



KENTUCKY BOARD OF PHYSICAL THERAPY

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Steve L. Beshear
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING November 20, 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
Krista Barton, Executive Secretary

KPTA Liaison: Janice Kuperstein, PT, PhD, MSED

Board Guests: Prentice Harvey, Esq.
Paula Smith, Esq.

Board Members Absent: Virginia Johnson, Public Member

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Linda Pillow, at 9:07 a.m. on Thursday, 11/20/14, at the Board office. A quorum was present.

Minutes for Previous Regular Meeting

Following review and discussion of amendments to the draft minutes suggested by Mr. Grubb, Ms. Ogle made the motion to approve the minutes of the Board meeting of 09/25/2014, as amended. This motion was seconded by Ms. Volz, which carried.

Board Discussions, Committees and Opinion Requests

2014 FARB Regulatory Law Seminar

Mr. Kelly recently attended the 2014 FARB Regulatory Law Seminar in Annapolis, MD. He discussed presentations relative to the effectiveness and efficiency of regulatory boards, and the *FTC vs. North Carolina State Board of Dental Examiners* case.

2014 FSBPT Licensure Compact Drafting Team

Mr. Majors reported that on 11/07-08/14 he attended the first of four scheduled meetings of FSBPT's Licensure Compact Drafting Team to review concepts for a physical therapy compact model, and to determine whether a consensus could be reached on proposed language for a compact to make available to all member boards. Mr. Majors also reported that the second meeting relative to this initiative is scheduled for 12/01-02/14 and he will provide the Board an update at its next meeting.

Policy and Procedure Manual Review Team

Ms. Volz reported the revisions that were recommended from the last Board meeting, including the acronyms, abbreviations and definitions, had been completed. These revisions were circulated to the members for their review. Mr. Clark made the motion to adopt the Policy and Procedure Manual with the suggested revisions, seconded by Mr. Barbato, which carried.

Mr. Barbato sought clarification concerning the Board's protocol of placing opinion requests on the agenda. Following discussion, the Board determined that the current policy is not to change, as the Executive Director shall continue to consult with the Board Chair to discuss possible agenda items, when needed.

Monitoring Procedures and Requirements

Mr. Curley gave a brief update on the rollout timeline of the electronic spreadsheet. The spreadsheet is currently set to begin testing in the early part of next year, and it will be made available to the Monitoring Task Force in the beginning part of the second quarter.

Enterprise Header & Footer for Public-Facing Agency Websites

Mr. Curley gave a brief explanation of the Header and Footer requirements for all state agency websites. He reported that we currently have both a Header and Footer on our website, and only minor changes are needed to meet the state's requirements. Kentucky.gov has essentially already created the Header and Footer for the Board's website, and it will be implemented concurrently with the update of the SharePoint website.

Annual Performance Evaluation – KBPT Executive Director

Ms. Pillow and Ms. Ogle reported that immediately prior to the Board meeting they discussed with Mr. Majors his favorable annual performance evaluation. Following discussion, Mr. Barbato made the motion that the Board approve a five percent raise for Mr. Majors. This motion was seconded by Ms. Volz, which carried. No staff members were present in the meeting room during any portion of the Board's discussion.

Proposed 2015-2017 Jurisprudence Examination

Mr. Majors reported that the 2015-2017 Jurisprudence Exam ("JE") Item Writers Task Force, consisting of Tom Pennington, Debra Turner and Peggy Block, convened by conference call on 10/14/2014 and 10/30/2014 to examine potential questions for the next JE. The examination questions were developed by these item writers following their consideration of the most prolific and significant topical issues which the Board and its staff have addressed in the past biennium. Mr. Majors circulated the item writers' list of twenty-two questions for the Board to review. Following discussion and some revisions, Mr. Barbato moved that the Board approve a set of twenty of these questions, as revised, to serve as the 2015-2017 JE. This motion was seconded by Ms. Volz, which carried.

