



KENTUCKY BOARD OF PHYSICAL THERAPY

312 Whittington Parkway, Suite 102

Louisville, Kentucky 40222

Phone (502) 429-7140

Fax (502) 429-7142

<http://pt.ky.gov>

Steve L. Beshear
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING May 21, 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
Brian Fingerson, RPh, IPTPC Director

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 9:03 a.m. on Thursday, 05/21/15, at the Board office. A quorum was present.

Minutes for Previous Regular Meeting

Following discussion and review, Mr. Barbato made the motion to approve the minutes of the Board meeting of 03/19/15, seconded by Ms. Johnson, which carried.

Board Discussions, Committees and Opinion Requests

Office Space & Financial Report

Mr. Majors presented a detailed budget report pertaining to the relocation of the Board office. The report included information on furniture purchases, office space upgrades, moving company expenses, various office supply purchases, and signage. Mr. Majors also reported that all of the purchases to date have come in under budget.

FSBPT Ethics & Legislation Committee

Mr. Majors provided a report of the FSBPT Ethics and Legislation Committee meeting that took place during the last week of March in Alexandria, Virginia. Mr. Majors reported that the Telehealth resource paper, a product of this Committee, is now available on the FSBPT's website. Mr. Majors also discussed another Committee initiative concerning the drafting of new disciplinary guidelines that will be available to all member boards. While still in the discussion phase, it is expected that this document will include general categories of offenses and general types of dispositions based on those offenses. If it is

determined that this initiative should be completed, new disciplinary guidelines may prove especially beneficial to smaller jurisdictions.

FSBPT Licensure Compact Drafting Team

Mr. Majors reported that in the near future FSBPT will be distributing the draft Physical Therapy Licensure Compact to the Board members to review before the July Board meeting.

KBPT 2015 Continued Competency Audit

Mr. Majors reported that Ms. Barton will be taking the lead on handling the CE audit this year. He also reported that Board staff shall begin the audit process by 06/01/15.

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.

Tiered Licensure Application Fee

Mr. Barbato reported that a workgroup meeting is scheduled on June 8th to review all the factors surrounding a tiered licensure application fee for new graduates. Mr. Barbato agreed to provide the Board an update at its July meeting.

Board Newsletter

The members reviewed draft articles to be published in the next Board Newsletter. Among other subjects, these articles cover the appointment, reappointment and term expiration of Board members; recent legislation affecting physical therapy; the CE Audit; the Physical Therapy Licensure Compact; FSBPT's Telehealth Resource Paper, and a summary of the Board's disciplinary cases.

Articles of Interest

Mr. Majors circulated articles which addressed legislative involvement in setting licensing fees and regulatory boards which are considering equipping their investigators with firearms. Following discussion, the Board instructed Counsel to research the applicable laws in Kentucky relating to the use of firearms by investigators, and to provide a report at the next meeting.

Opinion Requests

The Board reviewed the following opinion request from:

(1) Sheila Reeves, on behalf of David Apts, PT, who inquired about physical therapy billing codes as they relate to applying Kinesio tape to a patient's shoulder. Following discussion, the Board authorized staff to respond by advising that the Board does not regulate billing and this question should be referred to the KPTA reimbursement committee. Mr. Majors also agreed to forward the inquiry to Ms. Holly Johnson, the Chair of KPTA's Reimbursement Committee.

(2) Gwynn Gant, PT, who sought a clarification concerning the requirements relating to discharge summaries set forth in 201 KAR 22:053 Section 5(4)(b)5. Following discussion, the Board instructed staff to respond by advising that the thirty (30) day time frame referenced in the regulation relates to the end of the plan of care, not from the last session of treatment.

(3) Mandy Schum, PT, who inquired whether a physical therapist licensed in Kentucky may bill mechanical traction performed for 15-20 minutes on an inter-segmental traction table. Following discussion, the Board instructed staff to respond by advising Ms. Schum that this is a billing issue, and she should consult with the provider and the employer payer guidelines.

