



## KENTUCKY BOARD OF PHYSICAL THERAPY

*Steve L. Beshear*  
Esq.  
Governor

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*Scott D. Majors,*  
Executive Director

### MINUTES OF MEETING January 15, 2015

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

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

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

KPTA Liaison: Janice Kuperstein, PT, PhD, MSED

Board Guests: Courtney Gosney, Student, Sullivan College

Board Members Absent: Charles "Chuck" Clark, PT

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Karen Ogle, at 9:09 a.m. on Thursday, 01/15/15, at the Board office. A quorum was present.

#### Appointment

The Board welcomed Ms. Linda Pillow, PT, who was reappointed by Governor Steve Beshear to begin a four-year term as Board member, effective 01/14/15. Ms. Krista Barton, the Board's Executive Secretary and a notary, administered the oath of office to Ms. Pillow.

#### Minutes for Previous Regular Meeting

Following review and discussion of amendments to the draft minutes, Ms. Volz made the motion to approve the minutes of the Board meeting of 11/20/2014, as amended. This motion was seconded by Mr. Grubb, which carried.

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

### **Washington Court Case – Dry Needling**

Mr. Grubb gave a brief update on the Washington Court case pertaining to dry needling. Mr. Grubb and Mr. Kelly gave a history of the case and reported that there was a summary judgment stipulating that dry needling is considered the practice of medicine and is considered outside the scope of Physical Therapy. Thus, the practice of dry needling is prohibited in Washington State absent a medical license.

### **2014 FSBPT Licensure Compact Drafting Team**

Mr. Majors reported that on 12/01-02/14 he attended the second of four scheduled meetings of FSBPT's Licensure Compact Drafting Team and there is a working draft model. Mr. Majors also reported that he will be attending the third meeting scheduled for 01/18-19/15 and he will provide the Board an update at its next meeting.

### **FSBPT Membership Survey Meeting**

Mr. Majors reported that on 01/09-10/15 he attended the Membership Survey Committee meeting in Alexandria, VA. This meeting was to review the tabulated results of the FSBPT survey. Some of the topics reviewed were exam services, exam licensure database, professional standards, communications, FSBPT staff, Continued Competency issues and new and future initiatives. The idea of the survey is to improve products and services that the FSBPT offers to the member Boards. Further information about the results of the survey will be announced with a newsletter and a short presentation at the annual convention later this year in October.

### **Monitoring Procedures and Requirements**

Mr. Curley gave a brief update on the rollout timeline of the electronic spreadsheet. The spreadsheet portal should be available for testing next month. When testing is completed it will be made available to the Monitoring Task Force to schedule training.

### **Jurisprudence Exam**

Mr. Curley gave a brief update on the Jurisprudence Exam for the 2017 biennium. Initially there was a situation having both the 2015 and the 2017 Jurisprudence Exam's being available at the same time to licensees. However, Mr. Curley explained that the complexity issue has been remedied and that both exams will be available on the website on 4/4/15.

### **Telehealth in Physiotherapy (INPTRA)**

Ms. Johnson, Mr. Majors and Ms. Barton listened to a WebEx presentation pertaining to Telehealth on 12/16/14 with the International Network of Physical Therapy Regulatory Authority (INPTRA). Ms. Johnson reported on some of the highlights of the presentation dealing with the differences between Telehealth services and hands on Physical therapy services pertaining to knee replacement patients in Canada. She also noted that Kentucky was referenced in the presentation as being one of the three states in the U.S. that has Telehealth regulations specifically for physical therapy.

### **Athletic Trainers and Proposed Regulations**

Mr. Barbato reported on the proposed changes to the Athletic Trainer regulations. After a lengthy discussion, Mr. Barbato made a motion to authorize staff to draft correspondence from the Board to the Kentucky Board of Medical Licensure expressing concern over potential public protection issues arising from proposed legislation that would expand the scope of practice for Athletic Trainers. The letter should be reviewed by the Board members and signed by Ms. Ogle, Board Chair. The motion was seconded by Ms. Pillow, which carried.

