



KENTUCKY BOARD OF PHYSICAL THERAPY

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Steve L. Beshear
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING March 19, 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
Talia Weinberg, PT

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

Board Agents: Louis D. Kelly, Esq., Board Counsel

KPTA Liaison: Janice Kuperstein, PT, PhD, MSED

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Karen Ogle, at 9:06 a.m. on Thursday, 03/19/15, at the Board office. A quorum was present.

Minutes for Previous Regular Meeting

Following discussion and review, Ms. Johnson made the motion to approve the minutes of the Board meeting of 01/15/15, seconded by Mr. Grubb, which carried.

Minutes for Previous Special Meeting

Following discussion and review, Ms. Pillow made the motion to approve the minutes of the Special Board meeting of 02/26/15, seconded by Mr. Barbato, which carried.

Board Discussions, Committees and Opinion Requests

CAPTASA

Ms. Volz, Mr. Barbato, Mr. Kelly and Ms. Barton recently attended the 2015 CAPTASA Conference in Lexington, Kentucky. Ms. Volz reported to the Board about a presentation on Intensive Residential treatment. She reviewed treatment time schedules, success rates in correlation with professionals and nonprofessionals, and gender specific treatment programs. Mr. Barbato reported on the presentation that covered current synthetic drugs. He provided a brief overview of the origins of synthetic drugs, the problem it presents specifically in regards to screening, and noting that synthetic drugs currently are inexpensive and readily available. Mr. Kelly provided a brief overview of his experience attending CAPTASA. Ms. Barton provided a brief overview on medical versus non-medical detox.

Monitoring Procedures and Requirements

Mr. Curley provided 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.

Remediation Resource

Mr. Majors reported that the Ethics and Legislation Committee has recently completed revisions to the Remediation Resource paper. Mr. Majors briefly described this process and reported the final product is available on the FSBPT's website.

Professional Boundaries, Inc.

Mr. Majors provided information concerning the Professional Boundaries, Inc., remedial education courses designed for disciplined health professionals.

Telehealth in Physiotherapy (INPTRA)

Ms. Johnson listened to a WebEx presentation pertaining to Telehealth on 02/25/15 with the International Network of Physical Therapy Regulatory Authority (INPTRA). Ms. Johnson reported on some of the highlights of the presentation dealing with the Telehealth services and hands on treatment of physical therapy services pertaining to ankle and shoulder difficulties in patients in Australia. She also noted another study that was conducted out of Los Angeles, California. Mr. Majors and Ms. Barton listened to a replay of this same presentation on 03/03/15.

Opinion Requests

The Board reviewed the following opinion request from:

(1) Virjeana Holbrook, PTA, who asked whether physical therapist assistants are permitted to accept orders from physician assistants, or nurse practitioners without a physician co-signature. Following discussion, the Board instructed staff to respond by: (a) referring Ms. Holbrook to declaratory opinion 1998-001 which addresses "physician extenders"; (b) advising that there is no provision in the Physical Therapy Practice Act or its corresponding regulations which prohibit the practice; (c) advising that she should consult with her employer and her payor guidelines to determine whether any employment or reimbursement policies and procedures are implicated by this situation.

Civil Matters and Investigations

2013 Complaint Committee

C2013-30: The 2013 Complaint Committee reported that the physical therapist in this case, Russell Morris, admitted to engaging in fraud or material deception in the delivery of professional services, including reimbursement, after billing for physical therapy services he did not provide. Mr. Morris appeared before the Board, without counsel, to review the terms of the proposed written settlement agreement which included the following terms: (a) two year suspension period, fully probated; (b) payment of a fine of \$500.00 and investigative costs of \$1800.00, for a total amount of \$2,300.00; (c) two years of monitoring; (d) notification of this settlement agreement provided to current and future employers; and (e) completion of the American Physical Therapy Association's course on professional integrity by 09/30/15.

