



## KENTUCKY BOARD OF PHYSICAL THERAPY

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Governor

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Scott D. Majors, Esq.  
Executive Director

### MINUTES OF MEETING November 21, 2013

Board Members: 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

Board Agents: Mark R. Brengelman, Esq., Board Counsel  
Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT

Board Guests: Jason Chambers, PT  
Mark Clark, PT  
Loretta Maldaner  
Mike Muscarella, PT  
Emily Sacca, PT  
Leigh Ann Thacker, Esq.

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Chuck Clark, at 9:00 a.m., on Thursday, 11/21/13, at the Board office. A quorum was present.

#### Minutes

A motion was made by Troy Grubb, seconded by Karen Ogle, to approve the minutes of the Board meeting of 09/12/13. Motion carried. A motion was made by Troy Grubb, seconded by Karen Ogle, to approve the minutes of the Special Board meeting of 10/22/13. Motion carried.

#### Board Discussions, Committees and Opinion Requests

##### Proposed Telehealth Regulation

Troy Grubb, Chair of the Telehealth Regulation Review Committee ("Committee"), reported that the first meeting of the Committee was conducted on 10/22/13, which was very productive. The Committee's second meeting was held in concert with the Board meeting on 11/21/13, and the Board members observed the Committee's meeting. Following discussion, Peggy Block made the motion for Board staff and counsel to draft a regulation in conformity with the Committee's report and recommendation and subject to any minor changes the Committee may determine prior to filing the regulation with the Legislative Research Commission. Linda Pillow seconded the motion, which carried.

### **FSBPT Annual Conference**

The Board discussed the speaker presentations and the Delegate Assembly session conducted at the FSBPT Annual Conference in San Antonio, Texas from 10/10–12/13.

### **FSBPT Licensure Compact Advisory Task Force**

Following discussion, the Board determined that no conflict would be created if Mr. Majors pursued appointment to the FSBPT Licensure Compact Advisory Task Force.

### **Monitoring Procedures and Requirements**

The Board reaffirmed the efficacy of physically transferring the netbook computers previously purchased for Board member use in preparation for and during the actual meetings to all Board-approved monitors for their use out in the field. When these netbooks are transferred to the monitors, the Board members indicated they would need to have them replaced with other hardware. Following discussion, Tina Volz made the motion for the Board to obtain iPad tablets and essential accessories for those members who need to review the Board packet materials prior to each meeting and access the materials during each meeting. Troy Grubb seconded the motion, which carried.

### **OAG Opinion on Dry Needling**

Karen Ogle, as the Board's Liaison to KPTA, reported that she attended KPTA's annual conference held on 09/20/13. During this conference, Ms. Ogle discussed with KPTA's representatives the opinion authored by the Office of the Kentucky Attorney General, Opinion #13-010, concerning the practice of dry needling. Ms. Ogle reported that no opinion was expressed by KPTA's representatives concerning a need for the Board to adopt regulatory standards concerning dry needling.

### **Correspondence from Oregon Law Firm Concerning Dry Needling**

Scott Majors circulated to the members a copy of a letter dated 11/13/13, from an Oregon law firm concerning the practice of dry needling by physical therapists in Kentucky. The Board also reviewed information circulated by FSBPT on the subject. Following discussion, the Board instructed Mr. Majors to notify the authors of the letter that the Board had received it and would take the matter under advisement.

### **Temporary Permits for Out-Of-State Supervised Practice**

Chuck Clark, Mark Brengelman and Scott Majors reported that Board staff recently received an inquiry concerning the issuance of a temporary permit for out-of-state practice on federally-owned property. Following consideration of this information and after discussion, Peggy Block made the motion that the Board amend the language in 201 KAR 22:020 Section 1(5)(a) to clarify that supervised practice on a temporary permit must take place within the Commonwealth of Kentucky. This motion was seconded by Virginia Johnson, which carried.

