



KENTUCKY BOARD OF PHYSICAL THERAPY

Steve L. Beshear
Governor

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Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING September 13, 2012

Board Members Present: Troy Grubb, PT, Chair
Peggy Block, PT
Karen Craig Ogle, PT
Charles Clark, PT
Linda Pillow, PT
Tina Volz, PT

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

Board Agents: Ryan Halloran, Assistant Attorney General, Board Counsel

Guests: Tony Brosky, PT, KPTA Liaison
Mark R. Brengleman, Esq.

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Troy Grubb, at 9:13 a.m., Thursday, September 13, 2012, at the Board office. A quorum was present.

The Board welcomed Tina Volz, PT, who was appointed by Governor Steve Beshear to begin a four-year term as Board member, effective August 3, 2012. Ms. Volz will replace Janice Kuperstein, PT, whose term on the Board expired August 2, 2012. Donna Sims, the Board's Licensure Coordinator and a notary, administered the oath of office to Ms. Volz.

Motion was made by Karen Ogle, seconded by Chuck Clark, to approve the minutes, as amended, of the Board meeting of July 31, 2012. Motion carried.

Following consideration of various conferences which are expected to be held in 2013, and in an effort to avoid potential conflicts with the scheduling of these conferences, the Board established the following 2013 schedule for its Complaint Committee and Board meetings:

Complaint Committee: 3:00 p.m. to (approx.) 7:00 p.m.

January 16
March 20
May 15
July 24
September 11
November 20

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

January 17
March 21
May 16
July 25

September 12
November 21

Board Appointments

Following discussion, the Board made the following appointments, effective January 1, 2013, unless otherwise noted:

- (1) 2013 Board Chair: Troy Grubb moved that Chuck Clark be appointed as 2013 Board Chair, seconded by Peggy Block. Motion carried;
- (2) 2013 Board Chair-Elect: Troy Grubb moved that Linda Pillow be appointed as 2013 Board Chair-Elect, seconded by Tina Volz. Motion carried;
- (3) 2013 Complaint Committee: Troy Grubb moved that Chuck Clark, as the 2013 Board Chair, assume responsibility as a 2013 Complaint Committee member to join existing member Linda Pillow. Mr. Grubb agreed to serve as a 2012 Complaint Committee member for the remainder of the calendar year as temporary replacement for Janice Kuperstein, whose term expired August 2, 2012. Motion seconded and carried;
- (4) 2013 Remediation Committee: Troy Grubb moved that Linda Pillow and Peggy Block be reappointed as members of the 2013 Remediation Committee, seconded by Tina Volz. Motion carried;
- (5) ADA Accommodations Committee: Troy Grubb moved that, effective immediately, Tina Volz be appointed to the ADA Accommodations Committee, to join existing member Troy Grubb. Motion seconded by Peggy Block and carried; and
- (6) 2013 KPTA Liaison: Troy Grubb moved that Karen Ogle be appointed as the Board's 2013 KPTA Liaison, seconded by Tina Volz. Motion carried.

Scott Majors advised that, during the preparation of the Board newsletter, staff would benefit by having a Board member available for consultation purposes. The Board reaffirmed its practice of having the Board's Chair serve in this capacity.

Civil Matters and Investigations

Complaint Committee #1

C2012-07: Per the applicant's request for withdrawal of an application for licensure and refund of a fine previously paid, and upon the applicant's assurance that (s)he shall not practice physical therapy in Kentucky, the Complaint Committee made the motion to permit the applicant to withdraw the parties' proposed Conditional Grant of Certificate and Settlement Agreement and to refund the applicant the \$250.00 fine previously paid. The motion was seconded by Tina Volz, which carried.

C2012-08: Upon summary of the matter, with the assistance of counsel, the Complaint Committee recommended and moved that the Board give settlement authority to counsel in an effort to resolve this action informally without an administrative hearing. This motion was seconded by Peggy Block, which carried.

C2012-09: Upon summary of the matter, with the assistance of counsel, the Complaint Committee reported that this case is ongoing and more information is expected to be available by the next meeting.

C2012-11: Upon summary of the matter, with the assistance of counsel, the Complaint Committee reported that this case is ongoing and more information is expected to be available by the next meeting.

