

KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin Governor

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Scott D. Majors, Esq. Executive Director

MINUTES OF MEETING May 19, 2016

Board Members: Tina Volz, PT, Chair

Ron Barbato, PT, Chair-Elect

Troy Grubb, PT

Virginia Johnson, Public Member

Dan Martin, PT Linda Pillow, PT Talia Weinberg, PT

Board Staff: Scott D. Majors, Executive Director

Krista Barton, Executive Secretary Stephen Curley, Investigator

Louis D. Kelly, Esq., Board Counsel Beth Bell, Licensure Coordinator

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD, MSEd

Board Guest: Karen Craig Ogle, PT

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Tina Volz, at 9:02 a.m. on Thursday, 05/19/16, at the Board office. A guorum was present.

Appointment

The Board welcomed Mr. Dan Martin, PT, who was appointed by Governor Matthew Bevin by Executive Order dated 03/31/2016 to serve as a Board member until 01/01/2020. Ms. Krista Barton, the Board's Executive Secretary and a notary, administered the oath of office to Mr. Martin.

Minutes for Previous Regular Meeting

The Board reviewed the minutes of the 03/17/16 Board meeting.

Action taken: Mr. Barbato made a motion to approve the minutes of the Board meeting of 03/17/16 with no changes. This motion was seconded by Mr. Grubb, which carried.

Board Discussions, Committees and Opinion Requests

2016 Board Meeting Schedule

The Board briefly discussed the schedule for the September 2016 Board meeting, which is currently scheduled for 09/15/16.

Action taken: Following discussion, the Board decided to reschedule the September Complaint Committee meetings to 09/21/16 and the September Board meeting to 09/22/16.

FSBPT Annual Conference Credentialing & KBPT Voting Delegate and Primary Alternate Delegate The Board discussed the FSBPT Annual Conference and Delegate Assembly meeting scheduled for November in Columbus, Ohio. The Board previously determined that Mr. Grubb would serve as the Voting Delegate.

Action taken: After some discussion, Mr. Grubb made the motion that Ms. Weinberg take his place as the Primary Voting Delegate and for him to serve as the alternate Voting Delegate. The motion was seconded by Ms. Johnson, which carried. Additionally, as Voting Delegate, Ms. Weinberg shall attend the Leadership Issues Forum (LIF) in July, and Mr. Majors shall attend as Board administrator.

KBPT Officers

Mr. Grubb also made a motion for the Board to appoint Ms. Weinberg to serve as Chair-Elect during Mr. Barbato's term as Chair, and also for Ms. Weinberg to serve as Chair in 2018. The motion was seconded by Ms. Pillow, which carried.

FSBPT Board of Directors

Ms. Volz announced that Mr. Barbato has been chosen as one of the candidates for a vacant position on FSBPT's Board of Directors. The election for this position will be held during FSBPT's Delegate Assembly in November.

Mr. Barbato reported that he requested that Mr. Majors research the issue of how a KBPT member who also serves as an FSBPT Director is to be appropriately compensated by the respective organizations so direction and clarification could be provided to the Board and reflected in the minutes. Mr. Barbato also summarized Mr. Majors' opinion that KBPT members would only be eligible to receive a per diem when engaged in the discharge of official duties approved by the Board or otherwise representing the Board.

Proposed Physical Therapy Licensure Compact

Ms. Volz, Mr. Barbato and Ms. Pillow provided a detailed account of the KBPT Compact Workgroup's meeting with a KPTA delegation on 05/02/16 to discuss the Physical Therapy Licensure Compact

Action taken: Following a lengthy discussion about the Compact, Mr. Grubb made the motion that the Board pursue legislative enactment of the Physical Therapy Licensure Compact in the 2017 legislative session. The motion was seconded by Ms. Weinberg, which carried.

Ms. Volz further suggested that a smaller Compact Workgroup be constituted, consisting of two (2) Board members, the Board's Executive Director and its General Counsel. Mr. Majors suggested that the two (2) Board members on this Workgroup always be the current Board Chair and Chair-Elect. Mr. Majors was instructed to notify KPTA leadership of this development and to attempt to schedule a joint discussion between the two (2) organizations in June.

