into two categories: the ones that require members and registered students to provide information or evidence of compliance and the ones that do not.

As an example of the latter, the HRPA Rules of professional conduct require members to abide by numerous rules including rules on advertising one’s professional services. The difference, however, is that members are not required to provide information or evidence of compliance with the rules on advertising one’s professional services. Non-compliance could be the subject of a complaint but members and registered students are not required to provide information or evidence of compliance with these rules.

At HRPA, the rules that do require members and registered students to provide information or to document compliance include:

- Maintaining current and accurate contact information,
- Notifying the Registrar of any of the events listed in the self-reporting obligations by-law,
- Notifying the Registrar of bankruptcies and insolvency events,
- For members and registered students in independent practice, obtaining appropriate professional liability insurance and provide the Registrar of evidence of such,
- For designated members, participating in the Continuing Professional Development program and to submit a completed CPD log every three years,
- For members and registered students who no longer wish to be registered with HRPA, notifying the Registrar in writing of the intent to resign.

Note that for the above, only for the Continuing Professional Development requirement has robust verification mechanisms and clear-cut consequences for non-compliance. Obligations could be mapped out as follows:
For most obligations, the Association depends on self-report and the honesty of members and registered students. For instance, bankruptcies and insolvency events, the occurrence of events covered by the self-reporting obligation. Should the member or a registered student not report these events, it is unlikely that the Association would find out.

In regards to the professional liability insurance requirement, since the requirement only applies to members and registered students in independent practice, members and registered students can avoid being identified as non-compliant by simply indicating that they are not in independent practice on their initial registration form or subsequent renewal forms.

**Compliance rates at HRPA: Where do we currently stand?**

<table>
<thead>
<tr>
<th>Obligation</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proportion of members and registered students with complete and accurate</td>
<td>Unknown</td>
</tr>
<tr>
<td>contact information (compliance with requirement to keep contact information up to date)</td>
<td></td>
</tr>
<tr>
<td>Proportion of members and registered students that have promptly and</td>
<td>Unknown</td>
</tr>
<tr>
<td>accurately the occurrence of events listed under self-reporting</td>
<td></td>
</tr>
<tr>
<td>obligations</td>
<td></td>
</tr>
<tr>
<td>Compliance rate for requirement to notify Registrar of bankruptcies and</td>
<td>1.7%</td>
</tr>
<tr>
<td>insolvency events set out in Act¹</td>
<td></td>
</tr>
<tr>
<td>Compliance rate for professional liability insurance requirement as</td>
<td>38.3%</td>
</tr>
<tr>
<td>enabled in the Act and set out in By-laws²</td>
<td></td>
</tr>
<tr>
<td>Proportion of resignations as a proportion of non-renewals (compliance</td>
<td>28.3%</td>
</tr>
<tr>
<td>with requirement to resign as opposed to just not paying one’s dues)</td>
<td></td>
</tr>
<tr>
<td>Compliance rate with Continuing Professional Development (CPD)</td>
<td>97.4%</td>
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<tr>
<td>requirement as set out in the By-laws</td>
<td></td>
</tr>
</tbody>
</table>

As a reference, based on conversations with many professional regulatory bodies, professional regulatory bodies begin to get concerned when compliance rates fall below 95%. We can see that, at HRPA, the compliance rates, except for the CPD requirement are quite low.

It should be noted that compliance issues are not unusual for new professional regulatory bodies as registrants adjust to being regulated professionals. However, even by the standards of new professional regulatory bodies, the compliance rates at HRPA are egregiously low.
**Why is the compliance rate for the CPD requirement as high as it is when other compliance rates are so low?**

The most likely explanation is that for the compliance with the Continuing Professional Development requirement there exists a robust verification mechanism and clear-cut consequences for non-compliance. This is the only obligation for which this is the case. This suggests that members and registered students comply only when they are watched and there are clear consequences for non-compliance. Although a matter of speculation, the fact that the compliance rates are high only when there exists a robust verification mechanism and clear-cut consequences for non-compliance does not bode well for compliance with other obligations where there is no obligation to provide information of evidence of compliance.

**What are the reasons for non-compliance?**

There are many possible reasons for non-compliance. The overarching reason for the low compliance rates at this time is that most members and registered students still do not think like true professionals and still do not think of HRPA as a true professional regulatory body.