CMS Rule Making/ATA

Mr. Barbato reported that the Centers for Medicare and Medicaid Services ("CMS") recently announced increased coverage starting in 2015 for home care of chronic care management, remote patient monitoring of chronic conditions and other services when provided by telehealth. Mr. Barbato circulated a written summary of this increased coverage for the members' review.

Opinion Requests

The Board reviewed the following opinion requests from:

(1) Jo Ann Terry, PT, who inquired about the use of iontophoresis by a licensed physical therapist. Following consideration, the Board instructed staff to respond by referring Ms. Terry to the opinion published by the Kentucky Board of Pharmacy in May of 1988 which clarified that a physical therapist may not dispense controlled substances from a common container, as physical therapists in Kentucky are not "practitioners" under Kentucky's pharmacy laws.

(2) Teresa White, PT, who inquired “whether it is ethical and legal for a PTA to be my supervisor?” Following consideration, the Board instructed staff to respond by advising: (1) a physical therapist assistant is not expressly prohibited from serving as Ms. White’s supervisor by virtue of Kentucky’s Physical Therapy Practice Act or its corresponding administrative regulations; (2) a physical therapist, not a certified physical therapist assistant, may change a physical therapy plan of care; and (3) Ms. White is encouraged to review 201 KAR 22:053 Sections 2 and 3 which outline the respective standards of practice for physical therapists and physical therapist assistants.

(3) Carlos Cochran, PT, who inquired about the scope of practice of physical therapists and physical therapist assistants concerning the performance of screens. Following consideration, the Board instructed staff to refer Mr. Cochran to the Board’s previously issued declaratory opinion on the subject.

Civil Matters and Investigations

2013 Complaint Committee

BIC2013-15: The Complaint Committee reported that the physical therapist assistant in this case, Brandy DeCoursey, was requesting to voluntarily surrender her certificate to practice in Kentucky. Ms. DeCoursey appeared telephonically before the Board, without counsel, to review the terms of a proposed written settlement agreement. These terms included her voluntary surrender of license with the ability to apply for reinstatement after three years and the need for her to comply with all existing terms of her previous settlement agreement that was entered and approved by the Board on 01/16/2014.

As Board Chair, Ms. Pillow reviewed each term of the agreement with Ms. DeCoursey, who acknowledged her understanding, assent, and agreement to all terms of the agreement. After providing Ms. DeCoursey an opportunity to have her questions addressed by the Board, and following discussion, the Complaint Committee recommended and moved that the Board approve and file of record the subject agreement. This motion was seconded by Ms. Volz, which carried.

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

CE2013-128: The Complaint Committee reported that the physical therapist assistant in this case, Karen Wheatley, admitted to practicing physical therapy on a lapsed certificate. Ms. Wheatley appeared before the Board, without counsel, to review the terms of a proposed written settlement agreement. These terms included a public reprimand and a fine in the amount of \$750.

As Board Chair, Ms. Pillow reviewed each term of the agreement with Ms. Wheatley, who acknowledged her understanding, assent, and agreement to all terms of the agreement. After providing Ms. Wheatley an opportunity to have her questions addressed by the Board, and following discussion, the Complaint Committee made the motion for the Board to approve and file of record the subject agreement. The motion was seconded by Mr. Barbato, which carried.

As Mr. Clark’s term on the Board is set to expire on 01/01/15 and Linda Pillow’s term on the Board may expire on 01/01/15, Ms. Volz made the motion that they be replaced on the 2013 Complaint Committee with Mr. Grubb and Ms. Ogle while the work of this committee winds down in the near term. This motion was seconded by Mr. Barbato, which carried.

2014 Complaint Committee

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

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

C2014-08 and C2014-10: The credential holder in this action, Shayne Ferguson, appeared before the Board, without counsel, to review the terms of a proposed written settlement agreement which included

the following terms: (a) five year period of probation; (b) abstain from the use of alcoholic beverages; (c) maintain active participation in IPTPC; (d) follow all recommendations of his intensive outpatient treatment; (e) payment of a fine in the amount of \$7,500; (f) refrain from engaging in home health or maintaining an independent physical therapy practice; (g) notification of current and future employers of the settlement agreement; and (h) completing the continuing education course, CAPTASA.