C2012-12: Upon summary of the matter, with the assistance of counsel, the Complaint Committee reported that the Board received a signed Cease and Desist following the unauthorized use of the protected term "PT", but also had received information suggesting that compliance may not be secured. Thus, the Committee recommended and moved that the full Board table this case for the next meeting for staff to further investigate to ensure the individual's compliance with the Cease and Desist. This motion was seconded by Peggy Block, which carried.

C2012-13: Upon summary of the matter, with the assistance of counsel, the Complaint Committee reported that this case is ongoing and more information is expected to be available by the next meeting.

BIC2012-14: Upon summary of the matter, with the assistance of counsel, the Complaint Committee reported that this case is ongoing and more information is expected to be available by the next meeting.

C2012-20: Upon summary of the matter, with the assistance of counsel, the Complaint Committee recommended and moved that an investigation be opened against this credential holder based on allegations of possible fraudulent and/or deceptive billing practices involving Medicare. This motion was seconded by Chuck Clark, which carried.

C2012-21: Upon summary of the matter, with the assistance of counsel, the Complaint Committee recommended and moved that an investigation be opened against this credential holder based on allegations of possible fraudulent and/or deceptive billing practices involving Medicare. This motion was seconded by Chuck Clark, which carried.

C2012-22: Upon summary of the matter, with the assistance of counsel, the Complaint Committee reported that the employer who filed the complaint for possible sexual harassment on the part of the credential holder noted that its own internal investigation could not corroborate the allegations and no action was thus taken. Accordingly, the Committee recommended and moved that no investigation be opened at this time absent additional information. This motion was seconded by Peggy Block, which carried.

C2012-23: Upon summary of the matter, with the assistance of counsel, the Complaint Committee recommended and moved that an investigation be opened concerning this individual's unauthorized use of the protected terms "Physical Therapy" and "Physiotherapy," and to authorize staff to issue a Cease and Desist if the investigation reveals facts and information to so support. This motion was seconded by Tina Volz, which carried.

C2012-24: Upon summary of the matter, with the assistance of counsel, the Complaint Committee recommended and moved that an investigation be opened concerning this individual's unauthorized use of the protected terms "Physical Therapy" on an advertisement, and to authorize staff to issue a Cease and Desist if the investigation reveals facts and information to so support. This motion was seconded by Tina Volz, which carried.

Complaint Committee #2

BIC2012-16: Following a review of the response filed to the Board Initiated Complaint, and with the assistance of counsel, the Complaint Committee reported that this is an ongoing investigation and the Committee was awaiting information in response to an investigative subpoena.

BIC2012-17: Following a review of the response filed to the Board Initiated Complaint, and with the assistance of counsel, the Complaint Committee reported that this is an ongoing investigation and the Committee was awaiting information in response to an investigative subpoena.

BIC2012-18: Following a review of the response filed to the Board Initiated Complaint, and with the assistance of counsel, the Complaint Committee reported that this is an ongoing investigation and the Committee was awaiting information in response to an investigative subpoena.

BIC2012-19: Following a review of the response filed to the Board Initiated Complaint, and with the assistance of counsel, the Complaint Committee reported that this is an ongoing investigation and the Committee was awaiting information in response to an investigative subpoena.

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. Cases listed in this report, for which additional information was presented, include:

C2010-23 (S. Barton, PT 002407) Scott Majors reported that Mr. Barton has requested that a hearing be conducted following the Board's Notice of Revocation, entered August 14, 2012. Board members provided staff four (4) possible dates in December on which this hearing could be scheduled and attended by a quorum of the Board.

C2011-06 (R. Combs, PT 004977) Scott Majors affirmed that Ms. Combs' license was still under Immediate Temporary Suspension. In an effort to obtain a final disposition, the Board's counsel has requested a pre-hearing conference and will seek leave from the hearing officer to file an Amended Notice of Hearing.

Update on Monitoring Probations

Updates were given concerning probation monitoring for the following: Malton Schexneider, PT; James Rick Roe, PT; Ron Cole, PT; Lawrence Tatem, PT; Tiffiney Bentley, PT; Amanda Mattingly, PTA; Jon-Mark French, PTA; Jeremy Kruger, PT (written report); Shannon Snyder, PT; Karen Snyder, PT; Barack Jonkers, PTA (written report); Art Nitz, PT; and Michael Harris, PTA.

The Board also discussed the nature of Steve Hammons' continuing service as monitor for Mr. French. Following consideration, Peggy Block offered to contact Mr. Hammons to determine whether a change in this relationship is presently warranted.