As Board Chair, Ms. Ogle reviewed each term of the agreement with Mr. Morris, who acknowledged his understanding, assent, and agreement to all terms of the agreement. After providing Mr. Morris an opportunity to have his questions addressed by the Board, and following discussion, the 2013 Complaint Committee moved that the Board approve and file of record the subject agreement. This motion was seconded by Ms. Weinberg, 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 provided a brief history that this case involves allegations of possible fraud or material misrepresentation in the delivery of services. The Complaint Committee moved to authorize Board Counsel to draft and submit a proposed settlement agreement with the following terms: (a) three year suspension, fully probated; (b) quarterly monitoring; (c) prohibition regarding home health, with leave to petition for relief from this term following four monitoring visits; (d) fines and costs; and (e) completion of an APTA ethics course. The Board instructed Counsel that if the settlement agreement is not accepted within twenty days, Counsel is authorized to file a Notice of Hearing and Formal Complaint. If the settlement agreement is accepted by the credential holder, Board Counsel shall invite the credential holder to appear before the Board at its meeting in May to review the terms of the settlement agreement. This motion was seconded by Ms. Johnson, which carried.

C2014-11: The Complaint Committee provided a brief history that this case involves allegations of possible substandard care and gross negligence. The Complaint Committee reported that, after reviewing the allegations and KBPT staff reports, it recommended and moved the Board take no action. This motion was seconded by Ms. Pillow, which carried.

C2014-13: The Complaint Committee provided a brief history this this case involves allegations of possible fraud and misrepresentation in delivery of services. The Complaint Committee reported that, after reviewing the allegations and KBPT staff reports, it recommended and moved that the Board take no action. This motion was seconded by Mr. Barbato, which carried.

C2014-14: The Complaint Committee provided a brief history that this case involves allegations of possible fraud and misrepresentation in delivery of services. The Complaint Committee reported that, after reviewing the allegations and staff reports, it recommended and moved that the Board take no action. This motion was seconded by Ms. Volz, which carried.

C2014-16: The Complaint Committee reported that last meeting the Board authorized Counsel to issue a Private Admonishment and a fine of \$1,000.00. Due to the fact that the credential holder changed his/her address, the Private Admonishment had been returned to the Board office. The Complaint Committee reported it would provide an update at the May meeting.

C2014-18: The Complaint Committee provided a brief history that this case involves possible allegations of patient abandonment. Following lengthy discussion, the Complaint Committee recommended that the Board issue an Order: (a) requiring the credential holder to submit to a mental health and substance abuse evaluation approved by IPTPC to determine the credential holder's psychological or physical status to practice physical therapy; (b) notifying the credential holder that the evaluation must be approved by IPTPC within five days of receipt of the Order; (c) requiring that the evaluation must be completed by April 30, 2015; and (d) authorizing the Board's Executive Director to sign the document in substitution of the Board's Chair. This motion was seconded by Ms. Volz, which carried.

BIC2014-19: The Complaint Committee gave a brief history that this case involves a civil judgment in a malpractice action. Following discussion, the Complaint Committee recommended and moved to authorize an initiating complaint by the Board. This motion was seconded by Ms. Pillow, which carried.

2015 Complaint Committee

C2015-01: The Complaint Committee reported this case involves possible violations of a credential holder's current settlement agreement pertaining to failure to notify the Board of a cessation of practice in Kentucky, as required by a subject settlement agreement. The Committee also noted that it had received and considered a corrective action plan submitted by this credential holder to address both the prior noncompliance and future plans to practice in Kentucky in conformity with the settlement agreement.

Following further discussion, the Committee recommended and moved that the Board: (a) accept the corrective action plan; (b) authorize counsel to advise the credential holder that the period of probation would be stayed between 02/26/2015 and the date of the next monitoring visit; (c) authorize counsel to advise the credential holder that non-billing for physical therapy treatment of Medicaid/Medicare patients is not permitted; and (d) authorize counsel to attempt to execute an addendum to the settlement agreement referencing the terms of the corrective plan regarding a minimum amount of practice of physical therapy within Kentucky.