- Members and registered students are simply not aware of the requirement,
- Members and registered students are aware of the requirement but did not think that it was important for them to comply.

**Members and registered students are simply not aware of their obligations**

This is not impossible despite the fact that all members and registered students must sign-off on the conditions of registration with HRPA upon initial registration and annually upon renewal after that. Other than Office of the Registrar web pages, webinars from the Office of the Registrar, and articles in the Office of the Registrar Regulatory Affairs newsletter, there has been very little communication from HRPA on the obligations that come with registration with HRPA. For instance, the HRPA Member Handbook makes no mention whatsoever of any obligations that come with registration with HRPA. It is not surprising, then, to find that some members and registered students are just not aware of their duties under the Act and the By-laws.

**Members and registered students are aware of the requirement but did not think that it was important for them to comply**

This reason for non-compliance is of greater concern.

For instance, there are likely many members and registered students in independent practice who do not obtain professional liability insurance because they believe that their practice poses no threat to anyone. Unfortunately, this is not how professional regulation works. It is not up to the member or registered student to decide whether a requirement is reasonable or not. A member or registered student may feel that a requirement should not apply to them, but that does not mean that the member or registered student has the choice of complying or not.

Even more startling evidence came from the 2017 HRPA Member Survey.

When members and registered students were asked on the 2017 Member Survey whether they would notify the Registrar of a bankruptcy or insolvency event were they to experience such an event, 6.4%
said they would not, and 19.2% said they were unsure whether they would report the bankruptcy or insolvency event or not. Given that the requirement to report a bankruptcy or insolvency event is the law, the fact that 25.6% of members and registered students would disregard the requirement outright or were unsure whether they would abide by the requirement is of concern.

In fact, the evidence suggests that these numbers may be optimistic in the sense that a number of members and registered students who said they would notify the Registrar of a bankruptcy or insolvency event are likely significantly greater than the number of members and registered students who would actually notify the Registrar of such an event. For instance of the 20 members that said they did experience a bankruptcy or insolvency event in the last year, 13 said they would report the bankruptcy or insolvency event to the Registrar, and yet in that time period, HRPA received only 3 notifications of a bankruptcy or insolvency event. Obviously, the proportion of members who would report such an event to the Registrar is overestimated by self-report data.

Based on the write-in comments on the 2017 HRPA Member Survey, it is clear that some members do not see HRPA’s regulatory authority as legitimate and that they believe that they can decide whether a requirement is to be complied with or not. Some members and registered students seem to believe that they do not need to comply with rules they don’t agree with. This, of course, is of real concern to a professional regulatory body as it goes against the basic tenets of self-regulation.

**How do we bring compliance to acceptable levels?**

Although the implementation of more robust verification mechanisms (e.g., practice inspections, audits) would be wise, at this point the major thrust should be to educate members and registered students as to their duties and obligations as professionals and that compliance with the requirements set out by their professional regulatory body is an intrinsic part of professionalism.

Every interaction with HRPA, including all communications, must reinforce the perception that HRPA is a professional regulatory body and that all members and registered students are regulated, professionals. Members and registered students need to understand not only what these professional obligations are but how they are all part of true professionalism.

HRPA members and registered students must think of HRPA as their professional regulatory body and respect the authority of their professional regulatory body. This does not appear to be the case at this time. The key word here is respect.

Professional regulatory bodies want to be held in esteem by members for doing what they are mandated to do but with a recognition by members that they will act to protect the public interest when it needs to.

Achieving this kind of respect is the challenge. Of course, professional regulatory bodies must be deserving of respect. The professional regulatory body must demonstrate a steadfast commitment to the mandate, but that may not be enough. The professional regulatory body must cultivate this sense of respect.

Professional regulatory bodies need to continually explain their mandate of promoting and protecting the public interest but they also need to remind their members of the logic underlying self-regulation.
Professional regulatory bodies serve the profession by serving the public. As soon as this is no longer true, the whole logic underlying self-regulation breaks down.

As substantiated in the enabling legislation, the profession and its members made a deal with the government. In exchange for the privilege of self-regulation, the profession and its members agreed to establish and support a professional regulatory body that would in turn do whatever needs to be done to reduce, suppress, mitigate or eliminate the potential harms to the public stemming from the practice of the profession. Professional regulatory bodies are fulfilling a contract made between a profession and its members and the government.

A key to bringing about this respect is to get members to understand the underlying logic of self-regulation.