Online Verification System & Payment Portal

Mr. Majors reported that he, Bob Evancho and Carlos Luna met on 05/02/16 to discuss Kentucky Interactive's ability to design a database that would address KBPT's future requirements, including the ability to seamlessly connect with a database hosted by the Physical Therapy Licensure Compact Commission. Additionally, Kentucky Interactive's proposal for this database would enable exam applicants to check the status of submitted applications online via a secure log-in process. Mr. Majors

reported that there would be no additional fees assessed to KBPT associated with the design and implementation of these changes. Mr. Curley suggested that a staff member be involved with the process of creating a new database to help ensure its development would meet KBPT's specific needs.

Action taken: Mr. Barbato made a motion for the Board to authorize staff to work with Kentucky Interactive in the design, development and implementation with this new database. The motion was seconded by Ms. Pillow, which carried.

2017-2019 Jurisprudence Exam

Mr. Majors reported that the Jurisprudence Exam (JE) workgroup met on 05/10/16. The workgroup asked Mr. Majors to determine whether the Board is interested in expanding the JE and/or developing a more advanced exam for initial licensure.

Action taken: After discussion, the Board decided to retain the current format of the JE and reexamine any changes to the format at a later date.

Scope of Practice Workgroup

The Board had a lengthy discussion regarding the suggested changes proposed by the Scope of Practice Workgroup.

Action taken: The Board requested that Mr. Kelly make the proposed changes that were discussed and circulate them to the Board members to review and discuss at the August Board meeting.

KBPT Declaratory Opinions Workgroup

The Board reviewed and discussed the information provided by the workgroup that met on 05/18/16.

Action taken: After a lengthy discussion, Mr. Barbato made a motion to accept the Frequently Asked Question (FAQ) documentation as presented and to review the information at least once every four years and possibly in conjunction with periodic reviews of the Policy and Procedure Manual. The motion was seconded by Ms. Johnson, which carried. Also, Mr. Barbato made a motion to rescind all Declaratory Opinions currently posted on the website. The motion was seconded by Ms. Pillow, which carried.

Monitoring Procedures and Requirements

Mr. Majors reviewed Mr. Dale Atkinson's proposal to create a training program for Board Monitors.

Action taken: Following discussion, the Board asked Mr. Majors to contact Mr. Atkinson to attempt to renegotiate the cost associated with creating an orientation section for monitors and to offer a report at the August Board meeting.

2017 CE Audit Discussion

Mr. Majors again reviewed with the Board the proposed changes to the Board's Policy and Procedure Manual relating to the CE Audit process that were discussed in detail at the March Board meeting. He presented a draft amended policy for possible inclusion in the audit section of the Policy and Procedure Manual. Also, Mr. Majors reported on educating the credential holders of the changes through a newsletter article that will include timelines, violations, and fines. The information will also be posted on our website and included with the initial audit orders.

Action taken: Following a brief discussion, Ms. Johnson made a motion to accept the drafted amended policy and to incorporate this into the Policy and Procedure Manual. The motion was seconded by Ms. Pillow, which carried.

CAPTASA

Ms. Weinberg gave a brief report to the Board concerning her attendance of the 2016 CAPTASA Conference in Lexington, Kentucky. She discussed information relative to the current drugs people are abusing and medical assisted detox versus non-medical detox.

CLEAR Webinar

Mr. Curley gave a brief report to the Board concerning his participation in a CLEAR webinar in March. He discussed information relative to linking classified advertisements to people, GPS tagging for photos, Facebook searches, and reverse searches for telephone numbers.

Civil Matters and Investigations

2015 Complaint Committee

C2015-11: The Complaint Committee reported that Counsel contacted a family member of the credential holder. There will be a status update provided at the August Board meeting.

Action taken: No action taken.

BIC2015-12: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2015-35: The Complaint Committee reported that the credential holder participated in the telephonic prehearing conference on 03/21/16, and has submitted a response to the Board Order.

Action taken: The Complaint Committee recommended and moved to dismiss the Notice of Hearing and to proceed with the investigation. The motion was seconded by Ms. Pillow, which carried.

