



## **PT Licensure Compact — The Countdown is On!**

*This article is based on a presentation by Charles Brown, Executive Director, Arizona State Board of Physical Therapy; Connie Clarkston, Executive Director, Missouri Board of Registration for the Healing Arts; James D. Heider, Executive Director, Oregon Physical Therapist Licensing Board; Louis D. Kelly, Esq., General Counsel, Kentucky Board of Physical Therapy; Michael Sobowale, Board Director, Tennessee Board of Physical Therapy; and Tennessee Senator Bo Watson, PT, at the 2016 FSBPT Annual Meeting.*

Four Down, 49 to Go! This was an interactive session with the four states to pass the Physical Therapy Licensure Compact (PTLC) in 2016: Arizona, Missouri, Oregon, and Tennessee. Meanwhile, Kentucky has been busily preparing and proactively planning for introduction of legislation of the PTLC in 2017. It takes 10 states to make the Compact operational and 2017 could be the year! The panelists shared the decision-making process to move forward with the PTLC, the preparation done to ensure a smooth introduction of the bill, and the lessons learned from their unique experiences in the legislative session. The session concluded with a question and answer session with the panel.

The Oregon Physical Therapist Licensing Board (OPTLB) has always looked at access to care as a public benefit issue. In protection of the public, it has always made choices to try to break down barriers to licensure.

Prior to 1996, every state had a different score for the national exam. If you were from a state with a 2.5 deviation and wanted to go to a state with a 1.5 deviation, you couldn't get licensed there. You had to meet their standard. Oregon did away with that rule. Another rule Oregon deleted pertained to foreign-trained PTs. It used to be that even if a foreign-trained PT had been working and credentialed elsewhere in the U.S. for 15 years, if they wanted to work in Oregon they had to start from scratch. Oregon changed that to allow them to practice in the state if they held a current credential and met the work requirements under a U.S. model.

So when the OPTLB first heard of the concept of the Compact and the opportunity came to it to break down barriers to the endorsement application process from state to state, it directed staff to move forward.

The first thing boards need to consider is their legislative environment, which is different state to state. In Oregon, boards cannot lobby or take a position on a bill unless permission is granted by the governor's office. One of the things boards need to look at is if their state has adopted the nurses or medical compacts. In states that have adopted compacts, the legislature is aware of what compacts are and how they work, which makes the board's

work that much easier.

The Oregon board then looked for partnerships. One obvious one was the local chapter of the APTA. They always had a copacetic relationship and the good thing about the APTA is they had a lobbyist who knew all the legislative players already. She was instrumental in going to the governor's health policy advisor and getting the governor's permission to allow the board to move it forward. The Oregon Physical Therapist Association (OPTA) lobbyist also found a champion in the chair of the Senate Committee on Health Care, who said she would sponsor the bill.

It's important the board and anyone who speaks about the Compact be educated on what it means to all stakeholders. Advocators don't need to know all the details, but they need to be comfortable with the language and terminology in the Compact so they can answer questions and educate others. The lobbyist was able to get the Board hearings before both the House and Senate health committees during the legislative day before the session began. In that way, the Board was able to educate legislators about the Compact.

Flexibility is a must as boards go through the process. The Friday before a Monday hearing, an AG contacted the OPTLB and she had some constitutional concerns about the Compact. She also expressed her concerns during the work hearing. In a hearing before the Senate health committee, the Board suggested it was going to scrap the bill and try again in 2017. The committee chair, however, said she liked the bill and urged a stakeholder meeting to work out their differences. A solution was found and the legislative counsel wrote an amendment to the bill that reflected the compromise. It was introduced and made its way to the Senate floor. Many people were helpful during the process, including the Federation, the Council of State Governments, and the OPTA. On March 3, Oregon became the first state to pass the compact.

In Tennessee, the Compact passed because the Tennessee Physical Therapy Association (TPTA) was very much in favor of it. It was brought to the Tennessee Board of Physical Therapy (TBPT) and a Federation representative was brought in to educate the board on the issue. Questions from stakeholders included the definition of a compact, what's its impact, and what does it mean to us. The Federation was able to answer the questions and concerns board members had.