As Board Chair, Ms. Pillow reviewed each term of the agreement with Mr. Ferguson, who acknowledged his understanding, assent, and agreement to all terms of the agreement. After providing Mr. Ferguson an opportunity to have his questions addressed by the Board, and following discussion. The Complaint Committee recommended and moved that the Board approve and file of record the subject agreement. This motion was seconded by Mr. Barbato, which carried.

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

C2014-12, C2014-15 and C2014-21: The Complaint Committee reported that the hearing scheduled to begin this morning at 9:00 a.m. was ordered postponed. The physical therapist in this action, James Richard Roe, appeared before the Board, with his attorney, Luke Morgan, Esq., to review the terms of a proposed written settlement agreement. These terms included a voluntary surrender of license for at least three years and an express prohibition against providing any health care service to a member of the public until his license to practice physical therapy was reinstated.

As Board Chair, Ms. Pillow reviewed each term of the agreement with Mr. Roe, who acknowledged his understanding, assent, and agreement to all terms of the agreement. After providing Mr. Roe and his attorney an opportunity to have their questions addressed by the Board, and following discussion, the Complaint Committee recommended and moved that the Board approve and file of record the subject agreement. The motion was seconded by Ms. Pillow, which carried.

C2014-13: The Complaint Committee reported that this case is ongoing

C2014-14: The Complaint Committee reported that this case is ongoing.

C2014-16: The Complaint Committee reported that this case is ongoing.

C2014-17: The Complaint Committee reported that this case is ongoing.

C2014-18: The Complaint Committee reported that this new case involves allegations of possible patient abandonment. The Complaint Committee recommended and moved the Board to authorize an investigation be opened. This motion was seconded by Mr. Barbato, which carried.

C2014-19: The Complaint Committee reported that this new case involves allegations of possible substandard care and gross negligence. The Complaint Committee recommended and moved the Board authorize an investigation to be opened. The motion was seconded by Ms. Pillow, which carried.

C2014-20: The Complaint Committee reported that this new case involves a credential holder practicing on a lapsed license. The Complaint Committee recommended and moved that the Board authorize General Counsel to attempt to resolve this action through an informal settlement based on a fine of \$650 and a private admonishment. The motion was seconded by Ms. Volz, which carried.

C2011-06: The Complaint Committee reported the possible noncompliance by a credential holder with one or more terms of an active Conditional Reinstatement of Licensure previously approved by the Board. The Complaint Committee recommended and moved that the Board file an Order of Immediate Temporary Suspension of the credential holder. The motion was seconded by Mr. Barbato, which carried.

IPTPC Report

Mr. Majors presented the IPTPC report dated 11/12/14. IPTPC cases which previously have come to the attention of the Board, or were discussed at length during the Complaint Committees' reports, were reviewed.

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; Lori Oakley, PTA; Jeremy Kruger, PT; Tiffiney S. Bentley, PT; and Timothy Jones, PTA. Monitor reports were submitted by the Board-appointed monitors and considered by the Board for Mr. Cole, Ms. Gibbs and Ms. Bentley.

During the May Board meeting Mr. Cole requested to be relieved from all terms remaining to be completed with respect to his settlement agreement and probationary period. His request was denied due to the fact he had not met the terms of his settlement agreement for early release of monitoring and probation. Mr. Cole resubmitted his request on 11/17/14. Mr. Cole requested that he be permitted to personally address the Board during its November meeting, which request was granted. Following discussion of this case with Mr. Cole, and after reviewing his request that he be excused from further monitoring, all sanctions, restrictions and terms of his probation, Mr. Grubb moved that the Board approve Mr. Cole's request only as to early release of monitoring and to deny all other provisions of his request. The motion was seconded by Mr. Barbato; however, the motion failed for lack of a quorum of the Board voting in its favor. Mr. Grubb recused himself during the vote in this matter.

The Board also reviewed and discussed a monitoring report from Mr. Kaczmarek and his response to Ms. Gibbs' request to be relieved from further monitoring. Following discussion, Ms. Volz made the motion for the Board to relieve Ms. Gibbs from the remaining monitoring visits. The motion was seconded by Mr. Barbato, which carried.