### **Renewal Instructions: Jurisprudence Exam**

Ms. Pillow reported that she had recently reviewed the Renewal Instructions currently posted on the Board's website. Ms. Pillow made recommendations that the current instructions be revised. Following discussion by the Board, revisions will be made to the Renewal Instructions and posted to the website.

### **Continuing Education Software Program**

Mr. Majors reported that he and Ms. Barton participated in a brief WebEx presentation by CE Broker, a software program that tracks Continuing Competency. He brought it to the Board's attention for informational purposes only. The Board indicated that at this time it has no plans on moving away from aPTitude, the FSBPT's Continued Competency tracking program.

### **FSBPT's 2015 National Physical Therapy Examination Policies**

Mr. Majors provided the members a copy of FSBPT's 2015 National Physical Therapy Examination Policies for their review. He also reported that there have been questions posed to the Federation from member boards concerning the new eligibility requirements. The Federation is also reviewing the procedure for processing ADA accommodations for exam applicants and offering to take over this responsibility for member boards that would like to participate in the program.

### **Mandatory HIV/AIDS Continuing Education**

Mr. Majors notified the members that proposed legislation may be introduced in this legislative session which eliminates the HIV/AIDS continued competence requirement set forth in KRS 214.610(1). The elimination of this requirement, if approved, would affect the Board's requirements for initial licensure and renewal, as set forth in 201 KAR 22:020 and 201 KAR 22:040.

### **Opinion Requests**

The Board reviewed the following opinion requests from:

(1) Stephanie Wright, PT, who inquired "is it appropriate for a PTA to discuss/relay information regarding the [Physical Therapists] [plan of care] to family and/or other health care professionals?" Following consideration, the Board instructed staff to respond to Ms. Wright that, as long as the physical therapist initially discussed and explained the plan of care with the patient, and the plan of care is properly represented without alteration, a physical therapist assistant may explain the plan of care.

(2) Robert Pruden, PT, who inquired "if the Kentucky Board of Physical Therapy has responded to the Federal Motor Carrier Safety Administration as to if Physical Therapists in the state of Kentucky qualify to become certified in performing Department of Transportation physicals?" Following consideration, the Board instructed staff to respond that the Board feels this issue should initially be addressed through the Kentucky Physical Therapy Association (KPTA). The Board brought this matter to the attention of the KPTA Liaison who attended the Board meeting. However, the Board recommended that Mr. Pruden submit an official request to the KPTA whether a recommendation should be submitted to the Board to address this issue.

(3) Anita Cantrell, PTA, who inquired "can a PTA monitor meds in Home Health situations and make changes to the medication list when patients reports a medication change. Also, can a PTA deliver medications to a patient's home including narcotics?" Following consideration, the Board instructed staff to respond, as long as the PTA is otherwise working within the standards of practice for a physical therapist assistant (see 201 KAR 22:052 Section 3), a PTA is permitted to collect the data. The Board advised you that the proposed conduct may be fraught with professional boundary issues, and extreme caution should be exercised to ensure that these boundary lines are not exceeded.

## **Civil Matters and Investigations**

### **2013 Complaint Committee**

C2013-30: The Complaint Committee reported to the Board that this case involves possible fraud and misrepresentation in the delivery of services. The Complaint Committee moved to authorize Board Counsel to draft and submit a proposed settlement agreement to the credential holder for review and possible approval and, if accepted, to invite the credential holder to appear before the Board in March to review the terms of the settlement agreement. This motion was seconded by Ms. Volz, which carried. Ms. Pillow recused herself from discussing or voting on this case.

## **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.

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

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 gave a brief history that this case involves negligence and/or failure to respect the rights and dignity of all patients. The Complaint Committee reported that it recommended discipline; however, the Committee wanted to seek input from the full Board on the degree of discipline it deemed appropriate for the credential holder. Following consideration and discussion, Ms. Johnson made a motion to authorize Board Counsel to issue a Private Admonishment and a fine of \$1,000, and gave Counsel the authority to move forward with formal charges if the Private Admonishment was not accepted by the credential holder. This motion was seconded by Mr. Barbato, which carried. Ms. Pillow recused herself from any discussion voting on this complaint.