C2015-03: The Complaint Committee reported this case involves a possible violation of Chapter KRS 327.070 (2)(k), failing or refusing to obey any lawful order or administrative regulation of the board, by allegedly practicing outside the scope of the credential holder's training, experience and expertise. The Complaint Committee recommended and moved that the Board authorize an investigation be opened. The motion was seconded by Mr. Barbato, which carried.

BIC2015-04: The Complaint Committee reported that this credential holder was placed under an Immediate Temporary Suspension (ITS) at the Special Meeting in February and sent an initiating complaint by the Board. The Complaint Committee also reported that the credential holder has not attempted to renew his/her credential, and has not yet responded to the Complaint. The Complaint Committee recommended and moved that, if Board staff has not received a response to the Complaint by 03/29/15, Board Counsel be authorized to file a Notice of Hearing and Formal Complaint. The motion was seconded by Ms. Weinberg, which carried.

BIC2015-05: The Complaint Committee reported that this case is ongoing.

C2015-06: The Complaint Committee reported that this case involves a possible term protection violation by providing physical therapy to animals. The Complaint Committee recommended and moved to authorize Board Counsel to send an Informal Letter Agreement. The motion was seconded by Ms. Johnson, which carried. Ms. Pillow recused herself from discussing or voting in this case.

C2015-07: The Complaint Committee reported that this case involves a possible term violation by an individual providing physical therapy services without being properly credentialed. The Complaint Committee recommended and moved that the Board authorize an investigation be opened. The motion was seconded by Mr. Barbato, which carried.

Renewals: Mr. Majors reported that the Complaint Committee had reviewed renewal applications from credential holder's who answered "yes" to a question on their renewal affidavits, three of which were also reviewed by the IPTPC Chair, Mr. Brian Fingerson. One of these applicants voluntarily entered into IPTPC. Another application involved an impairment issue, and the credential holder is not currently practicing. Following further discussion, the Complaint Committee recommended and moved to take no action on these four renewal applications. The motion was seconded by Mr. Barbato, which carried.

Mr. Majors provided a brief history on a final renewal application in which the credential holder answered "yes" to having "a malpractice or civil judgment entered against you relating to your practice of physical therapy". The Complaint Committee recommended and moved to monitor the case. The motion was seconded by Ms. Pillow, which carried.

IPTPC Report

Mr. Majors presented the IPTPC report dated 03/10/15 due to the absence by Mr. Fingerson. 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. Majors reported that during the November 2014 meeting the Board voted to issue an Immediate Temporary Suspension of Rebecca Combs' credential. Mr. Majors also reported that Ms. Combs has not had any contact with either Mr. Fingerson or Board staff. Following discussion, Ms. Ogle moved to authorize Board Counsel to proceed with filing a Notice of Hearing and a Formal Complaint. The motion was seconded by Ms. Pillow, 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; 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. Bentley and Mr. Jones.

During the November 2014 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. Mr. Cole resubmitted his request on 03/16/15. Following discussion and after reviewing his request, Ms. Pillow made a motion to deny Mr. Cole's request. The motion was seconded by Ms. Johnson, which carried.

REPORTS AND OTHER BUSINESS

Legal Report

Open Records Issues -- Metropolitan Sewer District and the Alaska Supreme Court

Mr. Kelly discussed recent litigation involving the Metropolitan Sewer District in Louisville, Kentucky, and a decision released in October of 2012 by the Alaska Supreme Court in *McLeod vs. Parnell*, both of which involved the issue of government employees using private email accounts to conduct official business. Mr. Kelly also reviewed Kentucky's Open Records Act and its requirements in relation to email.

North Carolina State Board of Dental Examiners

Mr. Kelly reviewed the US Supreme Court's ruling issued 02/25/15 in *North Carolina State Board of Dental Examiners vs FTC*, and he reported some of the salient aspects of a webinar sponsored by FSBPT on 03/12/15 which addressed this ruling. A copy of the ruling was also circulated to the Board members for their review.

HB 153

Mr. Kelly reported that HB 153 had been amended to reflect all of the Board's concerns previously communicated to the bill's sponsors, and the bill was scheduled to pass into law later this year.

