



# The Times They Are A-Changin'

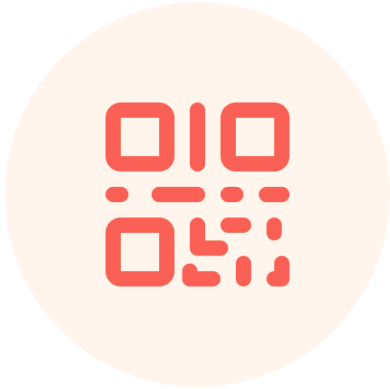
Stephen Curley & M. Keith Poynter

Kentucky Board of Physical Therapy

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## Most common resolution to Disciplinary Cases?

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# The Times They Are A-Changin'

Stephen Curley | Kentucky Board of  
Physical Therapy

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# New Presentation....Who Dis?

- Investigator private sector 4 years
- Investigator with the state for 12 years and 10 Boards
- Executive Director for PT Board of last 3 years



# What's on the Menu

- Interrogation vs. Interviewing
- Trauma- Informed Interviewing
- Tips and Tricks (less tricks more data)



# Interrogation

- More aggressive
- Uses deception
- Verbal and non-verbal cues
- Reid Technique
- Interview process uses more leading questions
- Confrontational and Adversarial



# Interview

- Building a rapport / Establishing trust
- Effective and Ethical approach to gathering information
- Conversation based approach
- Open and collaborative atmosphere between the investigator and the subject
- Open-ended Questions



- “Interrogation manual writers and trainers persist in the self-serving and misguided belief that contemporary psychological methods are not apt to cause an innocent suspect to confess- a fiction that is flatly contradicted by all the scientific research on interrogation” (Ofshe & Leo 1997)



# Reid Technique (Interrogation)

- Factual Analysis
  - Overcoming objectives
- Behavior Analysis Interview
  - Keep attention
  - Continue justification
  - Alternate Questions
  - Written Confession
- Theme Development
- Discourage denials



- “Creates a slippery slope for innocent suspects because it may set in motion a sequence of reciprocal observations and reactions between the suspect and interrogator that serve to confirm the interrogator's belief in the suspect's guilt” (Moore and Fitzsimmons, 513)





# Interview (PEACE Method)

- Preparation and Planning
- Engage and Explain
- Account
  - Conversation Management Model
  - Free Recall Model
- Closure
- Evaluation



A critical component of any investigation is the ability of investigators to obtain accurate and reliable information from victims, witnesses and the suspects or any interviewee.

“Solid interviewing skills stand as the cornerstone in law enforcement’s arsenal of crime-fighting weapons.”  
(Einspahr, 2000, p20).



# Interviewing with Trauma

- Trust and Rapport
- Encourage questions
- Supportive tone of interview
- Encourage thoughts and feelings
- Memory
- Open questions



“Why did you...?”

or

“Why didn’t you...?”

**“When (specific event happened), what were your feelings and thoughts?”**

or

**“Are you able to tell more about what happened when...?”**

The original questions are asking for clarification of what happened, which could be perceived as faulting the victim for taking or not taking a certain action. Asking a victim about their thought process provides an opportunity for them to explain what they did or did not do and why. The use of “Are you able to...” reduces the pressure on the victim to fully articulate what they did and why they did or did not act in a certain way.

When experiencing trauma, victims do not consciously choose their reactions or what they are able to remember, the survival part of the brain takes over and victims might not understand why they reacted the way that they did. When asking about thought processes, the question should be tied to a specific event, such as, “When he locked the door, how did that make you feel?”

“Start at the beginning and tell me what happened.”

or

“How long did the assault last?”

and

Other questions asking for a chronological account.

**“Where would you like to start?”**

or

**“Would you tell me what you are able to remember about your experience?”**

or

**“What are you able to tell me about what was happening before/during/after the assault?”**

or



**“If anything, what do you remember hearing during the event?”**

The original question may be difficult for the victim to answer because experiencing a traumatic event can impact the storage of memories, which may make it difficult for the victim to remember the length of time that the assault lasted or the chronological order of events.

Asking the victim to state the exact timeframe/timeline may increase the confusion and self-blame they experience. As a result, they may come up with their best estimate of a timeframe that may become problematic afterward. Reframing the questions and opening with “What are you able to...” can reduce the pressure on the victim to recall specifics given the impact of trauma on memory.

Additionally, asking sensory-based questions can lead to additional evidence that can help law enforcement to begin building a timeline and placing events in chronological order (e.g., hearing the suspect’s phone ring during the assault can give investigators a timeline when compared to the suspect’s phone records).



