



## KENTUCKY BOARD OF PHYSICAL THERAPY

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Governor

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Scott D. Majors, Esq.  
Executive Director

### MINUTES OF MEETING September 25, 2014

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

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

Board Agents: Louis D. Kelly, Esq., Board Counsel  
Brian Fingerson, RPh, IPTPC Director

Board Guest: Brent Curry, Student, University of Kentucky College of Pharmacy

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Linda Pillow, at 9:05 a.m. on Thursday, 09/25/14, at the Board office. A quorum was present.

#### Welcome of New KBPT Employee

Ms. Pillow introduced to the members the Board's newest employee, Krista Barton, who was appointed on 09/01/14 to serve as the Board's Executive Secretary.

#### Minutes for Previous Regular Meeting

Following discussion and review, Ms. Volz made the motion to approve the minutes of the Board meeting of 07/17/14, seconded by Mr. Barbato, which carried.

#### Board Discussions, Committees and Opinion Requests

##### 2014 FSBPT Annual Meeting and Delegate Assembly

Ms. Pillow, Ms. Volz, Mr. Barbato, Ms. Johnson, and Mr. Majors recently attended the 2014 FSBPT Annual Meeting and Delegate Assembly in San Francisco, California. Ms. Pillow reported to the Board information relative to the Coursework Evaluation Tool ("CWT") and possible changes to general education requirements as it pertains to foreign educated applicants. Ms. Volz reported to the Board the various motions made by the Delegate Assembly. Mr. Barbato reported to the Board information relative to biometric background checks and how this is a more thorough option for vetting licensure applicants. Mr. Majors reported on the Physical Therapy Licensure Compact initiative and the Telehealth resource paper currently being drafted by FSBPT's Ethics and Legislation Committee.

### **CLEAR – 2014 Annual Education Conference**

Mr. Curley gave a brief presentation to the Board concerning his attendance of the 2014 CLEAR conference earlier this month. He discussed presentations relative to ethical standards, sexual assault complaints, suspension and revocation, and the advantages and disadvantages of social media pertaining to board communication methods.

### **Policy and Procedure Manual Review Committee**

Ms. Volz reported to the Board concerning the Policy and Procedure Manual Review Committee which met on three occasions since the last Board meeting. She presented a draft of the revised Manual for review. Following discussion by the Board, further revisions will be brought before the Board at its next meeting in November.

### **Monitoring Procedures and Requirements**

Mr. Majors reported that KBPT and Kentucky.gov have entered into a contractual agreement in which the rollout of the electronic spreadsheet is anticipated within the next 45 to 60 days. Mr. Majors will update the Board at the November meeting.

### **2015 KBPT Renewal Application Revisions**

Mr. Majors reported that he met with Mr. Bob Evancho from Kentucky.gov concerning the renewal applications for the 2015 renewal cycle. Mr. Majors discussed various changes to the renewal application which will eliminate the issue of incomplete renewal form submissions. The online renewal cycle for the upcoming biennium is scheduled to begin on 01/05/15.

### **Appointment of Item Writers for 2015-2017**

After providing the Board with a historical summary of the planned change in implementation date for the 2015-2017 biennium Jurisprudence Exam (“JE”), notably that licensees should have access to the new exam by 04/01/15, the Board discussed the manner by which the next JE may be fully implemented by this deadline. Ms. Ogle moved to appoint Peggy Block, Debra Turner and Tom Pennington as item writers for the 2015-2017 Jurisprudence Exam, and to have Mr. Majors explore with FSBPT the prospect of developing the 2017-2019 Jurisprudence Exam. This motion was seconded by Mr. Barbato, which carried.

### **Annual Performance Evaluation – KBPT Executive Director**

The annual performance evaluation of the Board’s Executive Director, Scott Majors, was discussed by the Board. It was decided that the Board’s Chair, Linda Pillow, and the Board’s Chair-Elect, Karen Ogle, would review the performance evaluation with Mr. Majors at the November meeting. No staff members were present in the meeting room during any portion of the Board’s discussion of this matter.

### **2015 Board Meeting Schedule**

Following consideration of various conferences which are expected to be held in 2015, and in an effort to avoid conflicts with the scheduling of these conferences, the Board established the following schedule for its Complaint Committee and Board meetings:

Complaint Committee Meeting: approximately 5:00 p.m. to 7:30 p.m.

January 14  
March 18  
May 20  
July 15  
September 16  
November 18

Board Meetings: 9:00 a.m. to approximately 5:00 p.m.