C2015-103: The Complaint Committee reported that this case involves allegations of fraud and material deception, and that Counsel and the Board Investigator are currently in the process of seeking enforcement of a subpoena for records.

Action taken: The Complaint Committee recommended and moved to authorize Mr. Kelly and Mr. Curley to seek enforcement of the subpoena in Franklin Circuit Court. The motion was seconded by Ms. Johnson, which carried.

C2015-104: The Complaint Committee reported that Counsel has received a signed Agreed Order from the Respondent.

Action taken: The Complaint Committee recommended and moved to close this case. The motion was seconded by Ms. Weinberg, which carried.

C2015-108: The Complaint Committee reported that this involves allegations of substandard care.

Action taken: After reviewing the records, the Complaint Committee recommended and moved to close this case due to insufficient evidence. The motion was seconded by Ms. Pillow, which carried.

CE2015-37: The Complaint Committee reported that there is a prehearing conference scheduled with the credential holder and hearing officer, and the matter is ongoing.

Action taken: If the credential holder has not complied with the Continued Competency requirements and paid his/her fine, the Board requested Counsel to set a hearing date on 08/03/16,.

CE2015-86: Mr. Kelly reported that the credential holder entered into a preliminary agreement with the Board. However, the credential holder requested a proposed alternative disposition be presented to the Board for consideration. Without recommending for or against this proposal, Mr. Kelly explained that the credential holder requested that the fine be stayed for a period of two years and he/she would not renew his/her credential or pay the fine.

Action taken: After discussion, the Board rejected the credential holder's alternative proposal, and authorized Counsel to notify the credential holder that he/she has ten days in which to submit payment of a fine to the Board. If the credential holder fails to timely comply, the Board will move forward with a hearing.

2016 Complaint Committee

C2016-02: The Complaint Committee reported that this case involves allegations of fraud and material deception.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence. The motion was seconded by Ms. Pillow, which carried.

BIC2016-03: The Complaint Committee reported that this case involves a credential holder who failed to comply with terms of his/her Private Admonishment.

Action taken: The Complaint Committee recommended and moved to authorize Counsel to resolve and dismiss the Notice of Hearing if the credential holder has submitted the required continued competency by 06/30/16; otherwise, Counsel is to attempt to resolve this case prior to a hearing with a Settlement Agreement which would include a public reprimand and additional fines ranging from \$250-\$500, and a hearing date is to be scheduled for 08/03/16. The motion was seconded by Mr. Martin, which carried.

BIC2016-04: The Complaint Committee reported that this is ongoing.

Action taken: No action taken.

BIC2016-05: The Complaint Committee reported that this case involves allegations of attempting to obtain a license or certificate by fraud or material misrepresentation.

Action taken: The Complaint Committee recommended and moved to authorize Counsel to offer a Settlement Agreement that must be signed within twenty (20) days specifying that, if the applicant resubmits his/her application and meets all the requirements of eligibility, including successful completion of the NPTE, the applicant must enter into a two year IPTPC program before a credential is issued; however, if the applicant fails to enter into the Settlement Agreement within twenty (20) days, the Board authorize Counsel to file a Notice of Hearing and formal charges. The motion was seconded by Ms. Johnson, which carried.

BIC2016-06: The Complaint Committee reported that the credential holder failed to comply with the Order of the Board, and Board staff issued an Immediate Temporary Suspension, effective 05/09/16.

Action taken: The Complaint Committee recommended and moved to authorize Counsel to file a Notice of Hearing and formal charges. The motion was seconded by Ms. Johnson, which carried.

C2016-07: The Complaint Committee reported that this case involves alleged substandard care.

Action taken: The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Ms. Weinberg, which carried.

C2016-08: The Complaint Committee reported that this case involves a possible positive drug screen of a controlled substance.

Action taken: The Complaint Committee recommended and moved to open an investigation and to issue an Order that the credential holder must obtain a fitness to practice evaluation by a licensed

professional approved by the Board's Impaired Physical Therapist Practitioners Committee (IPTPC) at his/her own expense or, in lieu of obtaining the evaluation, the credential holder may enter into treatment approved by the IPTPC Chair within twenty (20) days and, further, if the credential holder fails to abide by the terms of the Order within twenty (20) days, the Board shall delegate to staff the authority to issue an Immediate Temporary Suspension (ITS). The motion was seconded by Ms. Pillow, which carried.

