



## KENTUCKY BOARD OF PHYSICAL THERAPY

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Governor

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Scott D. Majors, Esq.  
Executive Director

### MINUTES OF MEETING January 17, 2013

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

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

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

Guests: Brian Fingerson  
Tessa Allen  
Shubha Kamath  
Mark R. Brengelman, Esq.

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Chuck Clark, at 9:05 a.m., on Thursday, January 17, 2013, at the Board office. A quorum was present.

Linda Pillow noted that she was not present for the meeting on November 15, 2012. With that correction noted, motion was made by Peggy Block, seconded by Linda Pillow, to approve the minutes of the Board meeting of November 15, 2012. Motion carried.

#### **Board Discussions, Committees and Opinion Requests**

##### **KBPT's RFP for Legal Services**

On behalf of the Board's RFP Evaluation Committee, Chuck Clark gave a report to the full Board regarding the process of scoring the bids submitted by the various vendors. Raw scores of the individual vendors were not disclosed. While the Board remained in open session, Ryan Halloran, Brian Judy and Mark Brengelman stepped out of the conference room during the presentation of this report and were invited back to the conference room prior to Board action. Following this report, Virginia Johnson made the motion that the Board contract with outside counsel to provide legal services for the Board in lieu of continuing to receive these services through the Office of the Attorney General. This motion was seconded by Karen Ogle, which carried. Peggy Block then made the motion for the Board, through its Chair and Executive Director, to effectuate Section 8.00 of the Board's RFP for Legal Services by determining the best proposal received, by attempting to negotiate a fair and reasonable compensation based on the pricing submitted in that proposal, and by proceeding to negotiate with the next highest rated proposal if negotiations with the best proposal received fail to reach an agreement. This motion

was seconded by Linda Pillow, which carried. Troy Grubb recused himself and was not present in the conference room during this discussion and Board action.

### **FSBPT's Board Member and Administrator Training – June 6-9, 2013**

Scott Majors reported that FSBPT is offering training for administrators and board members in Alexandria, Virginia, on June 6-9, 2013, at FSBPT's expense. Maribeth Decker, FSBPT's Associate to Senior Staff, advised that slots are available for KBPT's Executive Director and up to two of its Members. Following discussion, Virginia Johnson and Tina Volz expressed interest in attending, and they agreed to confirm their availability with Mr. Majors after determining their June schedules.

### **FSBPT's Ethics and Legislation Committee**

Mr. Majors circulated for the members' review a copy of the October – December 2012 Monitoring Report of Legislative Activity and Physical Therapy Regulation.

### **Commission on Accreditation in Physical Therapy Education (CAPTE) – Call for Comment**

Mr. Majors circulated for the members' review a copy of CAPTE's call for comment by March 1, 2013, regarding PT and PTA education programs scheduled for review, as well as a listing of upcoming program reviews.

### **Board Appointments**

2013 JE Exam Committee: Troy Grubb and Scott Majors reported that Tom Pennington, Deborah Kelly and Debra Turner expressed interest in serving on the 2013 JE Exam Committee with Board representative Peggy Block. Following discussion, Tina Volz made the motion to: (a) appoint these individuals to the Committee; (b) provide them prior JE exams for review; (c) provide them a list of relevant topical issues as reflected in the disciplinary complaints filed with the Board in the past year; (d) request the Committee to submit its proposed JE exam to the Board by May 1, 2013, for the Board's consideration at its meeting on May 16, 2013; and (e) compensate the members of the Committee who are not Board members at the rate of \$60.00 per hour for their service. Karen Ogle seconded this motion, which carried.

### **Monitoring Procedures and Requirements**

Mr. Majors reported that the process of proposing standardized monitoring reports to facilitate consistency and uniformity and the supporting training of new Board monitors is a work in progress. Efforts are being directed to determine what other jurisdictions utilize/have adopted, and a status report will be provided to the Board at its next meeting.

### **Opinion Requests**

The Board reviewed the following opinion requests from:

(1) Amy Miller, whether the practice of using electronic signatures for patient charts and documentation in a Physical Therapy setting are a permitted practice in Kentucky. Upon consideration and discussion, and upon the advice of the Board's legal counsel, the Board concluded that KRS 369.107 provides that an electronic signature is satisfactory when the legal requirements call for a chart or document to be signed. After review of the Board's Declaratory Opinion # 1999-001, and after noting that KRS 369.107 was enacted after Opinion # 1999-001 was adopted, Peggy Block made the motion that a draft revision to this opinion, in accordance with KRS 369.107, be submitted to the Board for its consideration at its next meeting. Linda Pillow seconded this motion, which carried.

