
Kentucky State Board of Physical Therapy

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February 23, 1999

Muhlenberg Community Hospital
Ms. Deborah Newman, P.T.
PO Box 387
Greenville, KY 42345

Re: Opinion and Declaratory Ruling regarding governing the Physical Therapy Practice Act and electronic medical records

Dear Ms. Newman:

This correspondence is in response to your letter dated August 28, 1998, asking for an opinion from the Kentucky State Board of Physical Therapy on several issues regarding the application of the Physical Therapy Practice Act, KRS Chapter 327, and the use of electronic medical records.

Please keep in mind that this correspondence is an opinion of the Board based solely on the facts you have presented, which will be summarized below. The Board has authorized this opinion to you as an Opinion and Declaratory Ruling pursuant to KRS 13A.130(3) and KRS 13A.010(2)(b) as the agency with jurisdiction to interpret the statutes and regulations governing the practice of physical therapy in the Commonwealth of Kentucky.

Does KRS Chapter 327 require a written, paper record to be signed?

The Board is presented with the question whether KRS Chapter 327, or the regulations thereunder, require the use of a written, paper record to be signed by the physical therapist or physical therapist's assistant. You have presented the following facts in support of your question. Your hospital is using an electronic system for "ordering, documenting, and charging patient treatments." This may include the patient's initial evaluation, progress notes, and discharge summary, which under Kentucky law must be signed by the physical therapist. 201 KAR 22:053.

Your hospital will "protect the confidentiality of data, information, and communications entered into the system. This will be done by means of password assignments." You further state that all employees will be required to sign a confidentiality statement regarding the use of passwords, and that employees may not share or use another employee's password.

As the agency authorized by the Kentucky General Assembly to regulate the practice of physical therapy in this state, the Board is empowered to interpret its statutes and regulations. In summary, the use of an electronic password as a "signature" would comply, in the opinion of the Board, with the signature requirements of 201 KAR Chapter 22.

Kentucky common-law cases have broad language supporting the use of other identification methods as satisfying other statutory signature requirements. Such another method today might be the computer password, for example, a secret combination of four digits and letters.

In *Pardue v. Webb, Ky., 70 S.W.2d 665 (1934)* the validity of election ballots signed by a clerk of the election at the specific direction of the election judge was at issue. A state statute required an election judge to sign the local ballots. The Kentucky Court of Appeals ruled that this clerk's signature, signed at the direction of the appropriate person, substantially complied with the statutory requirements, thus the ballots were valid. "The authorities agree that a form of signature prescribed by statute is not exclusive of any other method legally sufficient to accomplish the same result." It is a strong argument that a secret password known only to the authorized physical therapist or physical therapist's assistant would be legally sufficient to fulfill the signature requirement of KRS Chapter 327 and its regulations.

The formal, handwritten signature and a secret password both have in common the inability to be easily duplicated. An individual would have to make a very good copy to forge a person's signature. An unauthorized computer user would have to guess or steal a password to gain access to the system or to sign a computer order or medical history. The most advanced systems, which are not yet practically available, have a computer identify the voice pattern or fingerprint of the physical therapist to verify his or her identity. Such identification would surely be as unique and as fool-proof as a handwritten signature.

Pardue continued its broad language supporting the available methods of fulfilling the signature requirement. "A strict or technical construction of a statute will not be resorted to when such construction would contradict the intent or purpose of the statute." The purpose of the physical therapy laws would be met by giving legal validity to a password in lieu of a written signature. In another election case cited in *Pardue*, *Wurts v. Newsome, Ky, 68 S.W.2d 448 (1934)*, an election judge merely stamped his name on the back of the ballot with a rubber stamp instead of writing his name. This method was upheld as sufficiently identifying the ballots.

Likewise, a computer screen could display a form with the authorizer's name typed on the dotted line, and with a checkmark underneath showing that the authorized physician's secret password had been correctly entered. This would identify who made the order or signed the discharge summary, and would prevent fraudulent orders from being issued or from fraudulent physical therapy records from being recorded.

In conclusion, the Board is of the opinion that a computerized, secret password, with sufficient confidentiality protections, would meet the signature requirements of KRS Chapter 327.

Sincerely yours,

Joan S. Dalton, PT, Chair
Kentucky State Board of Physical Therapy