| Quick Reference Guide to Trauma Informed Interviewing   |  |
|---|--|
|  Instead of...   |  Try...   |
| "Why did you...?"<br>or<br>"Why didn't you...?"   | "When (specific event happened), what were your feelings and thoughts?"<br>or<br>"Are you able to tell more about what happened when...?"  |
| "Start at the beginning and tell me what happened."<br>or<br>"How long did the assault last?"<br>and<br>Other questions asking for a chronological account. | "Where would you like to start?"<br>or<br>"Would you tell me what you are able to remember about your experience?"<br>or<br>"What are you able to tell me about what was happening before/during/after the assault?"   |
| "What were you wearing?"  | "Sometimes we can get valuable evidence from the clothes you were wearing, even if you've put them through the laundry. We would like to collect the clothes you were wearing at the time of the assault as evidence. Can we pick up those items at a time and place that is convenient for you?"  |
| "Why did you go with the suspect?"<br>or<br>"Do you think you led them on?"   | "Can you describe what you were thinking and feeling when you went with the suspect?"<br>and<br>"Did the suspect's behavior change after you went with them? How did this make you feel?"  |
| "Why were you out at this time and at this location?"<br>"Why didn't you leave?"  | "What are you able to tell me about what brought you to the location at this time/day?"<br>"Are you able to describe what was happening while you were in... (the room, the car, the house, etc.)?"<br>or<br>"What were your thoughts and/or feelings while you were in... (the room, the car, the house, etc.)?"  |
| "Did you say no?"   | "What are you able to recall doing or saying during the incident?"<br>and<br>"How did the suspect respond to your words or actions? Do you remember how that made you feel?"   |
| "Did you fight back?"   | "What did you feel like you were physically capable of doing during the incident?"<br>or<br>"What was going on in your mind when you realized you were in danger?"   |
| "Why didn't you report right away?"   | "Did anything in particular cause you to come tell us about this incident today?"<br>or<br>"Was there someone you trusted to tell about the incident after it occurred? When you told them, what were you thinking and feeling?"<br>or<br>"What were you feeling—physically and emotionally—immediately after the assault?"  |
| "Did anyone see this happen?"   | "Can you tell me about any people or witnesses who might have seen you and the suspect together or who might have seen the incident?"<br>and<br>"Can you tell me about any people or witnesses who might have seen you after the event?"<br>and<br>"Can you share information with me on any friends/colleagues/ classmates that might have noticed a change in your physical appearance or behavior (withdrawn/sad/angry) after the assault?" |
| "Have you had sex with this person before?"<br>or<br>"Are you dating/in a relationship with this person?"   | "Has this person done anything like this to you in the past?"<br>and<br>"Can you tell me how this instance was different from previous consensual sexual acts?"  |

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# Data... its not just for nerds!

- Timelines
- Investigative Costs
- Outcomes
- Types of Complaints
- Bias





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# Thank You

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# Alternative Dispute Resolution in an Administrative Law Setting

Pros, Cons, and Additional Considerations

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# Introduction

- General Counsel for the Kentucky Board of Physical Therapy
- Former General Counsel for the Kentucky Board of Chiropractic Examiners
- Private Practitioner –Civil and Criminal Litigator
- Former Police Officer



# Goals for Today's Presentation

- Clear Understanding of What Alternative Dispute Resolution (ADR) is
- Determining When and Why to Use ADR
- Legal Considerations for ADR



# What is Alternative Dispute Resolution? (ADR)

- ADR is a procedure for settling a dispute by means other than litigation, such as arbitration or mediation. (Black's Law Dictionary 8<sup>th</sup> Edition)
- Essentially, ADR is a means to reach a resolution without enduring the pitfalls and pains of litigation.





# What Types of ADR Exist?

- Arbitration
- Mediation
- Informal Negotiations
- Agreed Settlements



# Arbitration - Defined

- A method of ADR involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decisions are binding. (Black's Law Dictionary, 8<sup>th</sup> ed.)





# Meditation - Defined

- A method of non-binding dispute resolution involving a neutral third party who tires to help the disputing parties reach a mutually agreeable solution.

(Black's Law Dictionary, 8<sup>th</sup> ed.)



# Informal Negotiations

- A consensual bargaining process in which the parties attempt to reach agreement on a disputed, or potentially disputed matter.

(Black's Law Dictionary, 8<sup>th</sup> ed.)



# Agreed Settlement

- These come in the form of Settlement Agreements by the parties involved and conclude a case without a formal hearing.
- Settlement Agreements are incredibly flexible and are useful tools in resolving administrative cases.



# Topics for Consideration

- Arbitration



# Why Would the Board Choose Arbitration?

- More Control Over the Process
- Less Expensive
- Certainty of Outcome
- Removes Potential Judicial Intervention



# Arbitration Decision is Binding

- No Appeals
  - One shot at resolving the controversy; The Arbiter's decision is final
  - This is both a blessing and a curse
  - Arbiter's (like judges) are usually well versed in law, but not always...



# Why Would the Respondent Choose Arbitration?

- More Control Over the Process
- Less Expensive
- Certainty of Outcome
- Removes Potential Judicial Intervention



# Neutral Third Parties

- Not Board Members
- Not Board Staff
- Not Board Attorneys
  - Usually Retired Judges (But Not Always)





# Legal and Practical Considerations

- Does your statute or regulation speak to, or authorize arbitration?
- If not, you will likely need to make regulatory modifications to allow for it.



# Topics for Consideration

- Mediation



# Why Would the Board Choose Mediation

- More Control Over the Process
- Less Expensive
- Removes Potential Judicial Intervention



# Neutral Third Parties

- Not Board Members
- Not Board Staff
- Not Board Attorneys
  - Usually Retired Judges, But Not Always



# Legal and Practical Considerations

- Does not require statute or regulation changes in most instances
- Should have final resolution reduced to writing before the parties leave mediation



# Settlement Agreements/Informal Negotiations

- This is the best option of the ADR possibilities
  - Cheaper
  - Less Time Consuming
  - Avoids All Litigation



# Considerations of Negotiated Settlements

- Case Selection
  - Not Ideal for All Cases (Boundary Violations etc.)
  - Be Flexible (Litigation is Not Our Friend)





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# Thank You

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