The TBPT also reached out the TPTA because, just as in Oregon, they had resources and a lobbyist the board could leverage. During the Tennessee Day on the Hill, TPTA members converged on legislators' offices to explain the Compact concept.

The bill was introduced in January and became law in April. It went through five committees in the general assembly. The only real question that was raised was in the Ways and Means Committee, which inquired about the fiscal impact on the Board. The Board responded that there would be a recording cost and some start-up costs. However, the costs would be offset by the fees charged for the privilege of practicing in Tennessee.

Politics are always a factor when passing legislation, and politics in Tennessee and Oregon could not be more different. Oregon is a blue state and Tennessee is decidedly red.

However, good policy is good politics and the Compact is good policy.

Legislators always vote their district first. They always vote local first. Bringing in the American Physical Therapy Association does not have the same standing as bringing in your local chapter. Having your local chapter from Nashville, Tennessee, call a legislator in Chattanooga, Tennessee, does not have the same impact as a therapist from Chattanooga calling their own legislator.

When trying to move a piece of legislation, having the right sponsor is critical and having a sponsor who is in the majority party is important as well. The Federation is a great asset to those working on the issue, as is the Council of State Governments.

Arizona's efforts were not as organized as those in Oregon and Tennessee, but the Compact still managed to pass.

In 2015, a resolution opposing the Medical Compact made its way through the Arizona legislature. It didn't pass, but it had a lot of support. Once the PT Compact was drafted, the Arizona State Board of Physical Therapy (ASBPT) and staff discussed it, as well as having discussions with the association. In light of the messy Medical Compact resolution, the advice from the Board's contract legislative liaison was, let's wait. The Medical Compact resolution had left a bad taste in many mouths and the timing just wasn't right, the liaison believed.

But lo and behold, in February 2016 the Medical Compact, the Psychology Compact, and the update to the Nursing Compact were combined in one bill. They all passed through the House health committee without a squeak.

Texts flew between the committee chairman, the association lobbyist, and Board members saying let's get this done. The PT Compact was added to the bill with the others and it looked like Arizona was going to be the first state to join the PT Compact.

The bill breezed through the House but in the Senate some opposition to the Medical Compact arose. Still, it made it through committee and headed toward a full Senate vote. But all bills have to get past the Senate president to come to the floor, and he had concerns about the Medical Compact. At the same time, access was curtailed because the president cuts off all contact with state agencies at a certain point in the legislative calendar. The only ones who could get a meeting with him were large employers who wanted the compacts to go through. It passed and was signed into law by the governor in May.

There was some preparation meets opportunity there, in that the association and the Board had had their conversation ahead of time, had kind of discussed how it would end up working, and worked through the process. So, when an opportunity the Board didn't cause directly came about they were prepared to at least answer their questions and take part in the discussions.

Regardless of the jurisdiction, it's important to know the rules of your legislatures. There are 50 different legislatures, not counting the territories, and each have their own rules on who can move and stop legislation. That's why most associations employ lobbyists, because they know the rules.

The Missouri Board of Registration for the Healing Arts (MBRHA) used many of the same tactics used in other states. For example, the Missouri medical board worked with its association and has the trust of the members of the general assembly. The association took the lead, found a sponsor, and shepherded the bill through. But there were bumps along the way.

The bill's sponsor was a member of the Veterans Affairs Committee. Because of the military component of the bill, it was thought it could go through the Veterans Affairs Committee and avoid the Professional Registration Committee, which was having some struggles. It didn't work out that way. MBRHA and a Federation representative testified at the Professional Registration Committee. Before their presentation was completed, questions started flying about what compacts are and why they are used. Complicating the matter, a committee member was a physician who was frustrated over the Medical Licensure Compact.

Proponents left the meeting feeling a bit defeated.

The association lobbyist is very respected in the Capitol and contacted a friendly senator. The lobbyist also asked MBRHA to make phone calls to discuss the Compact from a regulatory perspective: this is how it can help Missouri citizens by providing access to care and this is how it can help PTs in your district. After the calls, it was quiet for a while. Eventually, the MBRHA received a call from the senator carrying the bill who was considering including it as part of an omnibus bill.