### **Verification of Continued Competence for Reinstatement Applicants**

Scott Majors reported that Board staff recently received an inquiry concerning the verification requirements of continued competence for reinstatement applicants whose credential had lapsed for less than three years. Following discussion, the Board instructed Board staff and counsel to review 201 KAR 22:040 Section 1(3) in relation to the continued competency requirements referenced in 201 KAR 22:045, and to offer a report to the Board at its next meeting whether clarification of the regulatory language is warranted.

## **Correspondence from Massage Therapy Board Concerning Practice by PTAs**

Scott Majors circulated to the members a copy of a letter from Thomas Hansen, Chairman of the Kentucky Board of Licensure for Massage Therapy, dated 11/06/13, which expressed concern that unidentified physical therapist assistants in Kentucky may be engaged in the unlawful practice of massage therapy. Following discussion, Peggy Block agreed to work with Mark Brengelman and Scott Majors in drafting an appropriate response which makes clear that physical therapist assistants in Kentucky may perform massage therapy if such treatment is: (1) included by the physical therapist in the plan of care; (2) appropriately delegated by the physical therapist to the physical therapist assistant; and (3) within the training and education of the physical therapist assistant.

## **KBPT Newsletter**

The Board members reviewed proposed articles for the next newsletter submitted by Linda Pillow, Karen Ogle, Dr. Beth Ennis, Mark Brengelman, Brian Fingerson, Stephen Curley and Scott Majors. Following discussion, a consensus of the Board concluded that the proposed article concerning aPTitude should be amended to reflect that, beginning with the 2015 continued competency audit, only those credential holders who are determined to be deficient in satisfying their requirements will be required to share their CE/CC documentation with the Board through aPTitude, as opposed to all credential holders selected for the audit. Subject to that amendment, Karen Ogle made the motion for the Board to approve all articles submitted to the Board for newsletter publication. This motion was seconded by Tina Volz, which carried.

Additionally, Linda Pillow made the motion that the Board's minutes for the meeting of 07/29/13, which referenced the role aPTitude will serve in the 2015 CE audit, should be amended to reflect that only those credential holders who are determined to be deficient in satisfying their requirements will be required to share their CE/CC documentation with the Board through aPTitude, as opposed to all credential holders selected for the audit; and that this amendment should be referenced in the Board's minutes for the meeting of 11/21/13. This motion was seconded by Karen Ogle, which carried.

## **Opinion Requests**

The Board reviewed the following opinion requests from:

- (1) Mike Muscarella, PT (09/16/13). This opinion request was personally withdrawn by the credential holder at the start of the meeting.
- (2) Barak Jonkers, PTA (09/20/13), inquiring whether a physical therapist assistant is expected to enter a Functional Limitation Report upon discharge, or wait for the co-signing PT to enter the report.

Following discussion, the Board instructed staff to respond that – “no” – it is not “expected”, but a physical therapist assistant is permitted to enter the report of the assessment and measurement under the supervision of a physical therapist. The Board also encouraged Mr. Yonkers to consult the Medicare / payor-specific guidelines on the subject.

- (3) Tiffiney S. Bentley, PT (license lapsed 03/31/13)(09/27/13), inquiring whether, upon reinstatement of her lapsed license, she would be permitted to satisfy the term of her probationary agreement for supervised practice if the supervisor was a credential holder of the Board but the practice actually took place out-of-state.

Following discussion, the Board instructed staff to respond by advising that the Settlement Agreement which Ms. Bentley and the Board entered into in September of 2010 specifically provided that the practice of physical therapy outside of Kentucky would be deemed “non-practice” and thus would not be applied to reduce her probationary period. Accordingly, the Board concluded that any practice of physical therapy which Ms. Bentley requested be applied toward her period of probation must be the practice of physical therapy that is both conducted and monitored in Kentucky. For these reasons, her request was not approved by the Board.

(4) Heather Workman, PTA (10/11/13), inquiring about the scope of practice for physical therapists and physical therapist assistants relative to sharp debridement.

Following discussion, the Board instructed staff to provide Ms. Workman with a copy of the Board's declaratory opinion #1999-006 concerning the scope of practice of sharp wound debridement.

