



KENTUCKY BOARD OF PHYSICAL THERAPY

Steve L. Beshear
Governor

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Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING January 16, 2014

Board Members: Linda Pillow, PT, Chair
Karen Craig Ogle, PT, Chair-Elect
Ron Barbato, PT
Charles "Chuck" Clark, PT
Troy Grubb, PT
Tina Volz, PT

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

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

KPTA Liaison: Janice Kuperstein, PT

Board Guests: Abby Brizius
Mackenzie Ghormey

Board Members Absent: Virginia Johnson

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

Minutes for Previous Meeting

Scott Majors reported that additional language was needed in the minutes for the Board's previous meeting concerning the Board's action relating to repeat offenders of the CE Audit. Proposed additional language was reviewed. Ms. Ogle also noted that a reference to the APTA Combined Sections Meeting (CSM) in Las Vegas, Nevada, from 02/03-06/14 should be included. Subject to these additions, Troy Grubb made the motion to approve the minutes of the Board meeting of 11/21/13, seconded by Karen Ogle. Motion carried.

Appointment

The Board welcomed Ron Barbato, PT, who was appointed by Governor Steve Beshear to begin a four-year term as Board member, effective December 23, 2013. Mr. Barbato will replace Peggy Block, PT, whose term on the Board expired December 3, 2013. Donna Sims, the Board's Licensure Coordinator and a notary, administered the oath of office to Mr. Barbato.

Board Discussions, Committees and Opinion Requests

FSBPT Licensure Compact Advisory Task Force

Mr. Majors reported that he has been appointed to serve on FSBPT's Licensure Compact Advisory Task Force which is scheduled to meet on 02/15-16/14 and 04/26-27/14 in Alexandria, Virginia. This task force is the product of the 2013 FSBPT Delegate Assembly at which the delegates voted to support the further exploration of a licensure compact for physical therapy in order to address the current issue of portability for licensees and increase the access to healthcare for consumers.

FSBPT Proposed NPTE Eligibility Requirements

The members reviewed materials prepared by FSBPT concerning its proposed eligibility requirements for the NPTE. After expressing some confusion concerning the proposed lifetime limit requirement, and following discussion, the Board instructed staff to contact FSBPT and request that, in all future communication from FSBPT to member boards relating to this proposed requirement, greater steps be taken to clarify/emphasize that the proposed lifetime limit of 6 attempts is to apply separately for the PT exam and the PTA exam, respectively.

FSBPT 2014 NPTE Examination Policies

Mr. Majors circulated to the members a copy of FSBPT's 2014 NPTE Examination Policies. Relatively minor changes to the prior policy were identified and discussed.

iPad Tablets and Monitoring Procedures

Mr. Majors reported that he has been in contact with the vendor assigned the state approved contract for Apple products to determine pricing for the Board's iPad order, approved by the Board at its previous meeting. The order is being reviewed by the Commonwealth Office of Technology to determine justification and necessity before the order can be approved. Mr. Majors expressed optimism that this order can be approved and delivery completed in time to distribute the hardware to the members at the next Board meeting.

Correspondence from Oregon Law Firm Concerning Dry Needling

Mr. Majors provided the members with a copy of correspondence prepared by staff in response to a letter dated 11/13/13 from an Oregon law firm concerning the practice of dry needling by physical therapists in Kentucky.

Health Care Facility Capacity Report

Mr. Majors provided the members with a copy of the Commonwealth of Kentucky Health Care Facility Capacity Report, prepared by Deloitte in December 2013, in which the physical therapy profession in Kentucky was examined. The members reviewed and discussed issues referenced in the report, including potential workforce shortages, potential increases in reimbursement, loan forgiveness programs, advanced degree programs, and recruitment to fill vacancies in geographical areas where shortages exist.

New Provider Types for Medicaid Expansion

The members were provided a notification from the Commonwealth's Department of Medicaid Services, Division of Program Integrity, Provider Licensing and Certification Branch, concerning the expansion of the population eligible for Medicaid effective 01/01/14, as authorized through the Affordable Care Act.

Verification of Continued Competence for Reinstatement Applicants

Mr. Majors and Board Counsel Mark Brengelman discussed a recent inquiry concerning the verification requirements of continued competence for reinstatement applicants whose credential has lapsed for less than three years. Following discussion, the Board instructed staff and Counsel to present to the Board for consideration at its next meeting proposed language which amends 201 KAR 22:040 Section 1(3) in relation to the continued competency requirements referenced in 201 KAR 22:045.