Civil Matters and Investigations

2014 Complaint Committee

C2014-01: The Complaint Committee gave a brief history that this credential holder recently plead guilty to two Class A misdemeanors which were not related to the practice of physical therapy, pursuant to KRS 327.070(2)(f). After reviewing the resolution of criminal charges, the Complaint Committee recommended and moved to close the case. This motion was seconded by Mr. Barbato, which carried.

C2014-07: The Complaint Committee reported that additional information resulting from the investigation of this case was considered by the Committee to determine whether additional violations of the Board's laws and regulations had been committed. Following this review, however, the Committee concluded that additional charges were not warranted at this time. Consequently, the Committee recommended and moved to keep the charges currently filed against the credential holder and take no action on the additional information. The motion was seconded by Mr. Barbato, which carried. Counsel reported that Respondent's attorney in the case had formally rejected the Board's settlement offer and, instead, had extended a counter offer which rejected all terms of the Board's original offer excepting a base fine and a public reprimand, which the Board expressly rejected. Counsel also advised that a telephonic prehearing conference was scheduled to take place with the Hearing Officer on 05/22/15, and Counsel would attempt to secure a hearing date to coincide with time reserved by the Board members following the completion of the Board's July Complaint Committee meetings on 07/29/15.

C2014-16: The Complaint Committee reported that the credential holder has accepted a Private Admonishment and paid the fine of \$1,000.00. The Complaint Committee recommended and moved to close this case. The motion was seconded by Ms. Volz, which carried.

C2014-18: The Complaint Committee reported that this case is ongoing.

BIC2014-19: The Complaint Committee reported that this case is ongoing.

2015 Complaint Committee

C2015-01: The Complaint Committee reported that this credential holder has complied with the Board's amended Settlement Agreement. However, there has been some difficulty in finding a Board appointed monitor. The Complaint Committee recommended and moved to agree to pay a monitor for mileage and travel time even if it exceeded the cap of \$500 per day and, in order to expedite this matter, allow the Complaint Committee to approve the selection of the Board monitor, with the decision to be considered and ratified by the full Board at the next regularly scheduled meeting. The motion was seconded by Ms. Pillow, which carried.

C2015-03: The Complaint Committee reported that this case is ongoing.

BIC2015-04: The Board's General Counsel reported that the Board received a Hearing Officer's Recommended Order of Default in this case, dated 05/04/15, and the Board was thus required to consider the entire hearing record and to deliberate whether to accept this Recommended Order in issuing the Board's Final Order, pursuant to KRS 13B.120

As Ms. Ogle and Ms. Volz serve on the Complaint Committee which considered the investigation in this case and thus they recused themselves from the Board's deliberations in issuing a Final Order, Ms. Weinberg made a motion for Mr. Grubb to assume the role of Acting Chair in place of Ms. Ogle. The motion was seconded by Ms. Johnson, which carried.

Ms. Johnson made a motion to go into Executive Session pursuant to KRS 61.810(1)(c) for the purpose of discussing proposed or pending litigation on behalf of the Board. The motion was seconded by Ms. Pillow, which carried.

Ms. Johnson made a motion for the Board to come out of Executive Session. The motion was seconded by Ms. Weinberg.

Ms. Weinberg made a motion for the Board to accept the Recommended Order of the Hearing Officer and adopt it as the Board's Final Order. The motion was seconded by Mr. Barbato, which carried.

Ms. Weinberg made a motion to accept the factual allegations as true. The motion was seconded by Mr. Barbato, which carried.

Ms. Johnson made a motion to revoke Herat V. Desai's physical therapy license, number 005651. The motion was seconded by Mr. Barbato, which carried.