BIC2016-09: The Complaint Committee reported that this case involves a possible excessive use of alcoholic beverages or abusive use of controlled substances and possible impairment by reason of mental, physical, or other condition that impedes his or her ability to practice competently.

Action taken: The Complaint Committee recommended and moved to file a Board Initiated Complaint (BIC) and issue an Order to respond within twenty (20) days. Additionally, if the credential holder fails to respond within the allotted time frame, the Board shall delegate to staff the authority to issue an Immediate Temporary Suspension (ITS). The motion was seconded by Ms. Weinberg, which carried.

C2016-10: The Complaint Committee reported that this case involves a possible adverse action in West Virginia regarding falsification of a renewal application.

Action taken: The Complaint Committee recommended and moved to file a Board Initiated Complaint (BIC) and monitor the situation in West Virginia. The motion was seconded by Ms. Weinberg, which carried.

C2016-11: The Complaint Committee reported that this case involves alleged substandard care.

Action taken: The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Ms. Pillow, which carried.

C2016-12: The Complaint Committee reported that this case involves alleged substandard care.

Action taken: The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Ms. Pillow, which carried.

C2016-13: The Complaint Committee reported that this case involves alleged substandard care.

Action taken: The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Ms. Pillow, which carried.

IPTPC Report

Mr. Fingerson presented the IPTPC report dated 05/10/16. IPTPC cases which previously have come to the attention of the Board, or were discussed at length during the Complaint Committees' reports, were reviewed.

Additionally, Mr. Fingerson reported to the Board that the credential holder in BIC2015-13 is currently enrolled in a treatment facility. However, the credential holder has not submitted his/her monthly reports to Mr. Fingerson or signed up for drug testing.

Action taken: After discussion, Ms. Weinberg made the motion that if the credential holder continues to be noncompliant with the terms of their IPTPC agreement and after review and consensus reached between the Board Chair and IPTPC Chair the Board of noncompliance with the Program Agreement, staff is to be delegated the authority to issue an Immediate Temporary Suspension (ITS). The motion was seconded by Ms. Johnson, which carried.

Opinion Requests

The Board reviewed the following opinion requests from:

(1) Dana Romes, PT, who sought clarification concerning reassessment completion requirements in a LTACH.

Action taken: Following discussion, the Board instructed Mr. Majors to notify Ms. Romes that, notwithstanding the average length of stay as referenced in her inquiry, a LTACH facility is still considered and is licensed as an acute care hospital facility, not a long-term care facility. Accordingly, it is the Board's opinion that the fourteen (14) day reassessment requirement set forth in 201 KAR 22:053 Section 2 (4)(a) applies in this setting.

(2) Rhodora Fontillas, PT, who sought clarification with two scenarios relating to telehealth and physical therapy licensing in Kentucky.

Action taken: Following discussion, the Board instructed Mr. Majors to notify Ms. Fontillas that the practice of physical therapy in Kentucky would be implicated in both scenarios submitted, as Kentucky considers the actual practice of physical therapy to take place where the patient is located, not where the physical therapist is located. The Board encouraged Ms. Fontillas to review the definition of "Physical Therapy" in the Kentucky Physical Therapy Practice Act, found at KRS 327.010(1).

Update on Monitoring Probations

The Board noted the following credential holders who are presently being monitored: Tiffiney S. Bentley, PT and Donald Bruce Taylor, PT. A monitor report was submitted for Mr. Taylor by the Board-appointed monitor and considered by the Board.

After discussion, Ms. Pillow suggested that a term be added to the Model Settlement Agreement to ensure that a physical therapist must serve as a supervisor for all credential holders during the period of probation.

Additionally, Mr. Majors reported that Timothy Jones had not timely complied with the terms of his Settlement Agreement concerning the Continued Competency Course requirements. However, when this fact was brought to Mr. Jones' attention, he immediately complied and submitted the required courses.