(2) Jonathon Atkinson, potential foreign-educated applicant, whether the Board is willing to entertain an “appeal” of the results of his unfavorable FCCPT education evaluation, which noted a deficiency of the required 60 general education credits and, thus, renders him ineligible to sit for the NPTE pursuant to 201 KAR 22:070 Section 1. The Board reviewed an email exchange spanning more than one year between Mr. Atkinson and Board staff which addressed this issue. Upon consideration and discussion, Tina Volz made the motion that Board staff respond by emphasizing the applicable statute and administrative regulation which establish the Board’s requirements and limitations pertaining to foreign-education applicants for licensure, and note that there is no provision in the statute or regulation which would authorize the Board to grant Mr. Atkinson the relief he seeks through an “appeal”. Troy Grubb seconded the motion, which carried.

(3) Rob Barbato, whether the Board’s administrative regulations should be amended to reflect changes to the new CMS regulations which require reassessments minimally every ten (10) visits. Upon consideration and discussion, it was determined that no amendments to the Board’s regulations were warranted at this time. On behalf of the Board, Troy Grubb agreed to respond directly to Mr. Barbato.

### **Civil Matters and Investigations**

#### **Complaint Committee #1 (2012)**

C2012-08: Following consideration of a report from Board Counsel and its Executive Director, the Complaint Committee advised that the credential holder, Andreana Spencer, PTA, was scheduled to appear before the Board at 1:00 p.m. to address a pending investigation initiated after complaint and a proposed settlement agreement. Ms. Spencer appeared as scheduled. Following consideration of all information presented, the Board entered an Order approving the parties’ settlement agreement.

C2012-09: Following consideration of an investigative report, the Complaint Committee advised that a pediatric expert in physical therapy was retained to assess information obtained during the investigation. After reporting that no violation of the Board’s statutes or regulations was determined by this expert, and after finding insufficient information uncovered during the investigation to support a finding of a violation, the Committee recommended and moved that this investigation be closed. This motion was seconded by Peggy Block, which carried. Linda Pillow recused herself from the discussion, consideration and vote in this matter conducted by both the Committee and the Board.

C2012-12: Following consideration of information from its Investigator, the Complaint Committee recommended and moved that Mr. Montgomery be notified that he has twenty (20) days in which to comply, or substantially comply, with the signed Cease and Desist affidavit, and that his failure to do so will result in the Board pursuing legal action to enforce compliance. Karen Ogle seconded this motion, which carried.

C2012-13: Following consideration of a report from its Executive Director, the Complaint Committee recommended and moved that a proposed settlement agreement, signed by the credential holder, Thomas Billingsley, PT, be approved and adopted. Following consideration of all information presented, Virginia Johnson seconded the motion, which carried, and the Board entered an Order approving the parties’ settlement agreement.

C2012-20: Following consideration of information from its Investigator, and having reviewed documents obtained pursuant to investigative subpoena, and after finding insufficient information uncovered during the investigation to support a finding of a violation, the Committee recommended and moved that this investigation be closed. This motion was seconded by Peggy Block, which carried.

C2012-21: Following consideration of information from its Investigator, and having reviewed documents obtained pursuant to investigative subpoena, and after finding insufficient information uncovered during the investigation to support a finding of a violation, the Committee recommended and moved that this investigation be closed. This motion was seconded by Peggy Block, which carried.

C2012-23: The Board having previously opened an investigation concerning this individual's unauthorized use of the protected terms "Physical Therapy" and "Physiotherapy," and the Board having authorized staff to issue a Cease and Desist affidavit if the investigation revealed facts and information to so support the affidavit, and a Cease and Desist affidavit having been issued, and following consideration of information from its Investigator, the Complaint Committee reported that this case is ongoing.

C2012-24: The Board having previously opened an investigation concerning this individual's unauthorized use of the protected terms "Physical Therapy" on an advertisement, and the Board having authorized staff to issue a Cease and Desist affidavit if the investigation revealed facts and information to so support the affidavit, and a Cease and Desist affidavit having been issued, and following consideration of information from its Investigator, the Complaint Committee reported that this case is ongoing.

C2012-25: The Complaint Committee reported that this case is ongoing.

C2012-26: The Complaint Committee reported that this case is ongoing.

C2012-27: The Complaint Committee reported that this case is ongoing.