Mr. Barbato made a motion to direct staff to prepare the Final Order for the signature of the Acting Chair. 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. During the March Board meeting, Board Counsel was authorized to send an Informal Letter of Agreement. Counsel reported that he received the signed Informal Letter of Agreement. Consequently, the Complaint Committee recommended and moved to close this case. The motion was seconded by Mr. Grubb, which carried. Ms. Pillow recused herself during the vote in this matter.

C2015-07: The Complaint Committee reported that this case is ongoing.

BIC2015-08: The Complaint Committee reported that this case involves a possible violation by practicing outside the scope of the credential holder's training, expertise and experience. Following discussion, the Complaint Committee recommended and moved to authorize an initiating complaint by the Board. The motion was seconded by Ms. Weinberg, which carried.

C2015-09: The Complaint Committee reported that this case involves possible patient abandonment. After reviewing the facts and circumstances of this case the Complaint Committee recommended and moved to take no action. The motion was seconded by Ms. Pillow, which carried.

C2015-10: The Complaint Committee reported that on 04/08/15 this credential holder was sent notice of a Board Initiated Complaint. The Board staff reported that there has been no contact with this credential holder. The Complaint Committee recommended and moved to authorize Board Counsel to proceed with filing a Notice of Hearing and a Formal Complaint. The motion was seconded by Ms. Johnson, which carried.

C2015-11: The Complaint Committee reported that this case involves possible fraud and material deception. The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Mr. Barbato, which carried.

Renewals: The Complaint Committee reported that it had reviewed two renewal applications from credential holders who answered "yes" to a question on their renewal affidavits.

The first credential holder answered "yes" to question 1I of having "a malpractice or civil judgement entered against you relating to your practice of physical therapy." The credential holder has provided documentation. The Complaint Committee recommended and moved to authorize an initiating complaint by the Board. The motion was seconded by Ms. Pillow, which carried.

The Complaint Committee reported that the second credential holder answered "yes" to question 1A of "having been convicted of, or having pending charges for any felony, misdemeanor, or any crime in the courts of this state or any other state, territory or country." The credential holder has provided

documentation. Following discussion, the Complaint Committee recommended and moved that the Board issue an Order: (a) requiring the credential holder to submit to an inpatient evaluation for substance abuse approved by IPTPC to determine fitness for duty; (b) notifying the credential holder that the evaluation must be approved by IPTPC within ten (10) days of receipt of the Order; (c) requiring that the evaluation must be completed by June 30, 2015; (d) authorizing the Board's Executive Director to sign the document in substitution of the Board's Chair; and (e) providing that, if the credential holder fails to comply with this schedule, the Board's Executive Director be authorized to issue an Immediate Temporary Suspension (ITS). This motion was seconded by Mr. Barbato, which carried.

Applications: Mr. Majors reported that the Complaint Committee reviewed two exam applications:

One of these applicants answered "no" to the question on the application asking whether they had ever been convicted of, or do you have pending charges for any felony, misdemeanor, or other crime. The criminal background check revealed several misdemeanor convictions. The applicant sent in a letter of explanation. Following a review, the Complaint Committee recommended and moved to take no action. The motion was seconded by Mr. Barbato, which carried.

The second exam applicant answered "yes" to the application question asking whether they had ever been convicted of, or do you have pending charges for any felony, misdemeanor, or other crime. The applicant answered "yes", but also noted that he/she has had all criminal offenses expunged by a court of competent jurisdiction. The Board's independent criminal background check verified that the records in question had been expunged. Therefore, the Complaint Committee recommended and moved to take no action. The motion was seconded by Ms. Weinberg, which carried.

Lapsed Licenses: Mr. Majors reported that Board staff received eleven reinstatement applications and affidavits. Four of the eleven had not practiced on a lapsed credential; however, seven of the applicants had practiced on a lapsed credential, with one of these applicants having received a private admonition issued by the Board in the last biennium.