While awaiting the governor's signature, the MBRHA received a call from the lobbyist and the executive director of the Board of Nursing saying the PT Compact was creating problems. There were some technical issues in the way the PT portion of the bill was formatted, but it was determined the reviser of statutes could fix it. In the meantime, the Senate sponsor, who was in France at the time, was upset because he had told his colleagues the bill was sound based on the MBRHA's assurances. From a regulator's perspective, trust from the senator is of paramount importance. From the senator's perspective, respect from his colleagues is paramount. In the meantime, the nurses were gearing up to bombard the governor's office. Collaboration kicked in and the Board of Nursing and the MBRHA came together to stop the train wreck. The bill was fixed and signed and became effective August 28.

Kentucky is different than the other states represented on the panel because Kentucky has not yet passed the compact. There's a political term called a trifecta, which means the governor and both houses of the legislature are controlled by the same party. According to the National Conference of State Legislatures, 30 states, including Arizona, Oregon, and Tennessee, are all trifecta states. Kentucky was not at the time of the panel discussion. In Kentucky, the governor's mansion and state Senate are controlled by Republicans and the House is controlled by Democrats, although they only control it by five seats and it could turn in the upcoming election. (It did and Kentucky is now a trifecta state.)

When the Democrats took control of the House after Republicans controlled it for 30 years, it caused a lot of strife in trying to get things passed. There is a lot of contentiousness

between the House and Senate and House and governor's office. In light of the uncertainty after November, the Kentucky Board of Physical Therapy (KBPT) has tried to employ a strategy based on whether the Democrats retain control of the House or the Republicans take control. Either way, boards need to know who's in control, who likes each other and, more importantly, who doesn't like each other, because that could be an issue.

The governor and Senate leader are on good terms so the Board looked at getting them on board, knowing the House would have to come on board eventually. Senate leadership was approached first because the nurses had tried to pass through the Enhanced Nurse Licensure Compact last year and were stalled in the Senate. The Senate was concerned about the centralized compact commission making rules that take away from state sovereignty. The Senate told the Board to start with the governor first, who was not concerned about the issue, possibly because the message the PT Board was putting out was — we are reducing regulatory barriers to competition. While boards are chiefly concerned about public safety, that's not necessarily the first concern of an elected official.

The governor's legislative aide said he would take it to the governor with a recommendation to pass. Surprisingly, the Senate leadership wasn't concerned with the PT compact commission and, unsurprisingly, they liked the issues of enhancing competition and increasing access. Compact proponents had not met with House leadership yet because it was unknown who the House leadership would be until after Election Day. Still, they drew up a bill to present to the License and Occupation Committees in the respective chambers. The Senate committee chair is a good friend of a KBPT staff member and the House committee chair is good friends with a Board member. Neither was to be asked to sponsor the bill, however. When you have a split legislature, it's best not to have a member of leadership sponsor your bill because they generally are the most polarizing to the leadership of the other side.

Assuming the Democrats retained control and there's a split, the KBPT wanted someone who was going to champion the bill and work hard but who is not in leadership and not a lightning rod. The issue was brought to the Senate leadership and they said, no problem, find someone to sponsor it in the House, and we'll pass it.

As things proceed, another thing proponents will emphasize is two of Kentucky's border states, Missouri and Tennessee, have already adopted the Compact. According to the Federation, all Kentucky's border states except West Virginia are pursuing it this year. So one of the arguments the KBPT will make is it doesn't want to be the noncompetitive island in the region.

In response to a question, the audience was told there will be a cost to be credentialed in another jurisdiction under the compact, but it will be less than a full licensure process. It also will not affect anyone who doesn't want to utilize it. If a licensed PT lives and works in the middle of the state and has no intention of working across state lines, he needn't apply for credential elsewhere.

Compacts are very common. Driver's licenses operate across state lines under a compact, for example. All legislators can understand that concept. The other important point to make

is that states do not give up their sovereignty. The defense against concerns about sovereignty is there are bills in the U.S. Congress to nationalize licensures and compacts are a bulwark against that. It is equally important to frame your arguments according to the makeup of your legislature. If your legislature is diverse, perhaps your argument needs to be broad. In Tennessee, where nearly everyone is a Republican, the argument was we want to replace Obamacare with a system that allows insurance to be sold across state lines, and if we want that for health insurance, why wouldn't we want it for our professionals.