C2014-17: The Complaint Committee reminded the Board that this case involves possible substandard care and/or gross negligence. The Complaint Committee moved that the Board take no action due to the fact there is insufficient evidence to warrant additional investigation. This motion was seconded by Mr. Barbato, which carried.

C2014-18: The Complaint Committee reported that the credential holder failed to file a timely response within twenty days, as required by administrative regulation. The Complaint Committee recommended and moved that the Board file an order, signed by the Board Chair, requiring the credential holder to respond within twenty days. This motion was seconded by Ms. Volz, which carried.

C2014-19: The Complaint Committee reported that this case is ongoing.

C2014-22: The Complaint Committee reported this credential holder has a sanction issued by the Board. The Board staff received information that the credential holder has been sanctioned in another state because of the sanction currently in effect in Kentucky. The Complaint Committee recommended and moved to take no action. This motion seconded by Ms. Johnson, which carried.

## **2015 Complaint Committee**

KBPT staff reported information was submitted questioning the billing practices of a Kentucky credential holder currently on probation and under the terms of a settlement agreement. After reviewing the terms of the settlement agreement, and following additional consideration, Mr. Barbato made a motion to have staff draft a notification that the credential holder is not in violation of the terms of the settlement agreement based on the information submitted. The motion was seconded by Ms. Pillow, which carried.

C2008-07: The Complaint Committee reported that the KBPT staff presented information from the Board's assigned monitor raising concerns about possible violations of the settlement agreement committed by this credential holder. The Complaint Committee moved to have Board staff send a letter requesting the credential holder to explain why (s)he did not notify the Board within 10 days of the cessation of practice, as required by the settlement agreement. The motion was seconded by Ms. Pillow, which carried.

### **IPTPC Report**

Mr. Fingerson presented the IPTPC report dated 01/07/15. 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 not heard anything from the credential holder in case number IC2003-22. Also, he has not had any contact with the credential holders in C2011-06 and R2013-15.

### **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; 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. French and Mr. Jones.

During both the September and January Board meetings, 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. Mr. Kaczmarek submitted a monitoring report on 12/18/14, and the Board deemed the report satisfactory. Following consideration of this information, Ms. Johnson moved to release Mr. French from further monitoring. The motion was seconded by Mr. Grubb, which carried.

During the September Board meeting Dr. Nitz requested to be relieved from monitoring with respect to his amended settlement agreement and probationary period. The Board granted this request and Board staff notified Dr. Nitz. On 12/15/14, the Board staff received a letter from Dr. Nitz requesting to be released from the remaining time of his probationary period. Following discussion and after reviewing this request, Ms. Johnson made a motion to have Board staff send a letter of denial to Dr. Nitz. This motion was seconded by Ms. Volz, which carried.

## **REPORTS AND OTHER BUSINESS**

### **Legal Report**

#### **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 reported 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. The motion was scheduled on 11/21/14. Mr. Kelly reported that the judge ruled that the action of the Physical Therapy Board is not relevant in a malpractice case.

#### **HB 153**

Mr. Kelly provided the members with a copy of draft legislation, HB 135, filed on 01/08/15 by the Insurance Industry. At the November meeting, the Board met with insurance representatives to discuss the policies supporting this proposed legislation. Following review of this legislation, the Board identified a few provisions within the bill about which the Board is concerned. While the Board maintains its general support behind the purpose of the legislation, Ms. Volz made the motion instructing Board staff to notify Prentice Harvey and Paula Smith in writing of its concerns, with a copy of these concerns provided to KPTA lobbyist Leigh Ann Thacker. The motion seconded by Ms. Pillow, which carried.

### **Joseph vs South Carolina PT Board Case**

Mr. Kelly reported on a court case in South Carolina that pertains to Physical Therapists and the restriction of referrals. Mr. Kelly noted that this case is not applicable to the state of Kentucky.

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

Dr. Kuperstein reported that Mike Muscarella is now the Past President of KPTA and Patrick Myers is now the current President of KPTA.

Also, Dr. Kuperstein reported on a recent case in Iowa pertaining to an individual who was mistakenly licensed by the Board had failed the exam. The Board asked Counsel to check if we would be protected under the Doctrine of Sovereign Immunity if something of this nature occurred within our state.

