



KENTUCKY BOARD OF PHYSICAL THERAPY

312 Whittington Parkway, Suite 102

Louisville, Kentucky 40222

Phone (502) 429-7140

Fax (502) 429-7142

<http://pt.ky.gov>

Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING January 14, 2016

Board Members: Tina Volz, PT, Chair
Ron Barbato, PT, Chair-Elect
Troy Grubb, PT
Karen Craig Ogle, 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

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD, MSED

Board Guests: Thomas Clark, Budget Analyst
John Grabill, PT
Sean Grabill
Renee Burke, Pharmacy Student
Khaai Le, Pharmacy Student

Absent: Virginia Johnson, Public Member

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Tina Volz, at 9:04 a.m. on Thursday, 01/14/16, at the Board office. A quorum was present.

Minutes for Previous Regular Meeting

The Board reviewed and discussed amendments to the minutes of the 11/05/15 Board meeting.

Action taken: Ms. Pillow made a motion to approve the minutes of the Board meeting of 11/05/15, as amended. This motion was seconded by Ms. Ogle, which carried.

Board Discussions, Committees and Opinion Requests

Proposed Physical Therapy Licensure Compact

The Board had a lengthy discussion and reviewed various resources relating to the Licensure Compact.

Action taken: Mr. Grubb made the motion to table the decision on the Licensure Compact until the March meeting and to monitor HB 163, an enhanced version of its existing Nurse Licensure Compact. The motion was seconded by Ms. Ogle, which carried.

Scope of Practice Workgroup

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

Action taken: The consensus of the Board was to table the discussion until the March Board meeting. Mr. Grubb asked that any questions or concerns be emailed to him.

Monitoring Procedures and Requirements

Mr. Curley reported that a part of the application had to be rebuilt to accommodate the suggested changes. Once the rebuild is completed the application will be tested. Mr. Curley will give an update at the March Board meeting.

Online Verification System & Payment Portal

Mr. Curley reported that he had a meeting scheduled with Kentucky Interactive to have them design a system that verifications can be completed and paid for online. This is in the very early stages and he will update the Board at the March meeting.

2015 CE Audit Report & 2017 CE Audit Discussion

Mr. Majors and Ms. Barton provided the Board a report of the final data for the 2015 CE audit as well as a comparison of data for the 2013 and 2015 audits. Additionally, the Board was provided various models to examine for possible adoption as the Board's model for the 2017 CE audit.

Action taken: Following discussion, Mr. Majors offered to incorporate the various suggestions offered by the members into a proposed single, revised model for possible Board adoption at its March meeting.

KBPT Newsletter

The Board briefly reviewed and discussed draft articles for the Board's newsletter.

Action taken: Ms. Ogle made a motion to approve the newsletter articles with suggested amendments. The motion was seconded by Ms. Weinberg, which carried.

July Board Meeting Date

Prompted by a newly created conflict, Mr. Majors asked the Board to consider either advancing or postponing the July Complaint Committee meeting and the July Board meeting.

Action taken: The Board agreed to reschedule the Complaint Committee meeting to 08/03/2016 and the Board meeting to 08/04/2016.

BoardEffect

Mr. Curley gave a presentation on the basic applications of BoardEffect, and also noted that a more in-depth training will be provided at the March Board meeting.

Action taken: The Board requested that the January Board packet be uploaded into BoardEffect within a few weeks to help the members become familiar with the new software. Also, the Board requested that the March Board packet be uploaded into BoardEffect and onto the Ky.gov website.

Civil Matters and Investigations

2014 Complaint Committee

BIC2014-19: The Complaint Committee reported that the credential holder has accepted the proposed Private Admonishment, completed the required CE course, and paid his/her respective fine.

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

2015 Complaint Committee

BIC2015-05: The Complaint Committee reported that this case involved a complaint against a facility that allegedly had PTAs practicing without the supervision of a PT.

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 Mr. Barbato, which carried.

C2015-11: The Complaint Committee reported that this case is ongoing and there will be a status update provided at the March Board meeting.

Action taken: No action taken.

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

Action taken: No action taken.

BIC2015-13: The credential holder in this action, Mr. Doug Adams, appeared before the Board, without counsel, to review the terms of a proposed written settlement agreement. These terms include, but are not limited to: (a) enroll and demonstrate active participation in either inpatient or intensive outpatient facility approved by IPTPC; (b) enroll and maintain a lifetime contract with IPTPC; and (c) pay all fines and fees in the amount of \$1550 within one year of reinstatement.

As Board Chair, Ms. Volz reviewed each term of the agreement with Mr. Adams, who acknowledged his understanding, assent, and agreement to all terms of the agreement. The Board provided Mr. Adams an opportunity to have his questions addressed by the Board.

