



## **To tell or not to tell...what is the question?**

This article is based on a presentation given by Nancy R. Kirsch, PT, DPT, PhD and Sherri Paru, PT at the 2013 FSBPT Annual Meeting.

Physical therapy is in a very difficult ethical climate. There is a crisis of confidence. People are facing challenging moral dilemmas and have to address the competing needs of multiple stakeholders.

For instance, a case was reported to a physical therapy board by an insurance company of two therapists who were seeing about 60 patients a day. All the billing was for individual sessions.

A therapist was called in to the board and said that he reported the issue to his boss multiple times. He also reported that an aide was seeing lots of other people and probably billing for physical therapy. The therapist said he was vaguely aware of the duty to report.

Therapists often ask why the board doesn't do something when it knows there are bad physical therapists. The majority of boards don't have the power to do anything without a complaint; it would be considered entrapment.

The moral potency construct comprises moral courage, moral efficacy and moral ownership. A PT or PTA has moral potency when they express all three of these components.

- Moral ownership: knowing that that it is the person's responsibility to act.
- Moral courage: seeing actions through to their resolution and overcoming the fear that leads to inaction.
- Moral efficacy: the ability to act and be successful in the action.

Currently, most boards focus on making an ethical judgment rather than ensuring that the judgment is enacted. This results in judgments that are only about 20% effective; focusing only on the capacity for moral judgment accounts for 80% of the differences in ethical behavior. Here are questions that the board needs to ask:

- How do we improve the motivation to act once a moral judgment has been reached?
- How do we help people make those difficult decisions?
- What are the repercussions?
- What happens in a clinical situation when a student sees something that is absolutely

wrong? Is that student's graduation delayed if he is pulled from that clinical situation?

Moral potency helps a PT or PTA bridge moral thought to moral action. Moral ownership is the first step. Physical therapists with high degrees of moral ownership are less likely to practice self deception and are more likely to engage when confronted with ethical challenges. The roadblock to moral ownership is self deception. There are at least four easily recognized forms of self deception.

- Not taking an ethical action – or not exposing an unethical action – to avoid potentially negative repercussions.
- Exposure to less consequential unethical acts smoothes the way for acceptance of increasingly unethical acts. It becomes easy to justify incremental acts as not “so bad,” causing the downward spiral of what is considered unethical behavior.
- Attributing unethical acts to external sources. “Our competitors behave this way and we have to do so to stay alive. The insurance companies force us to act this way.”
- It is easier to tolerate unethical behavior if someone believes he is part of the supporting cast (“just following orders”). It is more difficult to take action when it involves a superior rather than a peer or subordinate.

Many people make ethical judgments during the course of their work. In most organizations, there are many challenges, distractions and incentives/disincentives that keep people from stepping up to act on their ethical judgment. People know what should be done but are not motivated to make that choice.

Moral potency is the capacity to generate responsibility and motivation to take moral action in the face of adversity and persevere through challenges. It is developed over time by experience, observing others whom the person respects or by planned learning and training interventions.

Physical therapy is a young profession but is moving forward by helping colleagues move to the next step of moral potency.

### **Case studies from Oregon**

The following case studies with fictitious names were presented.

- Devon (Dictator, evil, vindictive, offensive and noncompliant) is a bad boss. Most people don't want to work with him. He has threatened to make life miserable if the employee leaves the job. People are afraid to report Devon, and if they do, they don't report anything that is unethical. The board did a thorough investigation and found nothing. The employees don't like Devon. The board told Devon to try to get along better with his employees.
- Maddie (Manipulative, adorable, deceitful, dishonest, incompetent and evasive) is a cute, bubbly person and nobody thinks she can do anything wrong. She was working as a PTA because she couldn't take the PT exam again. She kept giving excuses for not taking the PT exam. An investigation revealed that she had been fired from several jobs for incompetence as a PTA. She left the state and worked without a license in Washington, which didn't require a PTA license at the time.

- Sid (Sneaky, inconsistent, domineering) was inappropriately touching young patients. He had a strong personality and no one wanted to confront him about it, so he was just fired. Two years later, the board received a complaint about a serious impropriety with two 13-year-old girls. He lost his license. The person who fired him from his first job should have brought the issue to the board's attention to prevent serious sexual assault.

## Oregon statutes

Oregon statutes say that when a person fails to report to the board direct knowledge of an unprofessional, incompetent or illegal act that reasonably appears to be a violation of the statute, the person could receive a disciplinary action. Disciplinary action can also be taken if someone interferes with an investigation or disciplinary proceeding of the board.

Oregon's general statutes stipulate that a health professional has a duty to report another health professional and cannot interfere with or use threats or harassment to delay or obstruct any person in providing information or evidence to the board in any matter, investigations, contested case proceeding or other legal action instituted by the board. An employer cannot discharge an employee based primarily on the employee's attempt to comply with or aid in the compliance with board rules.

Oregon's board will help a licensee reporting a violation to the board by offering to send a subpoena to that licensee to show up for an interview. She said it makes them feel a little more comfortable in the workplace.

Oregon will also take anonymous complaints, but they are difficult to investigate unless enough detail is included in the complaint.

What can boards do?

It was suggested the boards look in their practice act or statutes to find "duty to report" and "immunity" provisions. They should then educate licensees on their responsibilities and protections regarding unethical behavior. Boards can also offer ethics and jurisprudence courses and educate the public on its rights.



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Sherri Paru received her PT degree from Ithaca College in 1991. Since 2002, Sherri has been the Clinical Advisor and Investigator for the Oregon Physical Therapist Licensing Board. She is a Certified Investigator through CLEAR (Council on Licensure, Enforcement and Regulation). Sherri is the co-producer of the Boundary Violation Vignette Series for Physical Therapists and has co-presented several lectures on professional boundaries and ethics for FSBPT, APTA and OPTA and CLEAR.