Action taken: No action taken.

REPORTS AND OTHER BUSINESS

Legal Report

Executive Branch Ethics Commission Training

Counsel reviewed training materials provided by the Executive Branch Ethics Commission from a seminar attended by Counsel and the Executive Director on 04/25/16. The materials reaffirmed the position that state officers and Board members cannot use their official position for the financial benefit of themselves or their families.

FARB Model for FTC

Counsel informed the Board of new guidance provided by the Federation of Administrative Regulatory Boards (FARB) regarding "active supervision" for anti-competitive practices following the *North Carolina State Board of Dental Examiners v. FTC* case.

North Carolina Board of Physical Therapy Examiners

Counsel updated the Board on the status of two lawsuits in North Carolina regarding dry needling. A North Carolina state court dismissed a lawsuit brought by the North Carolina Acupuncture Licensing

Board against the North Carolina Board of Physical Therapy. Additionally, a federal lawsuit filed by the North Carolina Board of Physical Therapy against the North Carolina Acupuncture Licensing Board is still pending.

Wisconsin: Physical Therapists and X-rays

Counsel informed the Board that the state of Wisconsin is the first state to formally adopt a statute allowing physical therapists to order X-Rays.

NELP Report - Criminal Records as Barrier to Occupational Licensing

The Board briefly reviewed a National Employment Law Project (NELP) report recommending changing state laws to prohibit blanket denial of professional licenses for criminal offenses.

Ohio Professional Disciplinary Actions

Counsel informed the Board of a recent decision in Ohio indicating that the doctrine of abatement, which allows criminal convictions on appeal to be overturned if the defendant dies while the appeal is pending, did not apply to a revocation of a professional license.

Administrative Regulation - 201 KAR 22:045

Counsel reviewed proposed changes to 201 KAR 22:045 that would specific a deadline of 04/30 in an odd-numbered year for a credential holder to apply for a hardship extension for obtaining necessary CE hours for the previous biennium. Ms. Weinberg made a motion to approve the proposed changes. The motion was seconded by Mr. Barbato, which carried.

Massachusetts Regulatory Board

Counsel informed the Board of a proposal from the Governor of Massachusetts to subject all decisions of professional licensing agencies to review and veto by the Governor. The proposal was made to address the "active supervision" requirements of the *North Carolina State Board of Dental Examiners v. FTC* case.

KBPT Liaison to KPTA Report

Mr. Barbato reported that KPTA recently met with the Workers Compensation Commissioner. KPTA was able to persuade the Commissioner to agree to remove the language pertaining to a payment schedule for athletic trainers' evaluations and re-evaluations. Also, Mr. Barbato reported that occupational therapists had a higher reimbursement rate than physical therapists under the proposed workers compensation schedule for next year. KPTA is working with the Commissioner was able to remedy the situation. Furthermore, Mr. Barbato reported that KPTA was unable to stop the differential payment structure for OTAs and PTAs as it pertains to CMS reimbursement. Mr. Barbato also reported that a group of recreational therapists in Kentucky is trying to create a licensure board. Currently, KPTA has reviewed the definition of a recreational therapist and found it is overstepping relative to physical and occupational therapy. There was a meeting scheduled between KPTA and the recreational therapists, however, it has been cancelled. Finally, Ms. Volz's term on the Board is set to expire in August. If she is not reappointed by Governor Bevin, Mr. Barbato will assume the Chair position. Accordingly, Mr. Barbato requested that another Board member assume the role of KBPT Liaison.

Action taken: Mr. Barbato made a motion that Mr. Martin assume the role of KBPT Liaison. The motion was seconded by Ms. Weinberg, which carried.

KPTA Liaison to KBPT Report

Dr. Kuperstein reaffirmed several of the points address by Mr. Barbato in his report. She also briefly reported that occupational therapists have been diligently leading on the issue of recreational therapy with respect to the Tri-Alliance.

