



president's **perspective**

The Role of Licensing Boards in Public Protection: An Evolution Not a Revolution

Nancy R. Kirsch, PT, DPT, PhD, FAPTA

Regulation is anything but static and our membership is always confronting the newest challenges and opportunities in regulation. While the importance of regulation has been demonstrated, the manner in which we regulate most effectively is often in question. In evaluating the importance of regulation in our current health care delivery system we have to consider all stakeholders in the regulatory community. We all agree that the public is at the center of our regulatory world, but we have increasing concern for the importance of being responsive to the licensee and the importance of maintaining a strong, professional, and competent workforce.

By 1901 all states had some form of physician licensing law (Starr, 1982). As other professions developed, legislatures saw the need to establish regulatory language that placed the responsibility for public protection within the purview of the professional regulatory entity. Proponents of licensure characterize self-regulation as an indicator of professionalism, and a commitment to public protection and accountability for consumers (Rand, 2008). Physical therapy became one of those professions deemed to meet the requirements of professional regulation. Abraham Flexner argued that “something more than just a degree or claim is needed to make a profession.” Historically, regulatory boards were established only to control professional market entry. Boards developed criteria with regard to the minimum standard for educational preparation including supervised clinical practice. The privilege to self-regulate is given to the professional community as a sign of trust between the board and the public that the board is charged to protect. The licensing boards were given the privilege of defining what constitutes good professional behavior as defined by board promulgated rules and regulations = (MN, 1996). Boards then took on the role of assessing competence, first by determining entry-level competence. For physical therapy the APTA (and later the FSBPT) took on the responsibility of developing and maintaining the examination for initial licensure (Lillvis, 2017).

Initial competence is not sufficient. Protection of the public demands that licensees maintain competence throughout their clinical practice lifetime. The evolution of this responsibility began with board members recognizing that continuing competence was just as important as initial competence and the regulatory community was granted the responsibility to insure continuing competence for maintenance of licensure. In concert with competent practice is the expectation by the public that dyscompetence or incompetence will not be tolerated and will therefore be subject to disciplinary action. This was not a primary role of licensing boards, prior to the 1980s there was little evidence of physicians or any other health care provider being disciplined (Bal, 2014), though there was evidence of misconduct that in retrospect should have resulted in some type of discipline.

Physical therapy regulation evolved from its origins as “keeper of the list.” To truly protect the public it was insufficient just to register those who met the qualifications to become an “RPT,” a registered physical therapist. It was a natural evolution to the current role of public protection through striving to ensure initial and continuing competence and establishing parameters for practice and punishment for those who are not upholding those standards. But punitive action does little to ensure that we continue to move forward in our mission. We are on the cusp now of the next evolution in regulation, which requires a philosophical shift from what is perceived as the punitive role of regulation to a remedial role that strives to provide the tools and resources to assist a licensee in returning to safe and effective practice following a board action.

Is a remedial approach consistent with the mission of licensing boards? Physical therapists and physical therapist assistants have invested a considerable amount of time and energy into their education and practice. We know that many of the infractions that are committed by licensees are single incidents with no indication that their behavior is perseverative and would pose an ongoing risk to the public. Can we salvage that clinician? In the process of remediation will we create a stronger and more valuable resource for the delivery of physical therapy services? Is there a strong connection between the responsibility of the board to help maintain a competent and accessible workforce and supporting licensees to perform at the highest level of their license? How do we move from the concept of a strong supported workforce to enabling boards to make decisions and recommendations consistent with the philosophy of the multifaceted role of the regulatory committee to ensure competent practice across an entire career?

The FSBPT has already developed a host of supports for boards as we evolve into this role that challenges boards but also provides opportunities to develop a critical function for the future of regulation. These continuing competence tools include:

- oPTion, a competence self-directed assessment tool
- jurisprudence assessment modules (JAMs)
- ProCert, an activity accreditation program
- the aPTitude continuing competence management system
- remediation resources compendiums
- education on competence issues such as burn out

In addition, FSBPT in collaboration with some of our international colleagues are working on risk factors that impact professional behavior, another area where we believe we will be able as licensing board

members to provide valuable insight to our licensees. Look out for more about that in a future President's Perspective. This evolution in our work in regulation is very exciting and of immeasurable worth to patients, to practitioners, and to reinforcing the value of the licensing board in providing oversight and accountability.

References

- Bal, A., Bal, B., "Medicolegal sidebar: State Medical Boards and Physician Disciplinary Actions," *Clinical Orthopedics and Related Research* 472 (2014):28-31.
- Lillis, D., McGrath, R., "Directing discipline: State Medical Board Responsiveness to State Legislatures," *Journal of Health Policy, Politics and Law* 42 (2017):1 123-158.
- Maryland Nurse, "The future of professional licensing boards: effects on nursing practice" 15 (1996):1.
- Randall, E., DeAngelis, D., Licensing in T. Mizrahi and L. Davis. *Encyclopedia of Social Work* 3 (2008): 87-91. New York: Oxford Press.
- Starr, P. *The Social Transformation of American Medicine*. New York: Basic Books, 1982.

President Nancy R. Kirsch, PT, DPT, PhD, FAPTA received her PT degree from Temple University, her Masters in Health Education from Montclair University, Certificate in Health Administration from Seton Hall University, her PhD concentration in ethics from Rutgers University (formerly UMDNJ), and a Doctor of Physical Therapy from MGH Institute of Health Professions. She practiced in a variety of settings including in-patient rehabilitation, acute care, long term care, and home care. She owned a private practice for twenty years and currently practices in a school based setting. In addition, she is the Director of the Doctor of Physical Therapy Program at Rutgers, The State University of New Jersey. Nancy has been a member of the New Jersey Board of Physical Therapy Examiners since 1990 and was chairperson of the board for twelve years. She served as an evaluator for FCCPT. Nancy has been involved with the Federation of State Boards of Physical Therapy in the following capacities: she served two terms on the Finance committee and also served on several task forces, in addition to the Board of Directors. Nancy has been active in the American Physical Therapy Association since she was a student. She served the New Jersey Chapter as Secretary and President, and as a delegate and chief delegate to the House of Delegates. She served the national association as a member of the ethics document revision task force. She also served a five year term on the APTA Ethics and Judicial Committee and the APTA Reference Committee. She received the Lucy Blair Service Award and was elected a Catherine Worthingham Fellow from National APTA and received an Outstanding Service Award and the President's Award from the FSBPT.