January 15  
March 19  
May 21  
July 16

September 17  
November 19

### **2015 Board Appointments**

Following discussion, the Board made the following appointments, effective 01/01/15, unless otherwise noted:

- (1) 2015 Board Chair: Pursuant to the vote taken by the board in September of 2013, Ms. Ogle shall assume the position of Chair effective 01/01/2015;
- (2) 2015 Board Chair-Elect: Ms. Ogle moved that Ms. Volz be appointed 2015 Board Chair-Elect, seconded by Ms. Pillow, which carried;
- (3) 2015 Complaint Committee: Upon discussion and deliberation Mr. Clark moved, that effective 01/01/15: (a) Mr. Grubb be appointed by the Board to replace him (Mr. Clark) on the 2014 Complaint Committee; (b) Ms. Volz and Ms. Ogle be appointed to the 2015 Complaint Committee; and (c) Ms. Ogle be appointed to serve as chair of the 2015 Complaint Committee. This motion was seconded by Ms. Johnson, which carried;
- (4) 2015 Remediation Liaison Members: Mr. Clark moved that Ms. Volz and Mr. Grubb be reappointed as 2015 liaison members to KBPT staff concerning questions relating to remediation. This motion was seconded by Ms. Pillow, which carried;
- (5) 2015 ADA Accommodations Liaison Members: Mr. Clark moved that Ms. Volz and Mr. Grubb be reappointed as 2015 liaison members to KBPT staff concerning questions relating to accommodations. This motion was seconded by Ms. Pillow, which carried;
- (6) 2015 KBPT Board Member Liaison to KPTA: Ms. Pillow moved that Mr. Barbato replace Ms. Ogle as the Board Member Liaison to the KPTA. This motion was seconded by Ms. Ogle, which carried;
- (7) 2015 Continued Competency Liaison to KPTA: Mr. Barbato moved to reappoint Ms. Volz as the Board Member Continued Competency Liaison to KPTA. This motion was seconded by Ms. Pillow, which carried;
- (8) 2015 Finance Board Member Liaisons: Mr. Barbato moved that Ms. Ogle and Ms. Volz be appointed as 2015 liaison members to KBPT staff concerning questions relating to finance. This motion was seconded by Mr. Grubbs, which carried.

### **Opinion Requests**

The Board reviewed the following opinion requests from:

(1) Shaska Hines, PT, who inquired whether it is permissible to reassess every 90 days instead of every 30 days with the SCL2 program for the Community Alternatives of Kentucky. Following consideration, the Board instructed staff to respond by referring Ms. Hines to the express language found in the Board's administrative regulation concerning reassessments, 201 KAR 22:053 Section 2(4) and the corresponding administrative regulation concerning documentation required for reassessments, 201 KAR 22:053 Section 5(3). For billing or reimbursement questions, the Board also encouraged Ms. Hines to consult with her payor representative to determine specific requirements needing to be satisfied prior to reimbursement.

(2) Katie Elder, PT, DPT, who inquired about billing procedures for "re-evaluations versus new evaluations." Specifically, Ms. Elder asked whether she could perform "a re-evaluation/re-assessment for the 30 day mark and not bill for it, or does it need to be billed as a re-evaluation?" Following consideration, the Board instructed staff to respond by referring Ms. Elder to the express language found

in the Board's administrative regulation concerning reassessments, 201 KAR 22:053 Section 2(4) and the corresponding administrative regulation concerning documentation required for reassessments, 201 KAR 22:053 Section 5(3). For billing or reimbursement questions, the Board also encouraged Ms. Elder to consult with her payor representative to determine specific requirements needing to be satisfied prior to reimbursement.

(3) Cassie Gibson, PT, DPT, SCS, who inquired whether there is any regulation in Kentucky prohibiting her from covering sidelines for local schools as a sports certified specialist? Ms. Gibson also asked questions relating to marketing and professional liability insurance. Following consideration, the Board instructed staff to respond by advising that, as long as she otherwise complies with all provisions in the Kentucky Physical Therapy Practice Act and its corresponding administrative regulations, including the code of ethical standards and standards of practice, supervision and documentation, there is no express prohibition in the Board's law or regulation that applies to this contemplated practice and conduct. For any billing, reimbursement and/or insurance liability and coverage questions, the Board also requested that staff encourage Ms. Gibson to consult with her payor representative and/or her insurance carrier representative, as the Physical Therapy Practice Act and its corresponding regulations are generally silent on these issues.