(5) Scott Jemtrud, PT (10/15/13), who presented the following scenario: patient is evaluated by a physical therapist, who determines a need for skilled therapy services 3-5 times/wk for 2 weeks. Patient is billed according to the treatment provided. Follow-up treatments are provided by the physical therapist or a physical therapist assistant, as appropriate to meet the plan of care. On the days in which therapy is not treating the patient, an aide/technician that has been trained in assisting patients with ambulation/general exercise will mobilize the patient – a non-skilled activity for which no therapy charges are generated. The aide/technician is assigned to the therapy department and only mobilizes patients that are on the therapy caseload on days they are not treated by the physical therapist or physical therapist assistant. There is communication/interaction between the technician and the therapists on a daily basis. Based on this scenario, Mr. Jemtrud inquired whether the aide/technician falls under the definition of "supportive personnel" and therefore requires direct line of sight when performing non-skilled, repetitive activities?

Following discussion, the Board instructed staff to respond by stating that -- "yes" -- according to the scenario presented, the aide/technician working with the therapy department does fall under the definition of "supportive personnel" and therefore requires direct line of sight supervision when performing non-skilled, repetitive activities, per 201 KAR 22:053 Section 4(2), as defined by 201 KAR 22:001 Section 1(6) & (20). The Board reached this conclusion primarily due to the fact that, under the scenario presented, the aide/technician is still working under an existing physical therapy plan of care, these are still physical therapist patients, and there is ongoing communication/interaction between the aide/technician and the therapists on a daily basis.

(6) Malton Schexneider, PT (10/21/13), inquiring about 42 C.F.R. §§ 410.32(b)(3)(iii), 410.60(c)(2) relative to the supervision requirements for physical therapist assistants that apply to physical therapists in a private practice setting.

Following discussion, the Board instructed staff to respond by advising that the inquiry concerning the interpretation of Title 42 of the Code of Federal Regulations, Sections 410 *et. al.*, falls outside the jurisdiction of the Board to entertain, as this is a payor-specific question that is beyond the Kentucky Physical Therapy Practice Act and its corresponding administrative regulations. For general supervision requirements in Kentucky, the Board encouraged Mr. Schexneider to refer to the supervision requirements set out in 201 KAR 22:053, defined in conjunction with 201 KAR 22:001.

(7) Traci Witherspoon (10/29/13), seeking clarification of the 2012 administrative regulation amendments regarding the standards for supervision, particularly the maximum staffing ratios, as set forth in 201 KAR 22:053 Section 4(1). Specifically, Ms. Witherspoon received an opinion from KBPT staff in 2011 that a physical therapist could supervise five physical therapist assistants as long as the total work schedule for the five physical therapist assistants did not exceed 160 hours per week (four full-time equivalent). She is now inquiring whether the 2012 regulation amendments change this determination.

Following discussion, the Board instructed staff to respond by referring Ms. Witherspoon to the regulatory language found at 201 KAR 22:053 Section 4(1)(b) which provides a temporary exception to the staffing ratios up to a maximum of seven (7) work days in a sixty (60) consecutive day period that shall not be treated as a violation of the regulation. Otherwise, the new staffing ratios would apply to the facts in the scenario presented and a physical therapist would be limited to supervising not more than four physical therapist assistants. The Board notes that the scenario presented did not involve supportive personnel.

(8) Stephanie Pfeil, PTA (10/30/13), inquiring: (1) whether certain insurance companies qualify that a physical therapy plan of care has to be signed by a physician; and (2) whether a provider who offers

treatment in both the home health and outpatient gym settings may appropriately see and treat a home health patient in an outpatient gym to use certain equipment not available in the home.

Following discussion, the Board instructed staff to respond by advising that the specific questions presented fall outside the authority and jurisdiction of the Board to address, as the Physical Therapy Practice Act and its corresponding regulations are silent on these questions. The Board further directed staff to encourage Ms. Pfeil to consult her payor guidelines or discuss her inquiries with an authorized payor representative.