After discussion, Ms. Weinberg made a motion for Board staff to follow the procedure with respect to these reinstatement applicants as was adopted by the Board during its meeting on 05/16/13; specifically, for those applicants who timely completed and returned an affidavit indicating they had practiced on a lapsed credential, staff is to notify them that, if this is the first such violation committed by this credential holder, the Board propose to resolve each action: (1) through a private admonishment; (2) by assessing a base fine of \$250.00; and (3) by assessing an additional fine of \$70.00 per day of practice on a lapsed PTA certificate or \$100.00 per day of practice on a lapsed PT license and, furthermore, if this is the second violation committed by this credential holder during the previous biennium, the Board propose to resolve each action: (1) through a public reprimand; (2) by assessing a base fine of \$500.00; (3) by assessing an additional fine of \$70.00 per day of practice on a lapsed PTA certificate or \$100.00 per day of practice on a lapsed PT license; and (4) for Counsel to attempt to obtain a settlement agreement and, if unable to do so in a timely manner, for Counsel to prepare a notice of hearing and charges.

Ms. Johnson seconded this motion, which carried. Ms. Pillow dissented and, for repeat offenses, would support the imposition of discipline if the violations occurred within two consecutive bienniums instead of only the previous biennium.

IPTPC Report

Mr. Fingerson presented the IPTPC report dated 05/11/15. 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 addressed an issue from the March Board meeting concerning a letter received from Ms. Debra Turner inquiring about the status of the Impaired Physical Therapy Practitioners Committee. This inquiry was made on behalf of Mr. Steven Marcum, who currently is a member of the Committee. Mr. Fingerson explained that, with only six to eight clients, he does not conduct unnecessary meetings. However, because he is not a credentialed physical therapist, he will consult with other

committee members if he has a question that relates to the practice of physical therapy. After discussion, Mr. Grubb made a motion to authorize Board staff to send a letter to Ms. Turner and the remaining members of the committee thanking them for their previous dedication and assistance, and to further inform them that their services are no longer needed at this time. The motion was seconded by Ms. Volz, which carried.

Recovery Works

Mr. Fingerson reported briefly on Recovery Works, a Kentucky based group of rehabilitation facilities that offers a twenty-eight day residential treatment program.

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 Ms. Oakley and Mr. Kruger.

REPORTS AND OTHER BUSINESS

Legal Report

Administrative Regulations

Mr. Kelly reported that during the 2015 Legislative Session the Kentucky General Assembly passed House Bill 153, which prohibits healthcare providers (including PTs and PTAs) or their intermediaries from soliciting a person who was involved in a motor vehicle accident for at least 30 days following the accident. "Solicitation" is defined in the statute as "the initiation of communication with a person involved in a motor vehicle accident, including but not limited to any face-to-face contact with the person, in writing, electronically, or by any form of telephonic communication, in anticipation of gain or remuneration for the communication itself or for prospective charges for healthcare." The term "solicitation" does not include any marketing or advertising directed to the general public. The new law also requires PTs and PTAs to report any violations of this Act to the Board if they have actual knowledge of a violation. Finally, the law states that any healthcare provider who violates this new law will be subject to the disciplinary process of their respective licensing board. Mr. Kelly advised that staff will need to review the language of 201 KAR 22:053 to determine whether the anti-solicitation legislation should be incorporated into the Board's regulation. A report will be provided to the Board at the next meeting.

Mr. Kelly also reported that a new law was passed by the General Assembly and signed by Governor Steve Beshear to remove the mandatory HIV/AIDS training requirement under KRS 327.050, 327.060, and 201 KAR 22:040. Under the prior law, all credential holders had to complete the training course to receive an initial credential and had to re-take the course every 10 years. Mr. Kelly further advised that the new law becomes effective on 06/24/15, and staff will need to review the language of 201 KAR 22:040 Section 1(4) to determine whether the corresponding requirements in the regulation will need to be removed. A report will be provided to the Board at the next meeting.