REPORTS AND OTHER BUSINESS

Legal Report

Proposed Amendment to KRS Chapter 335B

Mr. Kelly informed the Board that Senator Gerald Neal has proposed an amendment to KRS Chapter 335B. This amendment, if approved, would require regulatory boards to adopt additional due process procedures to address applicants for licensure who have criminal convictions, including affording each such applicant an opportunity to appear before the board and, if applicable, to have the board conduct a due process hearing. Mr. Kelly agreed to monitor this process and to update the Board at its next meeting.

Jennings vs. Drayer Physical Therapy Institute

Mr. Kelly reported on a lawsuit filed in Fayette Circuit Court in 2010, *Jennings vs. Drayer Physical Therapy of Kentucky, PLLC, et. al.*, in which four current and former representatives of the Board were listed as potential witnesses to testify at trial, set to begin on 12/01/14. Mr. Kelly advised that, in concert with discussions with Mr. Majors, he had filed a motion in limine seeking to obtain an order from the presiding judge that would prohibit either party in the lawsuit from compelling a Board representative to appear and testify at trial. This motion is scheduled to be heard on 11/21/14, and Mr. Kelly shall provide notice to the subject four Board representatives as soon as an order is issued.

KPTA Liaison to KBPT Report

Dr. Kuperstein gave a brief report pertaining to Continuing Education. Ms. Lisa Volz, KPTA Executive Director, has requested that the Board, prior to the upcoming renewal cycle, notify all of its regulated

credential holders concerning the process for submitting Continuing Education programs to KPTA for approval. Ms. Volz contributed examples of problematic submissions for review. KPTA believes that this will be helpful in advance of the upcoming renewal period, as the turnaround time for approval may be as long as 4-6 weeks. Thus, if individuals wait until mid-March to submit their applications, they will not be reviewed in time for license renewal. Mr. Majors suggested that an article that was disseminated prior to the last renewal period be updated with input from KPTA and placed on the web page in an effort to address KPTA's concerns.

Dr. Kuperstein also presented the Board with a Consensus Statement on Clinical Judgment in Health Care Settings developed by the Tri-Alliance and distributed in October 2014. Mr. Barbato noted that he had reviewed the document with his team and believes the document to be a good attempt to educate individuals about their personal ethical responsibilities, especially in the face of payer regulations.

KBPT Liaison to KPTA Report

Ms. Ogle reported on matters pertaining to KPTA's Fall Conference at Baptist Health. She also advised that six names were submitted to the Governor's office for the two Board member terms that expire 12/31/14.

New Business

Mr. Majors reported that, following the preparation and distribution of the Board's agenda, he had been contacted by Talia Weinberg, PT, who sought to determine whether the Board had interest in an initiative to establish an organized list of therapists to perform peer review/utilization review. Ms. Weinberg's communications with the Ohio and Minnesota Physical Therapy Boards on this subject were shared with the Board. After consideration and discussion, the Board instructed staff to respond by sharing with Ms. Weinberg its opinion that such an initiative is one which is best addressed with the professional associations, such as KPTA and Minnesota's APTA Chapter, and not with the regulatory boards, such as KBPT. Consequently, KBPT has no plans at this time to begin such a project.

The Board also recognized Prentice Harvey, Esq., and Paula Smith, Esq., who appeared to address with the Board proposed anti-solicitation legislation that would apply to the Kentucky Boards of Medical Licensure, Chiropractic Examiners, Nursing, Physical Therapy, Occupational Therapy and Massage Therapy. Following discussion, the Board instructed Mr. Majors and Mr. Kelly to notify Mr. Harvey and Ms. Smith that the Board would make its representatives available for continued discussion during the process of determining how best to implement proposed anti-solicitation prohibitions that apply to Kentucky's health-related regulatory boards.