(9) Rick Winquist, PT, ATC (11/18/13), who expressed concerns with “a disturbing trend” that physical therapists “are being under utilized in favor of less expensive physical therapist assistants.” These concerns focused primarily upon the administrative, clinical and supervisory roles defined by provider employers.

Following discussion, the Board instructed staff to respond by acknowledging that many of the issues presented by Mr. Winquist in his letter of concern are addressed by specific internal policies which are unique to those entities and employers, and which do not fall within the jurisdiction of the Board to entertain via the Physical Therapy Practice Act and its corresponding administrative regulations. The Board also instructed staff to encourage Mr. Winquist to consult the standards of supervision that apply to physical therapists who practice in Kentucky in relation to physical therapist assistants and supportive personnel.

## **Civil Matters and Investigations**

### **2012 Complaint Committee**

C2012-12: Mr. Brengelman reported that this case is still ongoing, and that he expects Mr. Montgomery will sign the proposed agreed order in the next few days and that the order will be signed and entered of record by the presiding circuit court judge.

C2012-26: After consideration that a judgment of criminal conviction was recently entered by the Jefferson Circuit Court against this credential holder, and following additional discussion, the Complaint Committee recommended and moved that the Board authorize its Counsel to draft and submit a proposed settlement agreement to the credential holder and, if signed by the credential holder within ten (10) days of the Board meeting, to have the Board Chair sign and enter an Order adopting the Settlement Agreement on behalf of the Board forthwith. This motion was seconded by Virginia Johnson, which carried.

### **2013 Complaint Committee**

C2013-02: Upon summary of the case and investigation conducted, the Complaint Committee recommended and moved that the Board issue a Private Admonishment against this credential holder. This motion was seconded by Troy Grubb, which carried.

C2013-07: Following consideration of the results of the investigation, the Complaint Committee recommended and moved that this case be dismissed due to insufficient evidence uncovered during the investigation to support a violation. This motion was seconded by Peggy Block, which carried.

C2013-08: Following consideration of the results of the investigation, the Complaint Committee recommended and moved that this case be dismissed due to insufficient evidence uncovered during the investigation to support a violation. This motion was seconded by Peggy Block, which carried.

BIC2013-15: Mr. Brengelman reported that he is in the process of drafting appropriate settlement documents to submit to the credential holder for review and possible approval, and he anticipates this can be accomplished prior to the next Board meeting.

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

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

C2013-129: Following consideration of information submitted by the Impaired Physical Therapy Practitioners Committee (IPTPC) that the subject credential holder, who is a current participant in the Kentucky Professionals Recovery Network, has tested positive on three occasions for Oxymorphone, and on one occasion for Oxycodone, all without a legitimate, current prescription, the Complaint Committee recommended that the Board issue an order of immediate temporary suspension concerning this PTA's certificate, and also for the Board to authorize its Counsel to attempt to resolve this action informally through a proposed Order and Settlement Agreement. Troy Grubb seconded this motion, which carried.

C2013-130 (Dr. Bing Crosby, D.C., d/b/a Crosby Chiropractic Center, Louisville, KY): Following review and consideration of a possible violation of term protection by advertising physical therapy services, and after reviewing information that Dr. Crosby signed a Cease and Desist Affidavit for a similar instance in 2002, the Complaint Committee recommended and moved to the full Board that Board staff investigate whether Dr. Crosby has a physical therapist on staff and, if not, to authorize Board Counsel to file an action in Jefferson Circuit Court to enforce the term protection provisions of Kentucky's Physical Therapy Practice Act. This motion was seconded by Troy Grubb, which carried.

C2013-131 (Equi-Librium Therapy, LLC, Versailles, KY): Following review and consideration of a possible violation of term protection by advertising "Equine & Canine Physical Therapy", the Complaint Committee recommended and moved to authorize Board Counsel to prepare an Affidavit and Letter Agreement to submit to an authorized representative of Equi-Librium Therapy, LLC, and to refer the information in the Board's possession to the Kentucky Board of Licensure for Massage Therapy and to the Kentucky Board of Veterinary Examiners for appropriate action.

