



This article is based on a presentation by Troy Costales, Public Member and James D. Heider, Executive Director, Oregon Physical Therapist Licensing Board; Whitney Lawrence, Public Member and Melinda Richardson, PT, MA, President, Arizona Board of Physical Therapy; Barbara J. Safriet, JD, LL.M., Visiting Professor of Law, Lewis & Clark Law School, at the 2017 FSBPT Annual Meeting.

The Art of the Public Member: Maximizing Your Consumer Member in Public Protection

The expertise and professionalism of the professional members is essential on every regulatory board. For quite a long time, however, those were the only voices on boards. Then, about 40 or 50 years ago, boards began to recognize the need for the additional voice of the public, the supposed beneficiaries of these regulations. The Pew Health Professions Commission and the Citizen Advocacy Center are among the groups that have been advocating for public members on boards for years. It's an idea that is finally taking hold.

Public members can be a powerful voice on regulatory boards by bringing in fresh perspectives and oftentimes a perspective the board would not grasp on its own. But because they also do not have, in most cases, a background in the profession, it is imperative that boards allow them to ask questions, insightful and otherwise.

Public members present the public perspective. They are the public's voice. It's essential that they make a full commitment to attendance, participation, and preparation. They need to know upfront that board service is time consuming. They also must have a full commitment to continuous learning. The healthcare regulatory niche is 20% of the U.S. economy, and it's complicated, fluid, and volatile. It involves local, state, federal, and international laws. It takes continuous learning to keep up — from all board members, not just public board members.

Valuable Characteristics for Potential Public Members

Public members must be curious and ask questions — after they have done their own preparation. Asking informed questions forces every board member to step back and look at the big picture.

A good background for public members includes previous service in civic and other groups. It's good preparation for the give-and-take in group discussions and group decision-making. Previous experience in consumer or public policy advocacy also is helpful because it helps prepare for speaking in a public forum. Many people have fabulous ideas, but they've never had the experience of speaking in a larger group and lack confidence. It's not a deal-breaker, but it's

an added advantage if they have this already.

Experience that gives them a special awareness of diverse populations and the service needs of geographic areas the board serves would be beneficial as well. "One size fits all" often is not true, especially in health regulation when you're looking at access, rural or inner-city areas, or particular, previously underserved populations.

Public members also can be a good counterbalance to the possible biases of the professional members.

The Oregon Model

Oregon's governance model is set up in a way that citizens have a say in a lot of different ways in the governance and the execution of authority. Public members give their time to be members of boards and commissions and make decisions that affect every single Oregon resident and guest to the state. The implementation of these authorities ranges from public safety, commercial licensing, training, transportation, natural resources, and environmental initiatives to professional license regulation, all of which contribute to the success of the state.

Having a public member on board has become seen as so important to public protection that Oregon passed a law in 2012 that states when a health professional regulatory board reviews the investigatory information and report, the public member of the board must be actively involved. That has been interpreted as meaning that if the board has one public member and that public member is not at the meeting, the board cannot have discussions or take an action. That puts boards in a quandary if the public member for whatever reason is sick or can't come in.

For that reason, the legislators made two options available to boards. Boards could either remove one of their professional members and add a second public member or add a second public member if the resources and the funding is there. The Oregon PT board chose to add a second public member, going from seven to eight, with two public members.

Oregon launched a formal training program two years ago. It consists of four hours of training in three online sessions. Every board member must complete it in the first six months of their appointment. The training covers public sector ethics, public meetings records, overview of rule-making, diversity, and inclusion. It also covers human resources, payroll, finance, and procurement because being a board member is more than just the compliance. Board members also are responsible for the operations and the administration of the board.

But just having public members on board does not guarantee success. The Oregon secretary of state issued some audits that were critical of some health care licensing boards. Not the Physical Therapist Licensing Board, but within the health care regulatory community, a number of licensing boards' troubles had been highlighted. Another report questioned the semi-independent boards that are not under the direct authority of the legislature or under some of the statutory designs, and the small agencies that typically are one to four people.

The secretary of state brought up questions about that governance and where those organizations were headed. The audits of the professional health regulatory boards identified weaknesses in governance, acquiescence of lay citizen (public) members to the direction of the

board administrator or the licensees around the table, and a lack of knowledge by these boards around the Administrative Procedures Act, and what the appropriate authority and steps are when dealing with licensees and their personal property rights with a license.

Mentor the Members

Most new public members define public protection as injury and harm to patients. Public protection, however, is more than just seeking out those bad players or seeking out people who perhaps have bad practices or have injured people. Access to care is a public protection issue. Public awareness, too, is a public protection issue, as is public outreach.

Public members also need an understanding of regulations and the statutory authority to regulate. It's important they know the difference between statutes, rules, regulations, and policy. It's also important that a public member know how boards promulgate rules and how statutes are written and run through the legislature.

Understanding who the key stakeholders are is very important. Students coming out of school don't understand the key stakeholders, so to expect the public would understand would be a weakness. Key stakeholders include the jurisdiction's professional association, but it goes beyond that. The American Physical Therapy Association (APTA) and the Federation of State Boards of Physical Therapy (FSBPT) are key stakeholders. In Oregon, the Oregon Physical Therapists in Independent Practice (OPTIP), which represents 150 clinics in private practice in Oregon, is a key stakeholder. All board members should know the key stakeholders for their specific state and profession.