Director's Report

Financial Report

The Board reviewed monthly, quarterly and 2016 annual FAS3 financial reports addressing the Board's revenues and expenditures. Mr. Majors also detailed the amount of unexpended funds remaining in the fourth (4th) quarter for FY 2016, and the impact this fund balance will have on the Board's ability to obligate additional, unbudgeted funds prior to 06/30/16 for projects that were not foreseeable when the FY2015-2016 budget was originally prepared. Mr. Majors also reported that the Board's Finance workgroup briefly held its second meeting of 2016 on 05/18/16.

Action taken: No action taken.

FSBPT Excellence in Regulation Award

Mr. Majors circulated information and identified the criteria concerning FSBPT's first annual Excellence in Regulation Award. Following discussion, the Board instructed Mr. Majors to circulate a draft nomination statement to the members by 06/15/16 for consideration and possible input prior to submitting this nomination with FSBPT.

Office Security

Mr. Majors reported that on 04/14/16 office staff experienced a theft of personal property in the office. As a result, Jefferson Development Group, the building landlord, has been requested to examine the feasibility of installing a video camera surveillance system for the building to help ensure the safety of the building occupants and property. Mr. Majors will provide the Board an update at the August meeting.

Staff Developments

Mr. Majors summarized the process for attempting to hire a new staff member to replace Donna Sims upon her retirement on 08/01/16.

Louis Kelly also reported that he has been appointed by Governor Matthew Bevin to serve as both a Member and the Chair of Kentucky's Workers' Compensation Nominating Commission, and he has accepted this appointment after determining through the Executive Branch Ethics Commission that no conflict exists with this appointment that would interfere with his ability to serve as KBPT's General Counsel.

KBPT Offices & Commonwealth Office of Technology (COT)

Mr. Majors reported that he received information from COT that the cabling to the 312 Building is scheduled to be replaced in the next four (4) months that should result in a measurable increase in the speed with which data is transferred. This new cabling system has also been projected to substantially decrease KBPT's monthly obligation for internet service.

Department of Insurance

Mr. Majors provided the members with a copy of the Department of Insurance Public Protection Cabinet's report of health care providers with settlement and/or judgments, dated 04/04/16 covering the period from 01/01/16 through 03/31/16 in which no credential holders of the Board were listed.

CBT Comment Summary and Candidate Satisfaction Survey

Mr. Majors circulated for Board review a copy of the latest NPTE Comment and Summary and Candidate Satisfaction Survey Report which reflected that KBPT received the highest possible satisfaction rating of 100%.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences

- a. CLEAR Telehealth and Telemedicine 2016 (05/25/16 Webinar)
- b. FSBPT New Member and Administrator Training

(06/24-26/16 – Alexandria, VA)(Ms. Weinberg shall serve as KBPT's authorized representative.)

- c. FSBPT Leadership Issues Forum (LIF)
 (07/30-31/16) Alexandria, VA)
 (2016 KBPT Voting Delegate (Ms. Weinberg) and Board Administrator (Mr. Majors) shall serve as KBPT's authorized representatives)
- d. CLEAR 2016 Annual Educational Conference (09/15-17/16)
- e. FARB 2016 Regulatory Law Seminar (09/29-10/2/16 Chicago, IL)

Ms. Pillow made a motion for the Board to pay for registration fees and associated travel costs for Mr. Kelly and Mr. Majors to attend the FARB Regulatory Law Seminar. Ms. Weinberg, seconded the motion, which carried.

- f. FSBPT 2016 Annual Meeting, Conference and Delegate Assembly (11/04-06/16 – Columbus, OH)
 Ms. Weinberg made a motion for the Board to pay for registration fees and associated travel costs for four (4) Board members to attend the FSBPT 2016 Annual meeting. Ms. Pillow seconded the
- g. CAPTASA 2017 Conference Workshop (01/27-28/17 – Lexington, KY)

motion, which carried.

New licensees/reinstatements/renewal applications

Action taken: Mr. Grubb made the motion to review, approve and ratify the lists of persons issued licenses and certificates since the last meeting, as well as a list of examinees and reinstatements. This motion was seconded by Ms. Johnson, which carried. The lists are attached to these minutes.

A motion was made by Ms. Weinberg to adjourn the meeting at 3:24 p.m. The motion was seconded by Mr. Grubb, which carried.

Respectfully submitted,

Scott D. Majors Executive Director