Board and Administrative Business

Opinion Requests

The Board reviewed the following opinion requests from:

(1) Troy Grubb, PT whether: (1) PTs may acquire INRs through fingersticks while rendering care in the patient's home as part of the treatment plan; and (2) PTAs may acquire INRs through fingersticks while rendering care in the patient's home as part of the treatment plan. Upon consideration and discussion, the Board instructed staff to respond by:

- (a) citing to its Opinion and Declaratory Ruling on the issue, dated July 18, 2000; and
- (b) answering "yes," as long as INRs are related to the practice of physical therapy and the credential holder is duly trained and competent to perform the procedure.

(2) Char Manning, PTA whether an area on the Kentucky IEP form entitled "Health, Vision, Hearing and Motor Abilities," to be completed by Special Education personnel to describe a child's present level of performance, qualifies as a plan of care and, if so, whether this necessitates a PT signature before a PTA may legally document/assess this information. Upon consideration and discussion, the Board concluded that the question pertains to a school system evaluation tool which would not be a plan of care, and the question involves educational policy adopted by the state which is not within the jurisdiction of the Board to entertain.

(3) Troy Donahue, PTA whether the Board supports dry needling treatment as it relates to a PTA. Upon consideration and discussion, the Board instructed staff to respond by:

- (a) citing to the Board's Opinion and Declaratory Ruling on the issue, dated March 18, 2010 (previously provided); and
 - (b) referring Mr. Donahue to his PT supervisor to determine whether he (Donahue) has the requisite skill, training and experience to perform this procedure.
- (4) Becky House, PT whether the Board has any concerns with regards to scope of practice if she (House) is asked by her local high school to provide home game coverage for injury evaluation. Upon consideration and discussion, the Board instructed staff to respond by emphasizing that:
- (a) if only screening is involved, Ms. House must comply with the requirements set forth in 201 KAR 22:053 Section 2(1); but
 - (b) if treatment is also rendered, Ms. House must comply with the requirements set forth in 201 KAR Sections (2) and (5).
- (5) Kim Johnston Beasley, PT whether she is permitted to complete a discharge summary for a patient in a licensed PT facility for whom she performed the initial evaluation but provided no subsequent treatment. Upon consideration and discussion, the Board instructed staff to respond by noting that a discharge summary is simply a summary of care and can be written by a PT under the facts as presented.
- (6) Amber Moore, PT whether she was eligible for Category 2 CE credits. Upon consideration and discussion, the Board instructed staff to respond by stating she was:
- (a) not eligible for course credit under 201 KAR 22:045 Section 2 (3)(c), as this was not a part of a CAPTE-approved educational program or an APTA credentialed residency or fellowship program;
 - (b) eligible for one (1) contact hour per biennium of course credit under 201 KAR 22:053 Section 2(3)(a) regarding self-instruction; and
 - (c) eligible for a maximum of two (2) contact hours per biennium of course credit under 201 KAR 22:053 Section 2(3)(d) regarding physical therapy in-service or study group if consisting of two (2) or more physical therapists or physical therapy assistants.
- (7) Samantha P. Walls, PTA whether she is permitted to bill for tech time for Medicare A patients, as she has been advised by her employer. Upon consideration and discussion, the Board determined that it does not have jurisdiction over billing questions unless the billing engages in fraud or material deception. The Board also determined that Ms. Walls should consult her payer contract as well as the requirements, rules and regulations promulgated by the Centers for Medicare & Medicaid Services (CMS).
- (8) Amanda Curley, PT whether she is required to perform an evaluation following screenings of readmissions of long term care patients with whom she is familiar, as urged by her employer. Upon consideration and discussion, the Board concluded that Ms. Curley would not be in violation of the Board's laws and regulations if she performs both a screening and evaluation as long as she exercises her independent, professional judgment. If she performs only a screening/consult, she should refer to the requirements set forth in 201 KAR 22:053 Section 2(1). Moreover, if treatment is provided, she must perform an evaluation and comply with the requirements set forth in 201 KAR 22:053 Sections 2 and 5.
- (9) Nickie Wolfe, LOTR whether Kentucky regulations limit the scope of practice of a physical therapist from developing a home health aide care plan and supervising the home health aide's services for the physical therapists patients. Upon consideration and discussion, the Board instructed that staff respond by: (a) citing Ms. Wolfe to the Board's Opinion and Declaratory Ruling regarding state law governing physical therapy supervision of a home health aide, dated March 18, 2004, a copy of which can be found on the Board's website; (b) advising that home health aides are not considered to be "supportive personnel", as defined in 201 KAR 22:001 Section 1(16), and are thus not within the definition of the practice of physical therapy in Kentucky; (c) advising that it is not within the scope of practice for a physical therapist to supervise a home health aide in this setting; and (d) encouraging Ms. Wolfe to review applicable home health aide regulations to properly determine if she is otherwise qualified to supervise a home health aide in this setting.