Relationships with legislators also are important. In the world of technology, relationships are increasingly developed via text messages. But legislators are still into the human relationship business of looking people in the eyes, because they believe they can read people pretty well when looked in the eyes.

Relationships with other professional organizations are also important, particularly with those with which you don't see eye to eye all the time. They don't necessarily have to support you; you just don't want them against you. Legislators have a limited amount of time and can't invest in every issue. So if a PT bill comes before the legislator, the legislator is going to call the person he or she trusts most, which may be the chiropractors.

To the question of who takes disciplinary action — the state where the violation occurred or the home state — it was said that it's the state where the action occurred, although the board may want to inform the home state. The credentialing jurisdiction's action is limited to the privilege of operating in your state. However, the home state can also investigate and take action against the license. If the privileged state pulls the privilege, the privilege is pulled from all compact states for two years.



**Charles Brown** is Executive Director of the Arizona State Board of Physical Therapy. Chuck graduated in 2008 from Grand Canyon University with a Bachelor of Science in Business Administration. He is also a former Marine. Mr. Brown has worked in the licensing and regulating of healthcare providers since 2001. During his time with the Arizona Boards, he has served at the levels of Investigator, Deputy Director, and Executive Director. He actively participates in the CBA and served as Chair and Vice Chair from 2010-2011. He has served as Chair of the Exam Administration Committee, and as a member on the Education Committee, Finance Committee, as well as other task forces and focus groups.



professions.

**Connie Clarkston** began her career in regulation in 1985, working with boards of Nursing, Embalmers and Funeral Directors, Podiatric Medicine, Occupational Therapy, and Private Investigators. In 2012, Ms. Clarkston became the Director of Budget and Legislation for the Missouri Division of Professional Registration. In that role, Ms. Clarkston worked with the Missouri General Assembly on several issues affecting professional licensing, including rewriting Missouri's preneed funeral law and the Missouri Autism Bill, which requires health carriers to provide coverage for the diagnosis and treatment of autism spectrum disorders. Ms. Clarkston became Executive Director of the Missouri medical board in 2012, overseeing physicians, PT and PTAs, along with five other healthcare



**James D. Heider** is the Executive Director of the Oregon Physical Therapist Licensing Board. He has been in this position for 13 years and works directly with the planning, development of legislative strategies, and implementation of new statutes and rules for the Oregon PT Board. During his tenure he has intentionally nurtured and developed a copasetic working relationship with Oregon's local chapter of the APTA. This relationship played a crucial role in the passing of the Compact in Oregon.



**Louis D. Kelly, Esq.**, is a partner at the law firm of Adams, Stepner, Woltermann & Dusing in Covington, Kentucky, and serves as the General Counsel for the Kentucky Board of Physical Therapy. Mr. Kelly began his career as an Assistant Boone County Attorney, where he prosecuted criminal cases in District Court and advised the Fiscal Court on legal matters. During his career he has represented numerous cities, counties, and other public entities in a variety of legal actions in both state and federal court on issues ranging from civil rights, whistleblower actions, workers' compensation, harassment, and discrimination claims. He has successfully represented his clients through all phases of litigation, including summary judgment, trial, and on appeal. He has also advised and prosecuted claims on behalf of public entities in administrative hearings and disciplinary hearings.



**Michael Sobowale**, Board Director, Tennessee Board of Physical Therapy



**Senator Bo Watson, PT** is a member of the Tennessee Senate. He was first elected as a State Senator for the 105th Tennessee General Assembly, having previously served as a State Representative during the 104th General Assembly. Sen. Watson represents the 11th district, which encompasses part of Hamilton County. In July 2011, he became Speaker pro tempore in the Tennessee Senate. Sen. Watson graduated Magna Cum Laude from the University of Tennessee at Chattanooga in 1983 with a B.A. in Biology, and received his education and training in physical therapy at the University of Tennessee Center for Health Sciences in Memphis, Tennessee.