### **Civil Matters and Investigations**

#### **2013 Complaint Committee**

BIC2013-15: The Complaint Committee reported the credential holder in this case, who is under a settlement agreement and whose suspension was scheduled to end 09/01/14, recently contacted General Counsel. Mr. Kelly informed the Board the credential holder has relocated to the state of Washington, is not currently practicing, and is unable to meet the terms of the Order of Immediate Temporary Suspension. Considering this information, the Complaint Committee moved and recommended that the Board authorize General Counsel to offer a settlement agreement stipulating a voluntary surrender of license with the ability to apply for reinstatement after three years. The credential holder must appear before the Board and comply with all existing terms of her previous settlement agreement that was entered and approved on 01/16/2014. This motion was seconded by Mr. Barbato, which carried.

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

C2013-31: 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 of KRS Chapter 327. This motion was seconded by Ms. Volz, which carried.

C2013-129: The credential holder in this action, Ms. Loretta Moore, appeared before the Board, without counsel, to review the terms of a proposed written settlement agreement. These terms include, but are not limited to: (a) five year period of probation; (b) abstaining from the use of alcoholic beverages; (c) maintain active participation in IPTPC; (d) notification of current and future employers of the settlement agreement; (e) notifying the Board of any changes regarding employment; (f) and completing the continuing education course, CAPTASA.

As Board Chair, Ms. Pillow reviewed each term of the agreement with Ms. Moore, who acknowledged her understanding, assent, and agreement to all terms of the agreement. After providing Ms. Moore an opportunity to have her questions addressed by the Board, and following discussion, Ms. Volz made the motion for the Board to approve and file of record the subject agreement. This motion was seconded by Ms. Johnson, which carried. Mr. Grubb recused himself from any consideration of this matter and stepped outside the Board room during this discussion.

C2013-133: The Complaint Committee reported, since the last Board meeting, the subject Agreed Order, pertaining to a term protection violation was signed by the Circuit Judge and filed of record. Accordingly,

the Complaint Committee moved to dismiss this complaint. This motion was seconded by Ms. Volz, which carried.

### **2014 Complaint Committee**

C2014-01: The Complaint Committee reported that this case is ongoing.

C2014-05: The Complaint Committee reminded the Board that at its previous meeting the General Counsel was authorized to prepare a proposed settlement agreement. Without a recommendation or motion, the Complaint Committee reported that this credential holder had submitted a counter proposal to the original settlement agreement the Board previously authorized. Following consideration and discussion, and following lengthy discussion with the credential holder, Mr. Timothy N. Jones, PTA, Ms. Volz moved to accept a counter proposal by allowing Mr. Jones the ability to petition to be released from monitoring after four successful monitoring visits. This motion was seconded by Ms. Pillow, which carried.

C2014-07: The Complaint Committee reported that this case is ongoing.

C2014-08 and C2014-10: After noting that this credential holder is currently under an Order of Immediate Temporary Suspension, the Complaint Committee reported that the investigation in C2014-08 is ongoing and the Board's investigator is actively monitoring the results of an investigation performed by local law enforcement involving allegations of professional misconduct committed by the credential holder. Following consideration and discussion, the Complaint Committee recommended and moved that the Board authorize its General Counsel to draft a proposed settlement agreement and conditional reinstatement of license on terms agreeable to the Board and to attempt to negotiate a resolution with the credential holder as to both C2014-08 and C2014-10. Ms. Johnson seconded the motion, which carried.

C2014-11: The Complaint Committee reported that this case is ongoing.

C2014-12 and C2014-15: Concerning C2014-12, the Complaint Committee reported that a hearing officer has been assigned to the case and has scheduled an administrative hearing for 9:00 a.m. on 11/20/14, to correspond with the beginning of the Board's November meeting. Concerning C2014-15, the Complaint Committee reported that this credential holder had been arrested and charged with tampering with evidence, a felony. Following extensive discussion and consideration, the Complaint Committee recommended and moved that the Board authorize its General Counsel to draft a proposed voluntary surrender of license and to attempt to negotiate a resolution with the credential holder as to both C2014-12 and C2014-15. Mr. Barbato seconded the motion, which carried.

C2014-13: The Complaint Committee reported that this case is ongoing. Mr. Curley reported that he has tried on multiple occasions to contact the complainant to request additional information, without success. The Board authorized Mr. Curley to advise the complainant that failure to respond within the next 30 to 45 days may result in the case being dismissed by the Board.