Correspondence from Massage Therapy Board Concerning Possible Practice by PTAs

In response to a letter from the Chair of the Kentucky Board of Licensure for Massage Therapy, dated 11/06/13, which expressed concern with unidentified physical therapist assistants who may be engaged in the unlawful practice of massage therapy, Mr. Majors circulated to the members a copy of a letter drafted by former Board member Peggy Block. This letter helped clarify 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

Mr. Majors reported that the fall 2013 Newsletter was completed and posted on the Board's website shortly after the last meeting. Expressions of appreciation were extended to the members and to Counsel for the articles submitted which resulted in the most comprehensive Newsletter ever produced by the Board.

Senate Bill 29 Concerning Acupuncture in Kentucky

Mr. Brengelman reported on Senate Bill 29 concerning the practice of Acupuncture in Kentucky. While no issues were identified that directly impact the practice of physical therapy in Kentucky, additional monitoring of the progress of this bill, including any amendments, is warranted.

KPTA Task Force Concerning Athletic Trainers

Ron Barbato reported that KPTA leadership met with representatives of the Kentucky Athletic Trainers Society ("KATS") on 01/10/14 to discuss KATS' endeavor to amend KRS 311.903 to permit athletic trainers to bill for services provided to an athlete. Mr. Barbato further reported that, after a thorough discussion between the two organizations, KPTA concluded it could not support KATS in its endeavor at this time after determining that the administrative regulations which govern athletic trainers lacks the specificity to ensure public protection. Mr. Barbato agreed to provide the Board an update to this report at the next meeting.

Proposed Telehealth Regulation

Following questions and concerns expressed about the language of the draft telehealth regulation which was reviewed at the last meeting, the Board agreed to place the regulation back on the agenda for further review and consideration prior to its filing with the Legislative Research Commission. The members, in concert with Board Counsel and with Janice Kuperstein, KPTA Liaison and Telehealth Regulation Review Committee member, discussed various aspects of the proposed regulation, including the definition of "electronic communication" and the physical location of the provision of telehealth vis-à-vis the provider's state of licensure. Following extensive discussion, Chuck Clark made the motion for the Board to approve the language of this new regulation as originally proposed and considered by the Board at its last meeting, as well as the amendments to the definition section. This motion was seconded by Linda Pillow, which carried.

Temporary Permits for Out-Of-State Supervised Practice

During its last meeting, the Board voted to 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. Mr. Brengelman circulated a draft amended regulation which was reviewed by the Board. Following discussion, Chuck Clark made the motion to approve the language, as proposed, and to file the amended regulation forthwith. This motion was seconded by Linda Pillow, which carried.

Opinion Requests

The Board reviewed the following opinion requests:

(1) Kyle Gotchy, whose two inquiries were:

(a) “[m]ay a general business corporation employ a PT to provide screening, evaluation and counseling services within the PT’s scope of practice, or would such an employment relationship be inconsistent with the PT licensure requirements?”

Following discussion, the Board instructed staff to respond by saying “yes” – as long as all other requirements of the Physical Therapy Practice Act and its corresponding regulations are satisfied, with particular focus placed on the ethical standards and standards of practice, supervision and documentation found at 201 KAR 22:053; and

(b) “[m]ay a PT render screening, evaluation and/or counseling services in the absence of a referral by a doctor?”

Following discussion, the Board instructed staff to advise that, while the Board appreciates his review of the Board’s 2001 declaratory opinion concerning PTAs and verbal orders, which was evident from the full text of his opinion request, Mr. Gotchy should also be encouraged to review the Board’s 1997 declaratory opinion concerning direct access in Kentucky relating to services performed by a physical therapist. Mr. Majors agreed to provide Mr. Gotchy a copy of this opinion.

(2) Linda Pillow, PT (on behalf of a PT Associate) who inquired whether a physical therapist may treat a patient at two different outpatient clinics approximately twenty-five miles apart, assuming equal access to the patient’s documentation, the same support staff is present at both locations, and a single insurance company is billed for treatment at both locations.

Following discussion, the Board could not identify any language in the Physical Therapy Practice Act which would prohibit this contemplated practice. Ms. Pillow agreed to forward the Board’s opinion to her associate.

(3) Megan Oleksa, PTA, who inquired whether she would be required to work under a physical therapist who is certified in Manual Lymph Drainage/Lymphedema Therapy if she was similarly certified or “would I be able to work under any PT?”

Following discussion, the Board instructed staff to respond by advising that the physical therapist who serves as Ms. Oleksa’s supervisor in this instance need not be certified in Manual Lymph Drainage/Lymphedema Therapy, but must meet the ethical standards and standards of practice, supervision and documentation otherwise required by 201 KAR 22:053. Of particular emphasis, the Board urged this credential holder and her supervising physical therapist to be aware of the language found at 201 KAR 22:053 Section 1(1)(b) which mandates that physical therapists and physical therapist assistants shall practice within the scope of the credential holder’s training, expertise and experience.