Action taken: Ms. Ogle made the motion for the Board to approve and file of record the subject agreement. The motion was seconded by Mr. Grubb, which carried.

C2015-24: The Complaint Committee reported that this case is ongoing

Action taken: No action taken.

BIC2015-25: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2015-26: The Complaint Committee reported that this case involves allegations of substandard care and failing to respect the rights and dignity of patients.

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 Mr. Barbato, which carried. Mr. Grubb recused himself from any consideration of this matter.

C2015-29: 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 Board authorized Counsel to offer a Private Admonishment contingent on the credential holder completing a continued competency course as approved by the Board and paying a fine of \$250. The motion was seconded by Mr. Barbato, which carried.

BIC2015-31: The Complaint Committee reported it received information of a malpractice action against this credential holder. Without a recommendation or motion, the Complaint Committee reported that it wanted to seek input from the full Board on what action would be appropriate for the credential holder.

Action taken: Following consideration and discussion, Mr. Barbato made a motion to authorize Board Counsel to offer a Private Admonishment contingent on the credential holder completing a continued competency course as approved by the Board and paying a fine of \$250. The motion was seconded by Ms. Weinberg, which carried.

C2015-35: The Complaint Committee gave a brief history that this case involves allegations of possible fraud and material deception. The Complaint Committee reported that the credential holder has not responded to the Board's Order filed after the November meeting.

Action taken: The Complaint Committee recommended and moved to authorize Counsel to file a Notice of Hearing for failing to file a response and failing to comply with a Board order. The motion was seconded by Ms. Pillow, which carried.

C2015-36: The Complaint Committee reported that this case involves a possible term protection violation by an individual who allegedly offered physical therapy exercise without having a physical therapist on staff. Counsel reported that the Board staff received the signed Informal Letter of Agreement.

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

C2015-103: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2015-104: The Complaint Committee reported that this case involves a possible term protection violation.

Action taken: The Complaint Committee recommended and moved to accept a letter from the Respondent pledging future compliance and to close this case. The motion was seconded by Mr. Barbato, which carried.

C2015-107: The Complaint Committee reported that is case involves a possible IPTPC violation.

Action taken: The Complaint Committee recommended and moved to take no action. The motion was seconded by Ms. Ogle, which carried.

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

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

C2015-109: The Complaint Committee reported that this case involves allegations of a credential holder failing to respect the rights and dignity of a patient.

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

Exam Applicant J.K.: Exam applicant J.K. answered “yes” to question 11 on his/her application concerning seeking alcohol or drug treatment within the past 5 years. The Complaint Committee reported that application had been reviewed by the IPTPC Chair, Mr. Brian Fingerson.

Action taken: The Complaint Committee recommended and moved that issuance of a credential to the applicant be stayed pending receipt of satisfactory evidence that the applicant has voluntarily entered into a participation agreement with the Board’s Impaired Physical Therapy Practitioners Committee (IPTPC); however, if the applicant refuses to voluntarily enroll with IPTPC, the administration of the application for a credential with the Board should be stayed pending reconsideration of the matter during the March meeting. The motion was seconded by Mr. Barbato, which carried.

2015 CE Audit:

CE2015-37:

CE2015-43:

The Complaint Committee reported that Board staff has not received signed Settlement Agreements or payments for these credential holders.

Action taken: The Complaint Committee recommended and moved that the Board authorize and instruct Counsel to pursue final action through administrative hearings and allow the hearing officer to hear the case and issue a recommendation. The motion was seconded by Ms. Ogle, which carried.

CE2015-39:

CE2015-40:

CE2015-41:

CE2015-47:

CE2015-48:

CE2015-105:

The Complaint Committee reported that these individuals have signed their respective Settlement Agreements and have paid their respective fines.

Action taken: The Complaint Committee recommended and moved to retract the Notices of Hearings and formal charges, accept the signed Settlement Agreements, and close these cases. The motion was seconded by Mr. Barbato, which carried.

CE2015-44: The Complaint Committee reported that this credential holder accepted the Settlement Agreement and paid his/her respective fine. Board staff received the credential holder’s information prior to the Notice of Hearing and formal charges being sent out.

Action taken: The Complaint Committee recommended and moved to accept the signed Settlement Agreement and to close this case. The motion was seconded by Mr. Barbato, which carried.

CE2015-50: The Complaint Committee reported that the credential holder has provided proof of completion of all Continued Competency requirements via aPTitude for the 2013-2015 biennium.

Action taken: The Complaint Committee recommended and moved to retract the Private Admonishment, proposed fine, the Notice of Hearing and formal charges. The motion was seconded by Mr. Barbato, which carried.

CE2015-56: The Complaint Committee reported that the credential holder has failed to submit payment towards the fine, and has not uploaded his/her Continued Competency via aPTitude.