C2014-14: The Complaint Committee reported that this new case involves allegations of possible fraud or misrepresentation in the delivery of services. Following consideration, the Complaint Committee recommended and moved the Board to authorize an investigation be opened, and to have Mr. Curley notify the complainant that failure to respond within the next 30 to 45 days may result in the case being dismissed by the Board. This motion was seconded by Ms. Volz, which carried.

C2014-16: The Complaint Committee reported that this new case involves allegations of possible negligence and/or failure to respect the rights and dignity of all patients. Following consideration, the Complaint Committee recommended and moved the Board to authorize that an investigation be opened. This motion was seconded by Mr. Grubb, which carried. Mr. Clark recused himself from any consideration of this matter, both during the Complaint Committee's consideration and during the Board's meeting, and stepped outside the conference room during both occasions.

C2014-17: The Complaint Committee reported that this new case involves allegations of possible negligence and substandard care. The Complaint Committee recommended and moved the Board to authorize that an investigation be opened. This motion was seconded by Ms. Pillow, which carried.

### **IPTPC Report**

Mr. Fingerson presented the IPTPC report dated 09/11/14. IPTPC cases which previously have come to the attention of the Board, or were discussed at length during the Complaint Committees' reports, were reviewed.

Additionally, Mr. Fingerson reported that, he has been unable to contact the credential holder in C2011-06 relative to several reports from the drug screening company that the credential holder has failed to timely appear. Having reviewed and considered this matter, the Complaint Committee recommended that staff contact the credential holder's employer and advise that the credential holder's continued failure to respond to the Board's request for information may result in the immediate temporary suspension of the credential holder's ability continue to practice.

Finally, the credential holder in C2010-23, Mr. Stephen Barton, appeared before the Board to discuss the terms of his settlement agreement regarding remediation. After discussion, the Board instructed Mr. Barton to submit a revised remediation plan which shall include a more in-depth and concise plan. Mr. Barton agreed to resubmit his remediation plan, and he requested an extension to complete this process. Ms. Volz moved to amend Mr. Barton's existing settlement agreement by vacating the deadline of 10/01/14 and replacing said date with 11/01/14. This motion was seconded by Ms. Ogle, which carried.

### **Update on Monitoring Probations**

The Board noted the following credential holders who are presently being monitored: Ron Cole, PT; Lawrence Tatem, PT; Jon-Mark French, PTA; Andreanna Gibbs, PTA; Art Nitz, PT; Lori Oakley, PTA; Jeremy Kruger, PT; and Tiffiney S. Bentley, PT. Monitor reports were submitted by the Board-appointed monitors and considered by the Board for Mr. Cole, Mr. French and Dr. Nitz.

During the July Board meeting Dr. Nitz requested to be relieved from further monitoring with respect to his amended settlement agreement and probationary period. His request was denied due to the fact he had not met the required number of monitoring visits. Thus, Dr. Nitz resubmitted his request after completing the required number of monitoring visits necessary to comply with his settlement agreement. Following consideration of this information, Ms. Volz moved to release Dr. Nitz from further monitoring. This motion was seconded by Ms. Pillow, which carried.

Mr. Curley reported that Mr. French's three year probationary period ended in September 2014. However, Mr. French has not had the required 12 monitoring visits per his settlement agreement due to unforeseen issues with the original Board-appointed monitor and the process of obtaining a replacement. After consideration and discussion, the Board instructed staff to notify Mr. French that, upon receipt of one more favorable monitoring visit and an accompanying written request, the Board would be receptive to considering a petition for early release.

## **REPORTS AND OTHER BUSINESS**

### **KPTA Liaison to KBPT Report**

KPTA President Mike Muscarella appeared telephonically and expressed KPTA's concerns with proposed Athletic Trainer payment legislation which had been scheduled for legislative committee review and consideration on 09/23/14. Additionally, Mr. Muscarella shared with the Board pre-filed legislation concerning anti-solicitation provisions which referenced the Board of Physical Therapy. Mr. Muscarella encouraged the Board to review and assess this legislation, which may be codified in KRS Chapter 367. Following discussion, the Board agreed to table these matters for further review.

## **KBPT Liaison to KPTA Report**

Ms. Ogle reported that she is scheduled to appear at KPTA's Member and Award ceremony on 09/26/14 and its business meeting on 09/27/14.

### **New Business**

Ms. Pillow briefly summarized the "Just Culture" philosophy which was discussed during the FSBPT Annual Conference, noting that this is a set of disciplinary guidelines for boards to use to determine the most efficient and effective manner to handle routine complaints.