C2012-32: The Board having previously opened an investigation concerning this individual's unauthorized website use of the protected terms "Physical Therapy", and the Board having authorized staff to issue a Cease and Desist affidavit if the investigation revealed facts and information to so support the affidavit, and a Cease and Desist affidavit having been issued, and following consideration of information from its Investigator, the Complaint Committee reported that this case is ongoing.

C2012-33: Following consideration of information from its Investigator, and having reviewed information relative to a claim of falsified medical records, after finding insufficient information uncovered during the investigation to support a finding of a violation, the Committee recommended and moved that this investigation be closed. This motion was seconded by Karen Ogle, which carried.

C2012-34: Following consideration of information from its Investigator, and having reviewed information relative to a claim of practicing physical therapy without being properly credentialed, and after finding insufficient information uncovered during the investigation to support a finding of a violation, the Committee recommended and moved that this investigation be closed. This motion was seconded by Virginia Johnson, which carried.

### **Complaint Committee #2 (2010)**

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.

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.

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.

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.

### **Complaint Committee #3 (2013)**

C2013-01: Following consideration of information from its Investigator, and having reviewed information relative to a claim of conduct which, if true, may constitute criminal activity, the Committee recommended and moved that the Board refer this matter to local law enforcement for investigation and that the Board's investigation be closed. This motion was seconded by Karen Ogle, which carried.

### **IPTPC Report**

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

### **CEU Hardship Extension**

Mr. Majors reported that Teri Aiello, PTA #A02273, has been provided several hardship extensions of time for completion of her continued competency requirements for the 2009 – 2011 biennium. The last extension was approved through December 31, 2012, and Ms. Aiello has failed to submit evidence that she has met the requirements. Upon consideration and discussion, Troy Grubb moved that Board staff notify Ms. Aiello by certified mail that she has twenty days in which to submit evidence of completion of her continued competency requirements for the 2009 – 2011 biennium compliance and that her failure to do so would result in a private admonition and a fine calculated on the number of credits for which she is deficient. Virginia Johnson seconded this motion, which carried.

### **Update on Monitoring Probations**

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

On motion of Linda Pillow, seconded by Karen Ogle, which carried, the Board voted to go into closed session pursuant to KRS 61.810(1)(k) and 61.878(1)(k) to discuss Ron Cole's patients' billing records, as they relate to Mr. Cole's practice being monitored by Troy Grubb. On motion of Linda Pillow, seconded by Karen Ogle, which carried, the Board came out of closed session.

Mr. Cole personally appeared and requested that the Board create an exemption to the restrictive term and condition listed in paragraph 3 on page 4 of the agreement, which states as follows:

- 3) The Respondent shall not, during the period of probation, practice in an independent practice or solo practice setting, and the Respondent shall practice as an employee with a physical therapy entity, and shall not supervise another physical therapist, and shall not have any ownership interest in a physical therapy practice. . . .

In support of this request, Mr. Cole provided a detailed summary of his current practice and his proposal to professionally assess, reassess and treat individuals who would be residing with him in his personal home, subject to an exemption being granted. Following considerable review and discussion by the Board, Linda Pillow made the motion to deny the request for an exemption, concluding that the circumstances Mr. Cole presented to the Board during his appearance do not justify a change or modification to the existing restrictive term and condition while he is on probation during the settlement agreement presently in effect. Tina Volz seconded this motion, which carried. Troy Grubb recused himself from the Board's discussion and vote in this matter.

## **Director's Report**

### **Financial Report**

The Board reviewed monthly, 4th quarter and 2012 YTD annual FAS3 financial report addressing the Board's revenues and expenditures.

### **Amendments to Administrative Regulations**

The Board again reviewed the status of amendments to 201 KAR 22:001 and 201 KAR 22:053. Scott Majors advised that the Interim Joint Committee on Health and Welfare considered these regulations at its meeting on December 11, 2012, and these regulations took effect later that day.

Mr. Majors also reported that the Legislative Research Commission ("LRC") agreed to make "technical amendments" to Section 2 of 201 KAR 22:070 to conform to those amendments for Section 1 which took effect on March 21, 2012, and, thus, it was not necessary for the Board to file an emergency regulation.

Mr. Majors also advised that an amendment to 201 KAR 22:035 Section 2 to require credential holders to notify the Board upon a change in email address (if one is already on file) would be filed by the next regulation monthly filing deadline, February 15, 2013.

