



KENTUCKY BOARD OF PHYSICAL THERAPY

Steve L. Beshear
Governor

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Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING September 12, 2013

Board Members Present: Charles "Chuck" Clark, PT, Chair
Linda Pillow, PT, Chair-Elect
Peggy Block, PT
Troy Grubb, PT
Virginia Johnson
Karen Craig Ogle, PT
Tina Volz, PT

Board Staff: Scott D. Majors, Executive Director
Stephen Curley, Investigator

Board Agents: Mark R. Brengelman, Esq., Board Counsel

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Chuck Clark, at 9:18 a.m., on Thursday, September 12, 2013, at the Board office. A quorum was present.

Minutes

A motion was made by Karen Ogle, seconded by Troy Grubb, to approve the minutes of the Board meeting of July 29, 2013. Motion carried.

Board Discussions, Committees and Opinion Requests

2014 Board Meeting Schedule

Following consideration of various conferences which are expected to be held in 2014, and in an effort to avoid potential conflicts with the scheduling of these conferences, the Board established the following 2014 schedule for its Complaint Committees and Board meetings:

Complaint Committee Meetings: approximately 4:30 p.m. to 7:00 p.m.

January 15
March 19
May 14
July 16
September 24
November 19

Board Meetings: 9:00 a.m. to (approx.) 5:00 p.m.

January 16
March 20

May 15
July 17
September 25
November 20

Board Appointments

Following discussion, the Board made the following appointments, effective January 1, 2014, unless otherwise noted:

- (1) 2014 Board Chair: Chuck Clark moved that Linda Pillow be appointed as 2014 Board Chair, seconded by Virginia Johnson. Motion carried;
- (2) 2014 Board Chair-Elect: Troy Grubb moved that Karen Ogle be appointed as 2014 Board Chair-Elect, seconded by Peggy Block. Motion carried;
- (3) 2014 Complaint Committee: Troy Grubb moved that Chuck Clark, as the 2013 Board Chair, assume responsibility as a 2014 Complaint Committee member, and that Karen Ogle, as 2014 Board Chair-Elect, also be appointed to serve on this Committee. The motion was seconded by Linda Pillow, which carried;
- (4) 2014 Remediation Committee: Karen Ogle moved that Troy Grubb and Tina Volz be appointed as members of the 2014 Remediation Committee. The motion was seconded by Peggy Block, which carried;
- (5) 2014 ADA Accommodations Committee: Troy Grubb and Tina Volz agreed to remain on this Committee; therefore, the Board made no changes to the Committee's composition; and
- (6) 2014 KBPT Liaison to KPTA: Karen Ogle agreed to remain as the Board's Liaison for KPTA's meetings, functions, and activities; therefore, the Board made no changes to this position.

Additionally, the Board was apprised by KPTA leadership during the meeting that, starting with the November meeting, Janice Kuperstein will replace Tony Brosky as KPTA's Liaison to the Board.

Revisions to "Cease and Desist" Affidavit

Mark Brengelman circulated draft revisions to the Board's model cease and desist affidavit. These revisions were approved by the Board without additional amendment.

Healthcare Capacity Workforce Study Briefing

Mr. Brengelman offered a report and circulated materials concerning the Healthcare Capacity Workforce Study Briefing teleconference in which he participated on August 1, 2013.

FSBPT's Leadership Issues Forum

Scott Majors offered a report of the FSBPT's Leadership Issues Forum held in Alexandria, Virginia on August 9 – 10, 2013.

FSBPT's Ethics and Legislation Committee and FSBPT 2013 Annual Conference

Mr. Majors offered a report and circulated materials of the FSBPT's Ethics and Legislation Committee held in Alexandria, Virginia on August 25 – 26, 2013. Mr. Majors also provided to the Board copies of the motions that were tabled for discussion and vote at the 2013 Delegate Assembly.

Proposed Telehealth Regulation

Mr. Majors reported that the first meeting of the Telehealth Regulation Review Committee was scheduled to take place on October 22, 2013. Mr. Majors also requested that the Board consider appointing a Chair person to help facilitate the Committee meeting agenda and the manner by which any recommendations made to the Board would be effectuated. Following discussion, Linda Pillow made the motion to appoint Troy Grubb to serve as Chair of this Committee, seconded by Karen Ogle, which carried.