Mr. Majors discussed the need for possible changes to 201 KAR 22:160, the Board's telehealth regulation, pertaining to verifying the identity of patients and their locations and the statutory reference to including fee splitting language.

### **Director's Report**

#### **Financial Report**

Ms. Pillow, Ms. Ogle and Mr. Majors met shortly before the Board meeting as a direct result of the action taken by the Board at the last meeting to create a Finance Liaison work group. The meeting focused on a more in-depth discussion of the Board's budget, including expenditures and the process how revenue is generated, as well as the projected budget in regards to staffing and office space.

#### **KBPT Approval Request: Bar Dues**

Mr. Majors requested the Board to authorize reimbursement for his dues with the Kentucky Bar Association ("KBA"). Mr. Barbato made the motion for the Board to approve reimbursement for Mr. Majors' KBA Dues. This motion was seconded by Mr. Grubb, which carried.

#### **KBPT Office Space**

Mr. Majors reported that there are no further developments concerning the office space at this time, and he is still waiting to hear from the Real Property Division of the Department of Finance pertaining to the expansion of the Board's office space. Mr. Majors agreed to provide the Board an update at the next meeting.

#### **KBPT Website Design: FSBPT's Input**

Similar to his report offered at the last meeting, Mr. Majors reported that a representative with FSBPT has not yet contacted Board staff concerning an evaluation of the Board's website in an effort to increase its consumer-friendliness. Mr. Majors has requested FSBPT to conduct this evaluation, which is expected to be scheduled in the near future.

#### **KBPT's Records Retention and Destruction Procedure**

Mr. Majors reported that on 09/16/14 he attended the Executive Director's meeting in Frankfort. Mr. Jim Cundy, the representative with the Kentucky Department of Libraries and Archives charged with the task of developing a regulatory board consensus relative to record retention and destruction procedures, unexpectedly was not in attendance. Further information is expected at the November meeting.

#### **CAPTE Accreditation Actions**

Mr. Majors provided the members with a copy of CAPTE's accreditation actions taken in July and August of 2014.

## **Conferences Relating to Physical Therapy**

The Board reviewed the following schedule of upcoming conferences:

- a. FARB – 2014 Regulatory Law Seminar  
(10/03-05/14) – Annapolis, MD  
(Louis Kelly – KBPT Representative)
- b. FSBPT – Ethics and Legislation Committee – 2014 Meeting #2  
(11/01-02/14 – Charlotte, NC)  
(Scott Majors – KBPT Representative)
- c. FSBPT Licensure Compact Drafting Team – Meeting #1  
(11/07-08/14 – Alexandria, VA)  
(Scott Majors – KBPT Representative)
- d. FARB – 2015 Annual Forum  
(01/23-25/15) – Tucson, AZ)
- e. CAPTASA – 2015 Conference Workshop  
(01/30-31/15 – Lexington, KY)  
(Louis Kelly & Krista Barton)  
Mr. Majors advised that he will be recommending that the Board fully fund Ms. Barton and Mr. Kelly to attend the upcoming CAPTASA conference in Lexington. This topic will be further discussed at the November meeting.
- f. FSBPT – New Board Member and Administrator Training  
(06/12-14/15 – Alexandria, VA)
- g. FSBPT – Leadership Issues Forum  
(08/01-02/15 – Alexandria, VA)  
(Scott Majors and KBPT Primary Voting Delegate – KBPT Representatives)
- h. FARB – 2015 Regulatory Law Seminar  
(10/01-04/15 – Denver, CO)
- i. FSBPT – 2015 Annual Meeting, Conference and Delegate Assembly  
(10/15-17/15 – Orlando, FL)
- j. CLEAR – 2015 Annual Educational Conference  
(10/17-19/15 – Boston, MA)
- k. FSBPT – 2016 Annual Meeting, Conference and Delegate Assembly  
(11/??-??/15 – Columbus, OH)

## **New licensees/reinstatements/renewal applications**

Ms. Volz made the motion to review, approve and ratify the lists of persons issued licenses and certificates since the last meeting, as well as a list of examinees and reinstatements. This motion was seconded by Ms. Ogle, which carried. The lists are attached to these minutes.

A motion was made by Ms. Pillow to adjourn the meeting at 5:15 p.m. The motion was seconded by Ms. Volz, which carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott D. Majors', with a stylized, sweeping flourish extending to the right.

Scott D. Majors  
Executive Director