KBPT and KPTA Liaison Reports

Mr. Barbato reported that the regulation changes previously proposed by the Athletics Trainers had been withdrawn. Mr. Barbato offered to continue to monitor the situation and provide a report to the Board, as warranted.

Additionally, both Mr. Barbato and Dr. Kuperstein reported that the Kentucky Physical Therapy Association (KPTA) is requesting the Board to consider a tiered licensure application fee for new graduates. Following discussion and consideration, Ms. Volz made the motion to charge a workgroup of staff and members consisting of Tina Volz, Ron Barbato, Louis Kelly, Donna Sims and Scott Majors to examine whether a change would be appropriate in the manner and amount of the credentialing fees assessed for new graduates gaining initial licensure late in the biennium, and, if a change is deemed appropriate, for the workgroup to consider: (a) what, if any, statute or regulation changes would be necessary; (b) the financial impact upon the Board's budget; and (c) the logistics implicated to operationalize a restructuring of the fee assessment process. This motion was seconded by Ms. Johnson, which carried. Staff noted that, due to other priority issues ongoing during this time frame, results of this initial inquiry will be reported to the Board at the July meeting.

New Business

201 KAR 22:053 Section 2(3)

Mr. Barbato brought before the Board a question from a physical therapist pertaining to accepting a patient that is currently under an active plan of care from another physical therapy service. Once accepting the patient, the physical therapist found that the previous provider was not treating the physical therapy diagnosis that he/she found more pertinent to the situation. Furthermore, after accepting the patient on good faith, the physical therapist found issues with the timeline and questioned whether or not he/she can change the plan of care with the new diagnosis by using a reassessment or a new evaluation. Following a lengthy discussion, the Board concluded that, in the case of the new treatment diagnosis, the best plan of action would be that the accepting physical therapist discharges the patient and then performs an evaluation and develops a new plan of care; however, the same treatment diagnosis as reassessment would suffice if the plan of care or reassessment timeline required updating or modification.

Board Agenda Items

Ms. Ogle briefly reviewed a section from the Policies and Procedures Manual as it pertains to the inclusion of items on the agenda from Non-Board members. Following brief discussion, the Board decided to adhere to the current policy that items must arrive no later than ten days in advance of the regular meeting in order to be included on the agenda unless something is considered critical, in which event the Chair may add it to the agenda at his/her discretion.

Declaratory Opinions

Ms. Ogle proposed that the Board consider a comprehensive review of the current Declaratory Opinions that are posted on Board's website. Following discussion, the Board elected to review this matter at the next meeting.

IPTPC Committee Membership

Debra Turner, PT, requested information on behalf of a colleague concerning membership on the Advisory Board for the Impaired Physical Therapy Practitioners Committee (IPTPC). Recognizing the absence of Mr. Fingerson, the Chair of this Committee, the Board elected to pass this request to the next meeting of the Board at which Mr. Fingerson could contribute in the discussion.

Newsletters

Mr. Majors solicited ideas or actual draft articles for the Board's next Newsletter. Suggested topics identified for this Newsletter included the reappointment of Linda Pillow, the appointment of Talia Weinberg, the Board's office relocation, a reminder to credential holders of the deadline for submitting requests for agenda items for Board meetings, and possibly an article which addresses a first draft of the Licensure Compact for Physical Therapy proposed by FSBPT.

Director's Report

Financial Report

The Board reviewed monthly, quarterly and 2015 YTD annual FAS3 financial report addressing the Board's revenues and expenditures. Additionally, Mr. Majors reported that he met with Ms. Ogle and Ms. Volz on 03/18/2015 to discuss the Board's budget and to review more detailed reports regarding finances. Following this discussion, Mr. Majors agreed to prepare a brief summary of the Board's revenues and expenditures that may more clearly identify these items than the FAS3 reports made available by the Finance Cabinet.

KBPT Office Space

Mr. Majors provided a report concerning the relocation of the Board's office space and anticipated expenditures relating to operational costs for voice, data, and furniture. Following discussion, Ms. Weinberg made the motion for the Board to authorize Mr. Majors to spend up to \$10,000 for furniture purchases for the new office space. This motion was seconded by Mr. Barbato, which carried.