Civil Matters and Investigations

2012 Complaint Committee

C2012-12: Mr. Brengelman reported that Mr. Montgomery signed the proposed agreed order which was approved and entered of record by the presiding circuit court judge. Accordingly, no further action is needed from the Board.

C2012-26: At the last meeting the Board authorized Board 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. Mr. Brengelman reported that these steps were completed, the credential holder entered into a Settlement Agreement of permanent revocation, and the Board Chair signed an Order adopting the Settlement Agreement. Accordingly, no further action is needed from the Board.

2013 Complaint Committee

BIC2013-15: At the last meeting the Board authorized Board Counsel to draft and submit a proposed settlement agreement to the credential holder for review and possible approval and, if signed, to invite the credential holder to appear before the Board at the January meeting to review the terms of the settlement agreement. Mr. Brengelman presented the Board with a signed settlement agreement, but indicated that he was not able to obtain confirmation from the credential holder concerning the appearance before the Board. Mr. Majors reported that his attempt to obtain this same confirmation concerning the credential holder's appearance was likewise unsuccessful. Following discussion, Mr. Grubb made the motion for the Board to accept the Active Suspension of Credential and Settlement Agreement which was signed by the credential holder, and for Counsel to contact the credential holder and reinforce the requirement for the credential holder to appear before the Board at its next meeting to review the terms of the agreement. This motion was seconded by Ms. Volz, which carried.

R2013-18: The Complaint Committee reported that the requirement imposed on this credential holder to complete and submit an Affidavit which established that she did not practice unlawfully during the time that her license was lapsed had been satisfied, albeit untimely. Thus, the Complaint Committee recommended and moved that this case be dismissed. This motion was seconded by Mr. Grubb, which carried.

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

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

C2013-130: At the last meeting the Board reviewed information that a Chiropractor, who is not a credential holder of the Board, may be violating the Physical Therapy Practice Act's term protection provisions by unlawfully advertising physical therapy services. After reviewing further information that this individual previously signed a Cease and Desist Affidavit for a similar instance in 2002, the Board voted for staff to further investigate whether the individual has a physical therapist on staff and, if not, to authorize Board Counsel to file an action in the circuit court of the county of this individual's residence and practice. Staff reported during the January meeting that, following additional investigation, staff could not identify any physical therapist who works on staff with this individual. Thus, consistent with the Board's prior vote, Mr. Brengelman agreed to file the appropriate civil action in circuit court and to provide the Board an update on the progress of this litigation at the next Board meeting.

C2013-131: At the last meeting the Board reviewed information provided by Board Counsel concerning a possible violation of term protection by an entity unlawfully advertising "Equine & Canine Physical Therapy." At that time the Board voted to authorize Board Counsel to prepare an Affidavit and Letter Agreement to submit to an authorized representative of this entity and for Board staff 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. At the January meeting, Mr. Brengelman presented a copy of an Affidavit and Letter Agreement which had been signed by a lawful representative of this entity. Furthermore, Mr. Majors reported that the information previously reviewed by the Board in this case has been provided to representatives with the Kentucky Board of Licensure for Massage Therapy and the Kentucky Board of Veterinary Examiners for appropriate action. Consequently, the recommendation and motion of the Complaint Committee was to close this case. This motion was seconded by Ms. Volz, which carried.

C2013-132: The Complaint Committee reported that the Board had received information in this case that a Chiropractor in Kentucky may have violated the Physical Therapy Practice Act's term protection provisions by unlawfully advertising physical therapy services. The Complaint Committee recommended and moved that the Board authorize Board Counsel to prepare a Letter of Agreement for the Chiropractor's signature and representation that all such advertising will cease immediately and no similar violations will occur in the future. This motion was seconded by Ms. Ogle, which carried.

C2013-133: The Complaint Committee reported that the Board had received information in this case that a fitness facility in Kentucky may have violated the Physical Therapy Practice Act's term protection provisions by unlawfully advertising physical therapy services. The Complaint Committee recommended and moved that the Board authorize Board Counsel to prepare a Letter of Agreement for the Chiropractor's signature and representation that all such advertising will cease immediately and no similar violations will occur in the future. This motion was seconded by Ms. Ogle, which carried.

2013 CE Audit:

CE2013-73:

CE2013-78:

CE2013-84:

CE2013-98:

CE2013-120: The Complaint Committee reported that the credential holders in these five cases had satisfied all deficiencies with the CE audit and had entered into written settlement agreements with the Board. Accordingly, the Complaint Committee recommended and moved that these cases be dismissed as closed. Mr. Grubb seconded the motion, which carried.

CE2013-65:

CE2013-72:

CE2013-74:

CE2013-100:

CE2013-109:

CE2013-118: At its last meeting, the Board voted for Board staff and Counsel to draft Orders to be signed by the Board Chair notifying the credential holders in these six cases 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. At the January meeting these Orders were presented to Ms. Pillow, the Board Chair, who reviewed and signed the Orders and had them entered of record.