Monitoring Procedures and Requirements

A report was presented by Troy Grubb, Mark Brengelman, Stephen Curley and Scott Majors concerning the training program for board monitors conducted on September 9, 2013, by the Council on Licensure, Enforcement and Regulation ("CLEAR").

FTC vs. North Carolina State Board of Dental Examiners

Mark Brengelman and Scott Majors offered a report of the case involving FTC vs. North Carolina State Board of Dental Examiners. Following review and discussion, the Board agreed to monitor this litigation and the impact its precedent may have on state licensing and regulatory boards.

OAG Opinion on Dry Needling

Chuck Clark and Scott Majors circulated a copy of an opinion authored by the Office of the Kentucky Attorney General, Opinion #13-010, concerning the practice of dry needling. Specifically, after canvassing statutes and regulations currently in effect, in Kentucky and elsewhere, the opinion concluded that dry needling was within the scope of practice of physical therapy in Kentucky. Karen Ogle, as the Board's Liaison to KPTA, offered to seek KPTA opinion at its annual conference on September 20, 2013, whether regulatory standards were needed at this time. Accordingly, the Board agreed to pass this matter until its next meeting.

Opinion Requests

The Board reviewed the following opinion requests from:

(1) Shelly Newcom, PTA, inquiring whether a proposed practice of operating a running clinic, in which a runner's gait would be evaluated through the use of equipment to determine how optimum performance may be achieved, would fall within the scope of physical therapy in Kentucky. Following consideration and discussion, the Board instructed staff to refer Ms. Newcom to the statutory definition of Physical Therapy, found at KRS 327.010(1), and further to advise Ms. Newcom that, given the fact that her question was premised on the fact that she is a practicing physical therapist assistant, it is the Board's opinion that she would be engaged in the scope of practice of physical therapy if what she proposed fits within the definition referenced above. If so, this practice would be subject to the same standards of practice and supervision set forth in 201 KAR 22:053 as any other practice engaged in by a physical therapist assistant.

(2) Robbie Hinkebein, PT, DPT, OCS, ATC, inquiring as follows: "[i]s it a violation of the KY State Practice Act for a physical therapist to violate a condition of participation with a federally funded third party payer?" Following consideration and discussion, the Board concluded that, depending on the specific facts presented in the scenario, and assuming that a violation of a federally funded third party payer agreement has been committed, this may constitute a violation of the Kentucky Physical Therapy Practice Act; specifically, KRS 327.070(2)(h), in that such facts may support a finding that the physical therapist has engaged in fraud or material deception in the delivery of professional services, including reimbursement, or advertising services in a false or misleading manner.

(3) Gayathiri Gnanadevane, a foreign-educated endorsement applicant, inquiring whether the Board would accept her supervised practice experience outside of Kentucky to satisfy her on-site supervised practice requirements set out in 201 KAR 22:070 Section 1(2)(g). Following consideration and discussion, and based on the information submitted to the Board by the applicant, Peggy Block made the motion for the Board to deem this applicant's on-site supervised practice to have satisfied the regulatory requirements. This motion was seconded by Virginia Johnson, which carried.\

Civil Matters and Investigations

2012 Complaint Committee

C2012-12: Mr. Brengelman reported that Mr. Montgomery timely filed his Answer to the Civil Complaint, but had not yet responded to a settlement offer which would terminate this litigation. Upon discussion and consideration, the Complaint Committee recommended and moved that the Board authorize Mr. Montgomery through September 23, 2013, in which to respond to the Board's settlement offer. This motion was seconded by Peggy Block, which carried.

C2012-26: After consideration of new information that this credential holder may have engaged in an inappropriate relationship with a patient during the patient's treatment, coupled with the original allegations in the initiating complaint concerning possible inappropriate relationships between the credential holder and other patients and co-workers, the Complaint Committee recommended and moved that the Board order the credential holder to undergo a mental health evaluation to determine whether reasonable cause exists to believe that the credential holder may be impaired by reason of a mental, physical, or other condition that impedes his ability to practice competently. This motion was seconded by Peggy Block, which carried. Due to a limited but active role taken in the case investigation, Tina Volz recused herself from the vote taken by the Board.