FSBPT Ethics and Legislation Committee

Mr. Majors reported that FSBPT's Ethics and Legislation Committee had its first teleconference of the year on 03/02/15 and discussed final revisions to the Telehealth Resource Paper. Its first in-person meeting is scheduled for 03/28-29/15, and agenda items for this meeting shall include (among other items) re-entry to Practice, legislative update, remediation resources, and licensees working in multiple states. Mr. Majors offered to provide an update at the May meeting.

State Executive Directors Meeting

Mr. Majors reported that on 03/17/15 Geoff Dunn and other members of the Governor's Office hosted a gathering at the Capitol of executive directors throughout the state. Governor Beshear and various members of his cabinet spoke at the gathering concerning services available to state agencies. Additionally, Will Adams, the Governor's Deputy General Counsel, addressed the recent ruling by the US Supreme Court in North Carolina State Board of Dental Examiners vs. FTC.

KBPT's Records Retention and Destruction Procedure

Mr. Majors reported that there was supposed to be a Destruction Procedure meeting in March; however, that meeting has not taken place. Mr. Majors will provide a report to the Board in May.

2014 FSBPT Licensure Compact Drafting Team

Mr. Majors reported that on 01/18-19/15 he attended the third of four scheduled meetings of FSBPT's Licensure Compact Drafting Team. Mr. Majors also reported that the Licensure Compact Drafting Team is close to having a product available to share with all of the member Boards. Mr. Majors also reported that he will be attending the fourth meeting scheduled for 04/12-13/15 and he will provide the Board an update at its next meeting.

Administrative Hearings Training

Mr. Majors and Mr. Kelly provided a summary report concerning a training course held on 03/18/15 by the Office of the Attorney General, Administrative Hearings Branch. Particular points of emphasis were offered that have direct application to the Board's administrative hearing procedures. Additionally, Mr. Majors requested that the Board authorize reimbursement of registration fees for the training course for himself and Mr. Kelly. Ms. Ogle made the motion for the Board to approve reimbursement for Mr. Majors' and Mr. Kelly's OAG registration fees. This motion was seconded by Mr. Barbato, which carried.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. FSBPT Licensure Compact Drafting Team
(04/12-13/15 – Alexandria, VA) Meeting #4
Scott Majors – KBPT Representative
- b. FSBPT – New Board Member and Administrator Training
(06/12-14/15 – Alexandria, VA)
Mr. Barbato made a motion for the Board to approve Ms. Weinberg to serve as KBPT's representative for the New Board Member and Administrator Training with the FSBPT in Alexandria, Virginia. Ms. Pillow, seconded the motion, which carried.
- c. FSBPT – Leadership Issues Forum
(08/01-02/15 – Alexandria, VA)
Mr. Barbato made a motion for the Board to approve Ms. Volz to serve as the Primary Voting Delegate and for Mr. Grubb to serve as the Alternate Voting Delegate. Ms. Ogle, seconded the motion, which carried.
- d. CLEAR – 2015 Annual Educational Conference
(09/17-19/15 – Boston, MA)
Mr. Barbato made a motion for the Board to pay for the registration fees and associated travel costs for Ms. Pillow to attend the CLEAR Conference in Boston, MA. Ms. Weinberg,

seconded the motion, which carried.

- e. FARB – 2015 Regulatory Law Seminar
(10/01-04/15 – Denver, CO)
- f. FSBPT – 2015 Annual Meeting, Conference and Delegate Assembly
(10/15-17/15 – Orlando, FL)
- g. FSBPT – 2016 Annual Meeting, Conference and Delegate Assembly
(11/04-06/16 – 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 Mr. Grubb, which carried. The lists are attached to these minutes.

A motion was made by Ms. Johnson to adjourn the meeting at 4:55 p.m. The motion was seconded by Ms. Volz, which carried.

Mr. Grubb left the Board meeting at 12:20 p.m. and returned at 2:43 p.m.

Respectfully submitted,



Scott D. Majors
Executive Director