CE2013-54:

CE2013-95:

CE2013-128: The Complaint Committee reported that the credential holders in these three cases had failed to comply with the CE requirements and were repeat offenders. Accordingly, the Complaint Committee recommended and moved that the Board authorize Board Counsel to file a notice of hearing and charges in these cases. This motion was seconded by Ms. Ogle, which carried.

CE2013-111: The Complaint Committee reported that this credential holder paid his fine on 11/19/13 but was still deficient a total of 7.5 hours as of 01/16/14. The Complaint Committee recommended and moved that the credential holder be given through 02/10/14 in which to satisfy his deficiency on CE hours. This motion was seconded by Ms. Ogle, which carried.

2014 Complaint Committee

C2014-01: The Complaint Committee reported that the Board had received information concerning a credential holder involving potential violations of the Physical Therapy Practice Act that are currently under investigation by other entities. Accordingly, the Complaint Committee recommended and moved that an investigation be authorized and to monitor the underlying proceedings. This motion was seconded by Mr. Grubb, which carried.

C2014-02: The Complaint Committee reported that the Board had received information in this case that a Chiropractor in Kentucky may have violated the Physical Therapy Practice Act's term protection provisions by unlawfully advertising physical therapy services. The Complaint Committee recommended and moved that the Board authorize Board Counsel to prepare a Letter of Agreement for the Chiropractor's signature and representation that all such advertising will cease immediately and no similar violations will occur in the future. This motion was seconded by Ms. Volz, which carried.

IPTPC Report

The Board reviewed the IPTPC report dated 01/09/14, 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, Mr. Fingerson reported that, while on 11/27/13 the credential holder in case number BIC2013-129 exercised her option to have her immediate temporary suspension stayed no earlier than 06/01/14 by agreeing to certain conditions, one of which was to immediately take steps to enter IPTPC, he had not yet been contacted by this credential holder. As the credential holder is currently under temporary suspension, no further action of the Board was needed at this time

Update on Monitoring Probations

The Board noted the following credential holders who are presently being monitored: James Rick Roe, PT; Ron Cole, PT; Lawrence Tatem, PT; 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. Nitz and Mr. Harris.

The Board also considered a request submitted by Ron Barbato to reassign his monitoring duties relating to Mr. Nitz and Mr. Harris in view of Mr. Barbato's additional responsibilities he will be required to assume in his role as a Board member. Mr. Majors advised the Board that Debra Turner, who currently serves as a Board monitor, has expressed a willingness to accept the reassignment, if that was the Board's pleasure. Following discussion, Ms. Pillow made the motion for these monitoring assignments to be reassigned to Ms. Turner. This motion was seconded by Ms. Ogle, which carried.

Director's Report

Financial Report

The Board reviewed monthly, quarterly and 2014 YTD annual FAS3 financial report addressing the Board's revenues and expenditures.

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. Following discussion, the Board suggested that staff contact Rep. Robert Benvenuti, former Kentucky Inspector General, to advise of its concerns with this legislation.

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 01/02/14 covering the period from 10/01/13 through 12/30/13 in which no credential holders of the Board were listed.

KBPT Office Space

Mr. Majors reported that no further developments have occurred since the last meeting relating to decisions made by the Board of Nursing and the Board of Dentistry regarding a possible shared space arrangement in the office building. 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.

KBPT Staff Position

Mr. Majors provided the Board a report containing projected time frames for advertising the new staff position, interviewing potential candidates, and a possible start date. Mr. Majors will update the Board on any further developments at the next meeting,

Travel Expenses

Mr. Majors provided the Board a report concerning the state's travel reimbursement policies, including high rate reimbursement locales, as well a summary of those sections of the Board's policy procedures which address approval for travel and reimbursement. Following discussion, the Board instructed Mr. Majors to present a report at the next meeting which details the historical background of the travel expenses associated with Board members, staff, and counsel.

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)
- b. FARB – 2014 FARB Forum
(01/24-26/14 – Austin, TX)
- c. KPTA -- Legislative Day
(02/19/14 – Frankfort, KY)
- d. APTA "NEXT" Conference (formerly Annual Conference and Exposition)
06/11-14/14 – Charlotte, NC)
- e. FSBPT -- 2014 Annual Conference
(09/18-20/14 – San Francisco, CA)
- f. FARB – 2014 Attorney Certification Seminar
(10/03-05/14 – Annapolis, MD)

New licensees/reinstatements/renewal applications

On motion made by Ms. 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 Ms. Pillow, which carried. The lists are attached to these minutes.

A motion was made by Ms. Pillow to adjourn the meeting at 3:33 p.m. The motion was seconded by Ms. Ogle, which carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott D. Majors". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott D. Majors
Executive Director