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

Mr. Barbato reported that he would keep the Board updated on any changes with the Athletic Trainers proposed legislation change.

## **New Business**

Ms. Ogle asked the Board to consider rescheduling both the July Complaint Committee meeting and the July Board meeting due to a conflict which recently arose on her calendar. The Board agreed to reschedule the Complaint Committee to 07/29/15 and the Board meeting to 07/30/15.

The Board also agreed to have the September Complaint Committee meetings and the September Board meeting in Lexington at the University of Kentucky. Dr. Kuperstein, the KPTA Liaison, confirmed the availability of space at the University of Kentucky for both meetings in September.

## **Director's Report**

### **Financial Report**

Ms. Ogle, Ms. Volz and Mr. Majors met shortly before the Board meeting to discuss the Board's budget. He distributed a packet to both Ms. Ogle and Ms. Volz that included detailed reports regarding finances.

The Board reviewed monthly, quarterly and 2015 YTD annual FAS3 financial report addressing the Board's revenues and expenditures.

### **KBPT Office Space**

Mr. Majors circulated to the members a summary of cost estimates for the office space renovations in the 312 Building which the Board reviewed at the November meeting. Mr. Majors requested that the Board discuss authorizing him to move forward with notifying Finance Facilities to secure the new office space across the hall. Mr. Majors explained that there is a cost increase of \$13,653 per year for the new office space; however, Jefferson Development Group will complete renovations of the area, as originally proposed, at no additional cost to the Board. There will also be expenses associated with the Commonwealth's Office of Technology for cabling, relocation and additional furniture. Following discussion, Ms. Pillow made the motion to authorize Mr. Majors to move forward with the relocation of the Board offices by notifying Finance Facilities of the Board's decision and signing a new lease agreement. The motion was seconded by Ms. Johnson, which carried.

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

Mr. Majors reported that FSBPT's representatives are presently focused on further developments of its own website, and it likely would be another extended time period before FSBPT would be in position to conduct 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 he appeared before the Records Commission on 12/11/14. He explained that the Records Commission would like more information before a change in the records retention and destruction policy is approved. The Records Commission intends to schedule another meeting later this year to discuss the matter, and Mr. Majors will provide a report to the Board in March.

### **CAPTE Actions Upcoming Program Review**

Mr. Majors provided the Board members with a copy of the CAPTE accreditation actions taken during the 11/7-12/14 meeting.

### **CPEP Mini-ProBE Program**

Mr. Majors provided the members information concerning the Mini-ProBE, a condensed version of the full Professional/Problem-Based Ethics (ProBE) Program for ethics remediation.

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

Mr. Majors reviewed the most recent 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 83.33 % approval, while Kentucky's overall satisfaction has been measured at an approval rate between 90.7% and 100% for each of the four exam administrations last 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 1/05/15 covering the period from 10/01/14 through 12/31/14 in which no credential holders of the Board were listed. Mr. Majors noted that there should have been one credential holder listed on the report, and he would be following up with Brian Smith as to why the credential holder did not appear on the report.

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

The Board reviewed the following schedule of upcoming conferences:

- a. FSBPT Licensure Compact Drafting Team – Meeting #3  
(01/18-19/15 – Alexandria, VA)  
Scott Majors – KBPT Representative
- b. FARB – 2015 Annual Forum  
(01/23-25/15 – Tucson, AZ)
- c. CAPTASA – 2015 Conference Workshop  
(01/30-31/15 – Lexington, KY)
- d. FSBPT Licensure Compact Drafting Team  
(04/12-13/15 – Alexandria, VA) Meeting #4  
Scott Majors – KBPT Representative
- e. FSBPT – New Board Member and Administrator Training  
(06/12-14/15 – Alexandria, VA)
- f. FSBPT – Leadership Issues Forum  
(08/01-02/15 – Alexandria, VA)  
(Scott Majors and KBPT Primary Voting Delegate...? – KBPT Representatives)
- g. 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**

Mr. Barbato 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. Volz, which carried. The lists are attached to these minutes.

A motion was made by Ms. Johnson to adjourn the meeting at 3:56 p.m. The motion was seconded by Ms. Volz, which carried.

Respectfully submitted,



Scott D. Majors  
Executive Director