Chuck Clark, Karen Ogle, Tina Volz and Scott Majors presented a draft amendment to 201 KAR 22:045 to reflect that courses, seminars, workshops, symposia or home study courses consisting of less than three (3) contact hours that have been approved by either FSBPT or APTA may receive Category 1 credit. Following considerable review and discussion, Tina Volz made the motion to delete reference in the amendment to FSBPT. This motion was seconded by Troy Grubb, and carried. The Board authorized staff to file this amendment with LRC.

Mr. Majors reported that staff recently received a question whether an applicant for licensure who has failed the NPTE may be eligible to receive a temporary permit pursuant to 201 KAR 22:020 Section 4. The Board also considered an opinion offered by its legal counsel on the subject. Following review and discussion, Virginia Johnson made the motion that the Board amend this regulation to clarify that an examination applicant who has failed the examination is not eligible for a temporary permit. This motion was seconded by Troy Grubb, which carried.

Mr. Majors reported that the process of drafting proposed administrative regulations to implement telehealth in the provision of physical therapy and in the provision of continuing education is a work in progress. Chuck Clark, Troy Grub and Linda Pillow agreed to serve on a committee to assist staff in this endeavor, and a status report will be provided to the Board at its next meeting.

### **Department of Revenue**

Mr. Majors reported that the Board received a request from the Department of Revenue ("the department") on January 9, 2013, to implement the provisions of KRS 131.1817, which mandate that the Board "shall work with the department to develop a process to provide the department with information about its licensees." Following considerable review and discussion, the Board voted to defer the matter until the next meeting to obtain a legal opinion whether: (1) a written agreement should be utilized by the Board in developing the process with the department and, if so, what terms and conditions should be included in the agreement; and (2) by either policy or legal duty, the Board's credential holders should be notified that the information requested by Revenue will be/has been provided.

### **Malpractice Report**

Mr. Majors reported that the Board received from the Department of Insurance, Public Protection Cabinet, a report of health care providers with settlement and/or judgments, dated January 8, 2013, covering the

period from October 1, 2012, through December 31, 2012, and no credential holders of the Board were listed.

### **LRC's Program Review and Investigations Committee Meeting – December 13, 2012**

Mr. Majors supplied the Board with copies of a twenty-nine page report concerning Kentucky's Board, Commissions and Similar Entities that LRC's Program Review and Investigations Committee considered on December 13, 2012.

### **KBPT's Website**

As a follow-up to the last meeting, Stephen Curley, Board Investigator, demonstrated changes made to the Board's current website concerning the online renewal application process and members of the Armed Forces.

### **KBPT Presentations**

Mr. Majors reported that on December 12, 2012, he and Donna Sims presented an educational program and the jurisprudence examination to students attending Bellarmine University's Physical Therapy program. Similar programs and exam administrations are scheduled with the University of Kentucky's Physical Therapy program on May 7, 2013, and with KCTCS/Somerset Community College's Physical Therapist Assistant program on May 10, 2013.

### **In-Service Training**

Mr. Majors reported that Board member and staff in-service training is tentatively scheduled as follows:

- John Steffen, ED with the Executive Branch Ethics Commission, on March 21, 2013; and
- Jim Herrick, Assistant Attorney General, regarding open meetings/open records, on May 16, 2013.

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

- a. APTA Combined Sections Meeting  
(January 21-24, 2013)
- b. FARB Forum  
(January 25-27, 2013 – San Diego, CA)
- c. CAPTASA  
(January 25-26 2013 – Lexington, KY)
- d. KPTA Northern District Meeting  
(January 31, 2013)
- e. KPTA Legislative Day  
(February 20, 2013)
- f. KPTA Spring Conference  
(March 22–23, 2013 – Lexington, KY)
- g. FSBPT's Ethics and Legislation Committee  
(April 13-14, 2013 -- Alexandria, VA)
- h. FSBPT's Board Member and Administrator Training  
(June 6-9, 2013 – Alexandria, VA)
- i. APTA PT2013  
(June 26–29, 2013)
- j. FARB – Attorney Certification Conference  
(October 4-6, 2013 – Coeur d'Alene, ID)
- k. FSBPT Annual Conference  
(October 10-12, 2013 – San Antonio, TX)
- l. APTA National Student Conclave  
(October 24-27, 2013 – Louisville, KY)

The Board reviewed and approved the lists of persons issued licenses and certificates since the last meeting, as well as a list of examinees and reinstatements. The lists are attached to these minutes.

A motion was made by Chuck Clark to adjourn the meeting at 3:45 p.m. Motion was seconded and carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott D. Majors', with a stylized, flowing script.

Scott D. Majors  
Executive Director