Director's Report

Financial Report

The Board reviewed monthly, quarterly and 2014 YTD annual FAS3 financial reports addressing the Board's revenues and expenditures. Mr. Majors also circulated an article published in the Louisville Courier-Journal on 11/06/14 that addressed a projected \$135 million revenue shortfall in 2015 which may require another round of budget cuts.

KBPT Office Space

Mr. Majors circulated to the members a summary of cost estimates for office space renovations in the 312 Building which the Board has been reviewing. Mr. Majors also requested that the Board discuss whether authorization should be given to renew its present lease agreement with Jefferson Development Group for its existing space subject to a final decision made at a later point concerning a relocation. Following discussion, Mr. Barbato made the motion that the Board authorize Mr. Majors to enter into a renewal of its current lease agreement for its existing office space, and for this lease renewal to be subject to any later

decision the Board may make concerning relocation. This motion was seconded by Mr. Grubb, which carried.

KBPT Website Design: FSBPT's Input

Similar to his report offered at the last meeting, Mr. Majors reported that he anticipates a representative with FSBPT will soon contact him concerning an evaluation of the Board's website in an effort to increase its consumer-friendliness.

KBPT's Records Retention and Destruction Procedure

Mr. Majors reported that, consistent with the Board's decision made during its meeting on 07/17/14, and on behalf of the Board, he signed a revised records retention and destruction policy agreement with the Kentucky Department of Library and Archives on 11/18/14. A copy of the revised agreement was circulated to the members for their review.

CBT Comment Summary and Candidate Satisfaction Survey Report

Mr. Majors reviewed the Summary and Candidate Satisfaction Survey Report with the Board. Mr. Majors noted that the overall satisfaction for all jurisdictions pertaining to the processing of licensure applications has been measured at 86.95 % approval, while Kentucky's overall satisfaction has been measured at an approval rate approximately 10% higher for each of the three exam administrations earlier this year.

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 10/02/14 covering the period from 07/01/14 through 09/30/14 in which no credential holders of the Board were listed.

2015 KBPT Renewal Application Revisions

Mr. Majors reported that he has spoken with Mr. Bob Evancho from Kentucky.gov concerning the renewal applications for the 2015 renewal cycle. Mr. Majors reported that Kentucky.gov is currently ahead of schedule with beta testing and is on schedule to meet the January deadline.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. FSBPT Licensure Compact Drafting Team – Meeting #2
(12/01-02/14 – Alexandria, VA)
(Scott Majors – KBPT Representative)
- b. FSBPT Membership Survey Meeting
(01/09-10/15) – Alexandria, VA
Scott Majors – KBPT Representative
- c. FSBPT Licensure Compact Drafting Team – Meeting #3
(01/18-19/15 – 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)
Mr. Grubb made a motion for the Board to pay for the registration fees and associated travel costs for Mr. Kelly and Ms. Barton to attend the CAPTASA workshop. Ms. Volz, seconded the motion, which carried. Ms. Ogle made a motion for the Board to pay for the registration fees and associated travel costs for Ms. Volz and Mr. Barbato to attend the CAPTASA workshop. Ms. Pillow seconded the motion, which carried.
- f. FSBPT Licensure Compact Drafting Team
(04/12-13/15 – Alexandria, VA) Meeting #4
Scott Majors – KBPT Representative
- g. FSBPT – New Board Member and Administrator Training
(06/12-14/15 – Alexandria, VA)
- h. FSBPT – Leadership Issues Forum
(08/01-02/15 – Alexandria, VA)
(Scott Majors and KBPT Primary Voting Delegate...? – KBPT Representatives)
- i. CLEAR – 2015 Annual Educational Conference
(09/17-19/15 – Boston, MA)
- j. FARB – 2015 Regulatory Law Seminar
(10/01-04/15 – Denver, CO)
- k. FSBPT – 2015 Annual Meeting, Conference and Delegate Assembly
(10/15-17/15 – Orlando, FL)
- l. FSBPT – 2016 Annual Meeting, Conference and Delegate Assembly
(11/??-??/16 – 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 Mr. Barbato, which carried. The lists are attached to these minutes.

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

Respectfully submitted,



Scott D. Majors
Executive Director