2013 Complaint Committee

C2013-02: The Complaint Committee reported that this case is ongoing.

C2013-07: The Complaint Committee reported that this case is ongoing.

C2013-08: The Complaint Committee reported that this case is ongoing.

C2013-10: Following consideration of newly-discovered information that the business entitled "Next Level Physical Therapy, Personal Fitness and Life Coach" in Nancy, Pulaski County, Kentucky, is owned and operated by a physical therapist presently credentialed by the Board, the Complaint Committee recommended and moved that this action be dismissed. The motion was seconded by Troy Grubb, which carried.

BIC2013-15: Following consideration of a mental health/chemical dependency evaluation of the credential holder, coupled with the credential holder's criminal conviction of having the intent to defraud/scheme artifice to obtain benefits less than \$10,000.00 (two counts), and an additional criminal conviction for public intoxication, drug possession (marijuana), and resisting arrest, the Complaint Committee recommended and moved that the Board authorized its Counsel to extend a settlement agreement to the credential holder. Tina Volz seconded the motion, which carried.

C2013-30: The Complaint Committee reported that this case is ongoing.

C2013-31: The Complaint Committee reported that this case is ongoing.

C2013-36 (Hands on Healing Chiropractic / Lexington, KY): Following review and consideration of a possible violation of term protection by advertising physiotherapy services, and after reviewing information provided by the Kentucky Board of Chiropractic Examiners indicating that Drs. Michael Sullivan and Bethany VanRooy, who practice at the subject company, have both taken all of the

physiotherapy courses and passed the National Board of Chiropractic Examiners Physiotherapy Examination, the Complaint Committee recommended and moved to the full Board that no action be taken, as the subject company would not be in violation of the Board's statute on term protection or be engaged in the unauthorized practice under these circumstances. This motion was seconded by Troy Grubb, which carried.

C2010-04: After consideration of information received by the U.S. Bankruptcy Court for the Southern District of Ohio that this credential holder has filed for Chapter 7 bankruptcy protection in relation to the Board's administrative fine of \$5,000, which was a term in the Board's Final Order dated November 18, 2010, the Complaint Committee recommended and moved that no action be taken. The motion was seconded by Virginia Johnson, which carried.

C2013- : After consideration that this credential holder truthfully answered "yes" on the 2013 renewal application in relation to a conviction in the Lewis District Court on March 10, 2011, on a charge of Terroristic Threatening, 3rd Degree, a Class A Misdemeanor, and of Disorderly Conduct, 2nd Degree, a Class B Misdemeanor, for which he was sentenced to no jail time and was assessed a fine of \$1.00, and also after considering that he was found not guilty by jury on a charge of Resisting Arrest, the Complaint Committee recommended and moved that the Board take no action. This motion was seconded by Troy Grubb, which carried.

2013 CE Audit:

For Physical Therapists, Scott Majors reported that:

- a total of 313 were included in this year's audit;
- 238 were deemed fully compliant;
- 75 required follow-up inquiry to determine compliance status;
- 38 were either late in completing, or had never completed, the 2011-2013 jurisprudence examination;
- 12 were either late in completing, or had never completed, the HIV/AIDS requirement per 201 KAR 22:040 Section 1(4);
- 6 had submitted no response to the audit (treated as if failing to meet any of the minimum requirements); and
- 7 were late/short, other than the jurisprudence examination and the HIV/AIDS requirements.

For Physical Therapist Assistants, Mr. Majors reported that:

- a total of 204 were included in this year's audit;
- 161 were deemed fully compliant;
- 43 required follow-up inquiry to determine compliance status;
- 15 were either late in completing, or had never completed, the 2011-2013 jurisprudence examination;
- 5 were either late in completing, or had never completed, the HIV/AIDS requirement per 201 KAR 22:040 Section 1(4);
- 6 had submitted no response to the audit (treated as if failing to meet any of the minimum requirements); and
- 4 were late/short, other than the jurisprudence examination and the HIV/AIDS requirements.