Action taken: The Complaint Committee recommended and moved to open a Board Initiated Complaint (BIC) for violating an order of the Board. The case is referred to the 2016 Complaint Committee as case BIC2016-03. The motion was seconded by Ms. Weinberg, which carried.

CE2015-61: The Complaint Committee reported the credential holder has accepted the proposed Private Admonishment; however, the credential holder requested a payment plan. The credential holder was given until 02/08/16 to pay the fine. Board staff reported that the credential holder has not yet paid his/her fine.

Action taken: The Complaint Committee recommended and moved to authorize Counsel to file a Notice of Hearing and formal charges if the credential holder does not pay his/her fine by the 02/08/16 deadline; however, if the credential holder does pay his/her fine, the case shall be considered closed. The motion was seconded by Ms. Weinberg, which carried.

CE2015-63:

CE2015-64:

CE2015-65:

The Complaint Committee reported that, while these individuals had not yet responded to their proposed Private Admonishments or paid their respective fines by the last Board meeting, all of the individuals have since accepted the Private Admonishments and paid their fines.

Action taken: The Complaint Committee recommended and moved to retract the Notices of Hearing and formal charges and close these cases. The motion was seconded by Ms. Pillow, which carried.

CE2015-68: The Complaint Committee reported that this credential holder accepted the proposed Private Admonishment and paid his/her respective fine prior to a Notice of Hearing or formal charges being filed.

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

CE2015-70: The Complaint Committee reported that the credential holder has accepted the proposed Private Admonishment and paid the respective fine. A Notice of Hearing and formal charges were not filed because the credential holder paid prior to his/her deadline.

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

CE2015-78: The Complaint Committee reported that the credential holder has accepted the proposed Private Admonishment and submitted evidence of payment of the proposed fine.

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

CE2015-81: The Complaint Committee reported that the credential holder has accepted the proposed Private Admonishment and paid his/her respective fine prior to the deadline.

Action taken: The Complaint Committee recommended and moved to retract the Notice of Hearing and formal charges and close this case. The motion was seconded by Ms. Ogle, which carried.

CE2015-86: The Complaint Committee reported that there is a prehearing conference scheduled with the credential holder and hearing officer and the matter is ongoing.

2016 Complaint Committee

C2016-01: The Complaint Committee reported we have received information from a third party about a settlement in a lawsuit that may involve a credential holder.

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

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

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

IPTPC Report

Mr. Fingerson presented the IPTPC report dated 01/07/16. IPTPC cases which previously have come to the attention of the Board, or were discussed at length during the Complaint Committees' reports, were reviewed.

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 by the Board-appointed monitor and considered by the Board for Ms. Bentley.

REPORTS AND OTHER BUSINESS

Legal Report

Administrative Regulations

Mr. Kelly updated the Board on the status of the revisions to 201 KAR 22:020, 22:040, and 22:070. He explained proposed revisions relating to the elimination of the HIV/AIDS education for initial credentialing, renewal, and foreign-educated applicants were reviewed and approved by both the administrative regulatory review and interim health and welfare committees, and all of these administrative regulations became effective on 12/16/15.

Supreme Court's North Carolina Dental Decision

Mr. Kelly briefly summarized the contents of a policy paper written by the Consumer Advocacy Commission regarding the North Carolina Dental case.

KBPT Declaratory Opinions

The Board briefly discussed with Mr. Kelly about scheduling a meeting to review declaratory opinions issued by the Board in the past.

OAG Open Records Opinion

Mr. Kelly advised the Board regarding a recent Attorney General Opinion concerning the application of the Kentucky Open Records Act to private cell phones and text messages.

HB 225

Mr. Kelly advised the Board of HB 225 which deals with licensing for members of the military who receive comparable education through military training. Mr. Kelly advised that the proposed legislation was assigned to the Health and Welfare Committee and the staff would observe the progress and update the Board on any future action as it arises.

KBPT Liaison to KPTA Report

Healthcare Transparency Bill

Mr. Barbato reported that he attended a meeting with the Department of Insurance because there were some concerns expressed regarding patient protection. After the meeting, the consensus was to table the Transparency Bill and not take action at this time.

Athletic Trainers

Mr. Barbato reported that the Athletic Trainers under the auspices of the Board of Medical Licensure have filed a bill which would allow them to directly bill for their services.

Mobile Health & Special Health Clinic License

Mr. Barbato reported that a KPTA taskforce has been working with the Tri-Alliance to ensure regulatory wording will allow for many variances among therapy providers who do not fall under the existing exemptions. However, the Office of Inspector General (OIG) has recently changed the language in the Mobile Health regulation specifically defining multi-therapy agencies. This would primarily impact those providing Medicaid services in sites outside of the traditional outpatient clinics. Therefore, the taskforce requested the regulation be pulled.