#### **2013 CE Audit:**

Mr. Majors provided a report of the 2013 CE Audit. Following discussion, and upon the Complaint Committee's recommendation, Karen Ogle made the motion to authorize Mr. Majors, as the Board's Executive Director, to permit those credential holders who were assessed a fine to pay this fine in equal installments over a 90 day period, upon request. This motion was seconded by Tina Volz, which carried.

Mr. Majors also reported that a credential holder who had received a proposed private admonition and an administrative fine of \$220.00 for a failure to timely complete the 2011 – 2013 Jurisprudence Examination had requested that the Board, instead, issue a written "warning" and waive the fine. Following discussion, the Complaint Committee recommended and moved that the fine of \$220.00 be waived in this instance due to serious extenuating circumstances presented to the Board, but that no change be granted to the characterization of the private admonition. This motion was seconded by Troy Grubb, which carried.

Mr. Majors also reported six cases involving first offenders in which no response had been timely submitted to the Board's proposed fine due to a failure to meet the continued competency requirements. Following discussion, the Complaint Committee recommended and moved that the Board Chair enter Orders in these cases notifying the affected credential holders that they had 20 days from the date of the Orders in which to pay their respective fines, and to include language in the Orders that a failure to timely comply with the Orders would result in the filing of formal charges within a notice of the scheduling of an administrative hearing. Peggy Block seconded this motion, which carried.

Mr. Majors also reported ten cases involving repeat offenders in which no response had been timely submitted to the Board's proposed fine due to a failure to meet the continued competency requirements. Following discussion, the Complaint Committee recommended and moved that Board Counsel be authorized to file formal charges within a notice of the scheduling of an administrative hearing. Peggy Block seconded this motion, which carried.

## **IPTPC Report**

The Board reviewed the IPTPC report dated 11/12/13, submitted by Brian Fingerson, R.Ph. Cases that are involved in the IPTPC previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports.

Additionally, with respect to C2010-23, while Mr. Brengelman previously invited the credential holder and his counsel to attend a meeting of the complaint committee scheduled for 11/20/13, to determine whether the parties may be interested in agreeing to terms other than those referenced in the order of revocation, presently in effect, Mr. Brengelman was notified by the credential holder's counsel that the meeting would need to be rescheduled to a later date. Thus, no such meeting took place on 11/20/13.

## **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 Gibbs (formerly Spencer), PTA; Art Nitz, PT; Michael Harris, PTA; Michael Anthony, PT; Terence Brown, PT; and Lori Oakley, PTA. Monitor reports were submitted by the Board-appointed monitors and considered by the Board for Mr. Schexneider, Mr. Cole, Ms. Mattingly, Ms. Gibbs, Mr. Nitz, Mr. Harris and Mr. Anthony, Mr. Brown.

The Board also considered Ms. Mattingly's request to be excused from further monitoring, which was supported by Debra Turner, PT, the Board-appointed monitor. Following discussion, and assuming all other conditions of her settlement agreement have been met, Troy Grubb made the motion that Ms. Mattingly's request be granted. This motion was seconded by Virginia Johnson, which carried.

The Board also considered an inquiry from Board-appointed monitor Debra Turner concerning the appropriateness of a note for a self-discharge regarding Mr. Brown's documentation that simply states, "D/C patient with information from the last visit." Following discussion, the Board instructed staff to notify Ms. Turner that this is acceptable if the last progress note included all necessary information.

Additionally, the Board considered information from Board staff that Mr. Schexneider had satisfied all monitoring requirements and all terms of his probation.

## **Director's Report**

### **Financial Report**

The Board reviewed monthly, quarterly and 2013 YTD annual FAS3 financial report addressing the Board's revenues and expenditures. Mr. Majors also circulated a copy of the Board's 2014-2016 proposed budget which was filed with and approved by the Office of the State Budget Director, and he discussed KBPT staffing needs relative to the 2014-2016 budget.