Presentation Proposal for 2015 FSBPT Annual Meeting

Mr. Kelly reported that he has submitted to FSBPT for consideration a proposal for a presentation on Open Records that he would be willing to provide at FSBPT's annual meeting in Orlando, Florida later this year. He anticipates learning of FSBPT's decision on this proposal in the near term.

North Carolina State Board of Dental Examiners

Mr. Kelly informed the Board of the continued fallout of the North Carolina case including informing them of a recent case brought in Texas challenging a telehealth regulation. The Board directed Mr. Kelly and Mr. Majors to continue to monitor the situation and work with other Kentucky regulatory boards on remedial options. The Board also directed Mr. Kelly to research the types of decisions that might be deemed "anti-competitive practices" as defined under the FTC.

KBPT Declaratory Opinions

During the March Board meeting there was a discussion pertaining to current Declaratory Opinions hosted on the Board website. Mr. Kelly proposed to summarize each opinion and bring one or two before the Board at each meeting to review and/or update. Mr. Majors suggested that, before Mr. Kelly moves forward with this initiative, further efforts should be undertaken to examine the statutory framework that may confer upon the Board the authority to issue Declaratory Opinions. Mr. Kelly agreed to examine this issue further and to provide the Board an update at the next meeting.

KPTA Liaison to KBPT Report

US Department of Transportation Certified Medical Examiner

Dr. Kuperstein reported to the Board that she presented the information to KPTA from Mr. Pruden about being certified to perform DOT physicals. However, Mr. Pruden never contacted KPTA.

State Innovation Model (SIM) Model Design

Dr. Kuperstein reported that the Kentucky Cabinet for Health and Family Services received a \$2 million State Innovation Model (SIM) design grant from the Center for Medicare and Medicaid Innovation of the Centers for Medicare and Medicaid Services. She also reported that KPTA has been actively participating in the Stakeholders Meetings with each of the five workgroups: Payment Reform; Integrated and Coordinated Care; Increased Access; Quality Strategy/Metrics and HIT Infrastructure. The goal of KPTA is to make certain the physical therapy is represented in all discussions.

KPTA Request for Dues Consideration

Dr. Kuperstein reported on the request for a tiered licensure fee for new graduates. The KPTA Board feels that with a tiered licensure fee would help minimize the initial cost from transferring from student to new professional. Thus, it would entice other new graduates from other states to come to Kentucky to practice if we have a less expensive initial licensure fee, thereby helping us grow and better serve our communities.

KBPT Liaison Report

Mr. Barbato reported that there was a Board meeting on May 8th and the discussion primarily revolved around the State Innovation Model (SIM) design. He briefly touched on the subject of Telehealth regulations as it relates to the SIM project.

New Business

Standards of Practice Review

Following discussion and consideration, Ms. Weinberg made the motion to establish a workgroup consisting of Troy Grubb, Tina Volz and Ron Barbato to review the Board's standards of practice set forth in 201 KAR 22:053, and for Mr. Grubb to chair this workgroup. The motion was seconded by Ms. Volz, which carried.

Department of Transportation

The Board Chair received a letter from the Department of Transportation requesting an opinion from the Board on whether physical therapists are qualified to perform the medical examination. After discussion, the Board authorized staff to send a letter stating that some of the requirements for this position fall outside the scope of practice of physical therapy.

Jurisprudence Exam

Dr. Kuperstein and Mr. Majors brought to the Board's attention that the correct answer to question #3 of the 2015-2017 Jurisprudence Exam should be modified to more closely reflect the language of the governing administrative regulation, 201 KAR 22:053 Section 5. Ms. Weinberg made a motion to authorize Board staff to contact Kentucky Interactive and have the answer corrected. The motion was seconded by Ms. Pillow, which carried.

November Board Meeting

Mr. Majors asked the Board to consider advancing by two weeks the scheduled November Complaint Committee meeting and the November Board meeting. The Board agreed to reschedule the Complaint Committee meeting to 11/04/2015 and the Board meeting to 11/05/2015.