KPTA Liaison to KBPT Report

Kentucky Healthcare Transparency Bill

Dr. Kuperstein reported to the Board that the KPTA has decided not to move forward with the Healthcare Transparency bill.

Athletic Trainers

Dr. Kuperstein reported that the Athletic Trainers have filed legislation seeking the ability to directly bill private insurance for their services. The bill raises multiple concerns for physical therapy, as well as consumer protection issues, because their practice act lacks stringent consumer safeguards.

Therapy Tri-Alliance

Dr. Kuperstein reported that the Therapy Tri-Alliance Legislative Day is 03/08/16. The lobbyist for Occupational Therapy is working on securing a room for the three groups (PT, OT, and Speech) to meet separately with representatives from their respective boards. KPTA may contact KBPT to determine who might be available to meet with attendees.

Action taken: The Board asked Dr. Kuperstein to inform KPTA that KBPT is not in favor of an open forum meeting.

Kentucky Conclave

Dr. Kuperstein reported that the Kentucky Conclave is scheduled for 09/09-10/16 in Lexington.

APTA Website

Dr. Kuperstein reported that the Center for Integrity in Practice on the APTA website includes links to ethics documents, state practice acts, documentation information and many relevant documents.

State Affairs App

Dr. Kuperstein reported that the "State Affairs App", which will help the KPTA with its grassroots payment and policy efforts, is now available.

Director's Report

Financial Report

The Board reviewed monthly, quarterly and 2015 annual FAS3 financial reports addressing the Board's revenues and expenditures.

Mr. Majors reported that the Administrative Office of the Courts has made CourtNet 2.0 available to state regulatory agencies, including KBPT, to conduct criminal background checks at a substantially reduced cost than offered by the current system. Mr. Majors indicated that staff is in the process of completing the required documentation to enable KBPT to access the new system without delay.

Mr. Majors also introduced Thomas Clark, the Board's Budget Analyst with the Office of the State Budget Director, who appeared at the meeting as a guest to observe the Board's meeting in action. The Board members discussed the prospect of another sweep/raid of funds in its Restricted Agency Account, similar to that taken by the Governor's Office and the Legislature in 2014.

Action taken: Ms. Ogle made the motion that, if prior to the Board's meeting on 03/17/16 staff learn that a sweep/raid of Board's funds has been proposed as a component of the Commonwealth's FY 2016-2018 Budget, the Board's Chair and its Executive Director be authorized to immediately communicate the Board's serious concerns with this proposed process to the State Budget Director and appropriate legislators. This motion was seconded by Ms. Pillow, which carried.

Department of Insurance

Mr. Majors circulated copies of the quarterly malpractice report submitted by the Department of Insurance Public Protection Cabinet concerning health care providers with settlement and/or judgments, dated 01/04/16 covering the period from 10/01/15 through 12/31/15.

Articles of Interest

Mr. Majors circulated copies of topical articles of interest which addressed issues on Telehealth and Occupational Licenses.

CAPTE: Developing PT Programs

Mr. Majors circulated copies of the most recent CAPTE report which listed developing PT programs which specifically listed the new program at Western Kentucky University.

Office Security

Mr. Majors reported that the executive directors for the state regulatory boards located within the same building occupied by Board staff met on 01/06/16 to discuss office security, and that an update will be provided to the Board when additional information is obtained.

CBT Comment Summary and Candidate Satisfaction Survey Report

Mr. Majors reported the results of the latest CBT comment survey and satisfaction survey report. This report listed an overall satisfaction rating of 92.5% for all jurisdictions, while the overall satisfaction rating for Kentucky was listed at 93% in the first quarter, 100% in the second quarter, and 96% in the third quarter, and 94% in the most recent quarter.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences

- a. 2016 FARB Forum
(01/28-31/16 – Clearwater Beach, FL)
Mr. Barbato is to serve as KBPT's authorized representative.
- b. CAPTASA – 2016 Conference Workshop
(01/29-30/16 – Lexington, KY)
Ms. Weinberg is to serve as KBPT's authorized representative.
- c. CLEAR – 2016 Annual Educational Conference
(09/15-17/16 – Portland, OR)

- d. FARB – 2016 Regulatory Law Seminar
(09/29-10/2/16 – Chicago, IL)
- e. FSBPT – 2016 Annual Meeting, Conference and Delegate Assembly
(11/04-06/16 – Columbus, OH)

New licensees/reinstatements/renewal applications

Action taken: Ms. Ogle 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. Pillow, which carried. The lists are attached to these minutes.

Open Public Comment

Mr. John Grabill offered public comment to the Board concerning “bad faith” clauses found within many malpractice insurance policies that are available to practitioners of physical therapy.

A motion was made by Ms. Ogle to adjourn the meeting at 3:54 p.m. The motion was seconded by Ms. Pillow, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director