### **Amendments to Administrative Regulations**

Mr. Brengelman reported that the proposed amendments to 201 KAR 22:045 and 201 KAR 22:130 were considered by the Interim Joint Committee on Health and Welfare on 09/18/13, and that the amended versions of these regulations took effect at the close of business that day. The Board's emergency regulation, 201 KAR 22:055E, which set standards effective through 08/30/13, was successfully and efficiently withdrawn effective 09/17/13 based on an absence of a present emergency.

### **Department of Revenue**

Mr. Majors reported that he still has not received a response from Rep. Ben Waide regarding the Board's concerns with the recent changes to KRS 131.1817, as summarized in a written communication sent to Rep. Waide on 09/09/13.

### **Teleconference Addressing “KARES”**

Mr. Majors circulated for Board review a copy of a Memorandum of Understanding entered into between the Board and the Office of Inspector General (OIG), Cabinet for Health and Family Services, concerning the Kentucky Applicant Registry and Employment Screening System (“KARES”). Based on this Memorandum, coupled with a discussion between Board staff and OIG representatives held during a teleconference on 11/19/13, the Board has agreed to provide OIG an electronic copy of the Board’s database concerning its credential holders, to be updated after each Board meeting. The Board expressed support for this initiative.

### **Malpractice Report**

Mr. Majors provided the members with a copy of the Department of Insurance Public Protection Cabinet’s report of health care providers with settlement and/or judgments, dated 10/01/13 covering the period from 07/01/13 through 09/30/13 in which no credential holders of the Board were listed.

### **KBPT Office Space**

Mr. Majors provided an update concerning repairs and improvements to the Board’s office building which have been completed and which are scheduled to be completed in the near term. Mr. Majors also reported that the Board of Nursing and the Board of Dentistry are continuing to explore with the Department of Finance Facilities whether a shared space arrangement in the present office building may be feasible. Mr. Majors agreed to provide the Board an update at the next meeting.

### **NPTE Comment Summary and Candidate Satisfaction Survey Report**

Mr. Majors circulated for Board review a copy of the latest NPTE Comment and Summary and Candidate Satisfaction Survey Report.

### **Performance Evaluation and Feedback**

Mr. Majors requested and received an oral performance evaluation from the Board which addressed his first year of service as the Board’s Executive Director.

### **Conferences Relating to Physical Therapy**

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

- a. CAPTASA – 2014 Conference Workshop  
(01/24-25/14 – Lexington, KY)  
Chuck Clark made the motion for the Board to pay for the registration fees and associated travel costs for up to two Board members to attend this workshop. Virginia Johnson seconded the motion, which carried. Troy Grubb indicated he would be attending, and Karen Ogle advised she may attend but would need to confirm with Board staff.
- b. FARB – 2014 FARB Forum  
(01/24-26/14 – Austin, TX)  
Mark Brengelman advised that his registration fee for this conference would be waived due to his previous service to FARB as a presenter, and he requested approval for his remaining expenses to be paid by the Board. Peggy Block made the motion to cover Mr. Brengelman’s associated travel expenses to attend this conference. This motion was seconded by Karen Ogle, which carried.
- c. APTA Combined Sections Meeting (CSM)  
(02/03-06/14 – Las Vegas, NV)

- d. KPTA -- Legislative Day  
(02/19/14 – Frankfort, KY)
- e. APTA “NEXT” Conference (formerly Annual Conference and Exposition)  
(06/11-14/14 – Charlotte, NC)
- f. FSBPT -- 2014 Annual Conference  
(09/18-20/14 – San Francisco, CA)
- g. FARB – 2014 Attorney Certification Seminar  
(10/03-05/14 – Annapolis, MD)

**New licensees/reinstatements/renewal applications**

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 5:00 p.m. The motion was seconded by Tina Volz, which carried.

Respectfully submitted,



Scott D. Majors  
Executive Director