(10) Kim Weathers, PT whether her completion of a review course that was part of her remediation plan could be accepted toward her continued competency requirements for the 2011-2013 biennium. Upon consideration and discussion, the Board instructed staff to respond by referring Ms. Weathers to the Continuing Education Committee of the Kentucky Physical Therapy Association which approves CE coursework for the purpose of continuing competence.

NPTE Fee Increase

The Board reviewed information that the Board of Directors for FSBPT has passed a motion to defer the effective date of the previously-approved NPTE fee increase from January 1, 2013 to January 1, 2014, meaning that the NPTE fee will remain \$370 at least until January 1, 2014.

FSBPT Resolutions

The Board reviewed information from FSBPT representatives concerning KBPT's two proposed motions to be submitted to the General Assembly. Following consideration and discussion, Linda Pillow made the motion to revise KBPT's first motion, to read:

“[T]hat the Federation renegotiate its current contract with its testing agency, Prometric, to allow a minimum of one year (preferably two years) notice of NPTE dates be provided to affected schools and jurisdictions and, if renegotiation is not possible, that all contracts the Federation subsequently enters into with its testing agency shall include this clause as a mandatory term of the contract.”

Tina Volz seconded this motion, which carried.

Chuck Clark made the motion to also revise KBPT's second motion to allow jurisdictional approval up to two weeks prior to exam date. This motion was seconded by Tina Volz, which carried.

The Board further concluded that it would help facilitate an understanding of FSBPT's position if KBPT was provided a copy of the current contract between FSBPT and Prometric. Accordingly, the Board instructed staff to attempt to have FSBPT's representatives provide KBPT a complete copy of the contract for review.

Board Regulations

The Board again reviewed the status of amendments to 201 KAR 22:001 and 201 KAR 22:053. Scott Majors advised that, following the last Board meeting during which public comment for 201 KAR 22:053 was considered and consensus on exact language could not be reached, staff withdrew from LRC the proposed amendments to 201 KAR 22:053, and the corresponding amendments to the definitions in 201 KAR 22:001, to afford the Board additional time to revise the wording of the proposed amendments. Following review and discussion concerning proposed additional changes to the amendments, Chuck Clark made the motion to resubmit with LRC the revised versions of 201 KAR 22:053 and 201 KAR 22:001. This motion was seconded by Karen Ogle and carried.

Director's Report

The Board reviewed a financial report for July and August of 2012. Troy Grubb requested that future reports submitted for the Board's review also include the total revenue YTD.

Scott Majors offered a report of an educational presentation which Donna Sims and he gave on September 10, 2012, to several foreign-exchange students attending Bellarmine University's Physical Therapy program.

Stephen Curley, Board Investigator, demonstrated the Board's new website in the Sharepoint 2010 format, including designs and changes mandated by Kentucky.gov. Mr. Curley also provided a brief

explanation of the mobile applications expected to be available after the new website “goes live.” Following this demonstration and explanation, the Board concluded that staff should attempt to migrate information from the existing website to the new website as promptly as work schedules permit.

The Board discussed the schedule of upcoming conferences, including the FSBPT Annual Conference in Indianapolis; FARB’s Attorney Certification Conference in Atlantic Beach, Florida; FARB’s Forum in San Diego, California; and CAPTASA in Lexington, Kentucky. The members agreed to revisit this discussion at the next meeting to determine whether (a) representative(s) should attend.

Board members reviewed and approved the lists of persons issued a license, certificate as well as examinees and reinstatements since the last meeting. Lists are attached to these minutes.

A motion was made by Troy Grubb to adjourn the meeting at 5:00 p.m. Motion was seconded and carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott D. Majors", with a stylized flourish at the end.

Scott D. Majors
Executive Director