How Public Members Can Help Themselves to be Useful to the Board

The most important thing a new public member can do when committing to serve on the board is to be all in. Read a lot. Review the board's website, obtain copies of the state statutes, the administrative rules, recent board minutes, and look back at the prior proceedings of the board to see what was done. Ask questions of everybody, not just on the board, but the executive director too. New board members should also familiarize themselves with the professional association.

Attending the FSBPT's Regulatory Training in Alexandria, Virginia, introduces new board members to some of the boards around the country, how they're set up and structured, and their responsibilities.

But possibly the most important thing to raising a new board member's comfort level of being a citizen (public) member is attending the board meetings. All too often, lay citizen (public) members just don't show up. That was part of what came out at the Oregon Secretary of State office. People felt overwhelmed, discounted, not able to plug in and that it was just too challenging to be part of it.

How Boards and Staff Can Help Public Members

Boards that have more than one public member benefit when a new public member comes on board. In Arizona, for example, a new public member sat next to a seasoned public member. The seasoned member had assembled a binder of charts, graphs, and other information he perused during meetings to stay on track. He was more than happy to share his binder with the new member.

The board president/chair is also crucial to the new public member's success. Board discussions should be slowed to allow the public member to grasp the full meaning of the discussion. The board president should also be aware of the public member's body language. If the public member seems confused on a point, the president should stop and ask if the public member has a question. At times, the president may also ask if the public member has anything to add to the discussion to encourage participation.

Some presidents also ask witnesses to clarify "for the benefit of the public member." This not only promotes conversation and understanding for the public members, but it oftentimes promotes conversation among the professional members. For the whole group, it brings to light that not every physical therapist does everything in the same way.

Board meetings can cover up to 500 pages of material, and it's full of clinical jargon. Boards need to slow the pace when they have a new board member and leave time for discussion and provide a safe haven for any new public member to not feel that a basic clinical question is out of bounds. Public members should be seen as a voice of reasonableness.

When the dry needling issue arose in Arizona a couple of years ago, the board president stayed attuned to the public member's reaction to what was being presented to the board. It was very controversial. The board was breaking new ground and the president often looked at the public member just to see, as a consumer and somebody who was seeing it from a very different perspective than maybe a clinician would, what does that mean for the public?

Sometimes PTs overthink the issues. The public members can cut to the chase and say, "This is what I'm seeing." That feedback helps crystallize the issue for the professional board members.

All board members serve the same purpose. They are there to protect the public. The public members' perspective is vital in that protection of the public.



Troy Costales is a Public Member of the Oregon Physical Therapist Licensing Board. He was elected as the first chair of the Physical Therapy Compact Commission in June 2017. He is currently serving in his second term as a public member on the Oregon Physical Therapist Licensing Board. Troy previously served as a public member of the Oregon Real Estate Board, including two years as Vice-Chair. In his professional and volunteer careers, he has led multiple initiatives and organizations at the local, state, and national level. The national experience includes the positions of Chair, Vice-Chair, Task Force Chair, federal negotiations team member, and liaison to multiple national associations. Troy is the Administrator of the Oregon Department of Transportation's Transportation Safety Division, serving in that position for three Governors. He has more than 25 years of experience in transportation safety. Troy has a Master Degree in Public Administration from Portland State University.



James D. Heider is the Executive Director of the Oregon Physical Therapist Licensing Board. In his 15 years with the Board, Jim has been instrumental in the recruitment, orientation, and development of several Public Members to the Oregon Board.



Whitney Lawrence is a Public Member of the Arizona Board of Physical Therapy. She graduated in Business and Global Politics from Arizona State University. Whitney attended nursing school but realized she could make a difference in the medical field in other ways. She started a non-profit that brought bicycle ambulances to rural villages in Guatemala. She worked in the Governor's Office, where she learned how to get involved with state boards. Her background and love for the medical industry drew her towards the Board of Physical Therapy, where she was appointed as public member in 2016.



Melinda Richardson, PT, MA, is President of the Arizona Board of Physical Therapy. She has practiced for 33 years, the last 20 of which have been in hospital administrative roles. She is currently the Director of Acute Care Therapy Services for two trauma centers in Arizona. Mindy has also served the last seven years on the Arizona Board of Physical Therapy and is the current President. As an employer for community hospitals and as a regulator, Mindy appreciates the role that public members serve in meeting the mission of the state Physical Therapy Board. They bring a unique perspective to Board duties and are a direct line to a laymen's point of view.



Barbara J. Safriet, JD, LLM, is a Visiting Professor of Law, Lewis & Clark Law School. She previously served as Associate Dean for Academic Affairs and a Lecturer in Law at Yale Law School. She has served as a member of The Pew Health Professions Commission and its Taskforce on Health Care Workforce Regulation, and as a Health Law Consultant and Presenter for the Rockefeller Foundation, among others. Barbara has published and lectured extensively on topics of administrative and constitutional law and healthcare workforce regulation. She served as the Public Member of the Federation of State Boards of Physical Therapy's Board of Directors for 10 years, through 2010.

FSBPT® is a registered trademark of the Federation of State Boards of Physical Therapy.