Professional Pictures

Mr. Grubb made the suggestion that the Board members should have professional headshots taken by a professional photographer to help promote a more uniform and professional appearance of the members on the Board's website and newsletter. Mr. Majors agreed to research various photographers and their fees and, if a suitable option is determined, to try and have the photographs scheduled to be taken in the near term.

Meeting to Discuss Licensure Data

Ms. Ogle reported that she would be presenting general licensure information for a meeting to discuss licensure data in assessing health care workforce in Kentucky, scheduled on 05/22/15. This meeting will be hosted by the Commonwealth Institute at the University of Louisville School Of Public Health and Information Science, the Cabinet for Health and Family Services, and the Foundation for a Healthy Kentucky.

Director's Report

FSBPT 2015 First Quarter Legislative Report

Mr. Majors circulated for the Board's review a lengthy report prepared by FSBPT relating to the 2015 first quarter legislative activity of all member boards.

CBT Comment Summary and Candidates Satisfaction Survey Report

Mr. Majors circulated for the Board's review the latest CBT comment survey and satisfaction survey report. This report listed an overall satisfaction rating of 90.0% for all jurisdictions, while the overall satisfaction rating for Kentucky was listed at 93.0%.

Department of Insurance

Mr. Majors reported that the quarterly malpractice report submitted by the Department of Insurance listed one physical therapist licensed in Kentucky. Following discussion, The Board instructed staff to refer this matter to the 2015 Complaint Committee for consideration at its July meeting.

State Executive Directors Meeting

Mr. Majors reported that the next Executive Directors meeting has been scheduled for 06/04/15, and the Governor's office has again agreed to host the event at the Capitol. Mr. Majors also reported that Mike Burleson, Executive Director for the Kentucky Board of Pharmacy, has announced his retirement from state government effective 07/31/15.

Staff Evaluations

Mr. Majors advised that he has scheduled staff evaluations for 05/29/15. He invited the Board members to submit their input into the written annual evaluation of the Board's General Counsel by 05/27/15.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. FSBPT – New Board Member and Administrator Training
(06/12-14/15 – Alexandria, VA)
Talia Weinberg and Louis Kelly to serve as KBPT's authorized representatives.
- b. OAG Administrative Hearings – Training Course
(06/12/2015 – Frankfort, KY)

Ms. Weinberg made a motion for the Board to pay for the registration fees for Mr. Majors and Mr. Curley to attend the OAG Administrative Hearing training. Ms. Johnson seconded the motion, which carried.

- c. FSBPT – Leadership Issues Forum
(08/01-02/15 – Alexandria, VA)
Scott Majors and Tina Volz to serve as KBPT’s authorized representatives.
- d. CLEAR – 2015 Annual Educational Conference
(09/17-19/15 – Boston, MA)
Linda Pillow to serve as KBPT’s authorized representative.
- e. FARB – 2015 Regulatory Law Seminar
(10/01-04/15 – Denver, CO)
Ms. Johnson made a motion for the Board to pay for the registration fees and associated travel costs for Mr. Majors and Mr. Kelly to attend the FARB 2015 Regulatory Law Seminar in Denver, CO. Ms. Weinberg seconded the motion, which carried.
- f. FSBPT – 2015 Annual Meeting, Conference and Delegate Assembly
(10/15-17/15 – Orlando, FL)
Ms. Weinberg made a motion for the Board to authorize and pay for the registration fees and associated travel costs for Ms. Ogle, Mr. Barbato, and Ms. Johnson to attend the FSBPT 2015 Annual Meeting in Orlando, FL. Mr. Grubb seconded the motion, which carried.
- g. FSBPT – 2016 Annual Meeting, Conference and Delegate Assembly
(11/04-06/16 – 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 Ms. Weinberg, which carried. The lists are attached to these minutes.

A motion was made by Ms. Johnson to adjourn the meeting at 4:33 p.m. The motion was seconded by Ms. Weinberg, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director