Mr. Majors further reported that he would be meeting with Stephen Curley shortly after the meeting to determine which cases should be referred to Board counsel for preparation of a proposed private admonishment and associated fine.

IPTPC Report

The Board reviewed the IPTPC report submitted by Brian Fingerson, R.Ph. Cases that are involved in the IPTPC previously have come to the attention of the Board.

Additionally, with respect to C2010-23, Mr. Brengelman reported that he had been in recent contact with the credential holder, through his counsel, who may be interested in entering into a settlement agreement to resolve differences he has with the Board's order which effectively revoked his credential. Following considerable discussion, Linda Pillow made the motion for the Board to invite this credential holder and his counsel to appear before a complaint committee on November 20, 2013, and to address at that time: (1) his present ability to practice physical therapy in a competent manner; and (2) what terms he would find acceptable for entering into a settlement agreement with the Board. This motion was seconded by Virginia Johnson, which carried.

Update on Monitoring Probations

The Board noted the following credential holders who are presently being monitored: Malton Schexneider, PT; James Rick Roe, PT; Ron Cole, PT; Lawrence Tatem, PT; Amanda Mattingly, PTA; Jon-Mark French, PTA; Andreanna Spencer, PTA; Art Nitz, PT; Michael Harris, PTA; Michael Anthony, PT; Terence Brown, PT; and Lori Oakley, PTA.

Director's Report

Financial Report

The Board reviewed monthly, quarterly and 2013 YTD annual FAS3 financial report addressing the Board's revenues and expenditures.

Amendments to Administrative Regulations

Mr. Brengelman reported that the proposed amendments to 201 KAR 22:045; 201 KAR 22:55E; and 201 KAR 22:130 were considered by the Administrative Regulation Review Subcommittee on August 8, 2013, and were scheduled to be considered by the Interim Joint Committee on Health and Welfare on September 18, 2013.

2013 – 2015 Jurisprudence Exam

Mr. Majors reported that the changes to the proposed 2013 – 2015 JE made by the Board at the last meeting were completed by the developers with Kentucky.gov, and that the new examination was scheduled to go "live" and be fully accessible on the Board's website within a few days.

Department of Revenue

As instructed by the Board at its last meeting, Mr. Majors reported that September 9, 2013, he notified Rep. Ben Waide of the Board's concerns with the recent changes to KRS 131.1817 which place the obligation upon state regulatory boards to revoke a credential when notified that the holder of that credential has assumed a tax delinquency status. As of the date of the meeting, Rep. Waide had not yet responded. Mr. Majors offered to report back to the Board at its next meeting.

KBPT Telephone System

Mr. Majors reported that no new developments have occurred concerning the proposed VoIP telephone system since the last meeting.

KBPT Office Space

Mr. Majors reported that he was scheduled to meet with the Board's Budget Analyst in the next few days, and he intended to address the Board's office space and staffing needs with the analyst at that time. Mr. Majors agreed to provide the Board an update at the next meeting.

Conferences Relating to Physical Therapy

The Board reviewed the schedule of upcoming conferences, as follows:

- a. FARB – Attorney Certification Conference
(10/04-06/13 – The Coeur d'Alene in Coeur d'Alene, ID)
No Board member expressed interest in attending this conference. The Board previously approved for Mr. Majors and Mr. Brengelman to attend.
- b. FSBPT Annual Conference
(10/10-12/13 – San Antonio, TX)
- c. KBPT Telehealth Regulation Review Committee
(10/22/13 – KBPT Offices)
- d. APTA National Student Conclave
(10/24-27/13 – Louisville, KY)

On motion made by Tina Volz 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, the motion was seconded by Linda Pillow, which carried. The lists are attached to these minutes.

A motion was made by Karen Ogle to adjourn the meeting at 3:30 p.m. The motion was seconded by Mr. Grubb and carried.

Respectfully submitted,



Scott D. Majors
Executive Director