



KENTUCKY BOARD OF PHYSICAL THERAPY

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Steve L. Beshear
Esq.
Governor

Scott D. Majors,
Executive Director

MINUTES OF MEETING July 30, 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, MEd

A meeting of the Kentucky Board of Physical Therapy was called to order by Chair-Elect, Tina Volz, at 9:05 a.m. on Thursday, 07/30/15, at the Board office. A quorum was present. Board Chair Karen Ogle and Dr. Janice Kuperstein were unable to attend the first hour of the meeting, and they joined the meeting in progress.

Minutes for Previous Regular Meeting

Following discussion and review, Mr. Barbato made the motion to approve the minutes of the Board meeting of 05/21/15, seconded by Ms. Weinberg, which carried.

Board Discussions, Committees and Opinion Requests

Tiered Licensure Application Fee

Mr. Barbato reported that the workgroup established to investigate a tiered licensure application fee for new graduates met on 06/08/15. He summarized the pros and cons of implementing such a procedure, and he reported that the consensus of the workgroup was to table the issue and to revisit the matter when the Board decides to reopen the Practice Act. The Board authorized Mr. Majors to draft a letter to the KPTA and send to both Mr. Barbato and Ms. Volz for approval before distribution.

Monitoring Procedures and Requirements

Mr. Curley presented the test site of the Monitoring Portal to the Board. He recorded all comments and suggestions offered by the members regarding the electronic spreadsheet. He also reported that he

would notify Kentucky Interactive representatives concerning any changes that need to be implemented. The spreadsheet portal should be available for testing by the Monitoring Task Force next month.

KBPT 2015 Continued Competency Audit

Mr. Majors reviewed the section of the Policy and Procedure Manual pertaining to the Continued Competency Audit, and reported that the audit was initiated on 06/01/15. Ms. Barton gave a brief overview of the 2015 CE/CC audit to date. Mr. Majors reported that Deficiency Letters will be sent out in the near future and a report will be given at the September Board meeting.

KBPT Policy and Procedure Manual

Mr. Majors reviewed the section of the Policy and Procedure manual regarding the Continued Competency Audit and the HIV/AIDS requirement, which was repealed effective 06/24/15. Thus, it is no longer necessary to reference the requirement in the Continued Competency Audit policy. Ms. Weinberg made a motion to remove the language referencing the HIV/AIDS requirement from the Policy and Procedure manual. This motion was seconded by Ms. Volz, which carried.

New Board Member and Administrative Training

Mr. Kelly gave a brief overview of the FSBPT's New Board Member and Administrative Training session he attended in early June in Alexandria, VA. He briefly spoke about the FSBPT's reaction to the North Carolina Board of Dentistry ruling and the proposed Physical Therapy Licensure Compact.

Administrative Hearings Training Course

Mr. Curley reported on the training he attended in Frankfort on 06/12/15. He gave a brief overview of a presentation dealing with defense law for administrative hearings. He also reported that all documents submitted for filing with the Court of Justice beginning in October of 2015 shall be recorded electronically.

Meetings to Discuss Licensure Data

Ms. Ogle provided a detailed report concerning her attendance at meetings held on 05/22/15 and 06/29/15 hosted by the Cabinet for Health and Family Services, Office of Health Policy; the Foundation for a Healthy Kentucky; and the Commonwealth Institute with the University of Louisville's School of Public Health and Information Science. These meetings were held for the purpose of discussing how best to assess Kentucky's ability to serve its health care needs through its established health care workforce. Ms. Ogle also reviewed the Board's discussion held on 07/29/13 concerning the Physical Therapy Minimum Dataset and the Healthcare Capacity Workforce Study Briefing, which also addressed the need to improve data collection of Kentucky's health care workforce. Ms. Ogle advised that additional meetings concerning this issue will be scheduled, and a report of substantive developments that result from these meetings will be provided to the Board.

Proposed Physical Therapy Licensure Compact

Mr. Majors reviewed with the Board in detail the most recent draft version of the Physical Therapy Licensure Compact. Board members discussed various aspects of the Compact, with emphasis placed on the role continued competency requirements would have within the Compact and the anticipated effect that adoption of the Compact would have upon a member states' revenue. Ms. Volz and Mr. Majors advised they would attempt to gather additional information relating to the Compact from FSBPT representatives during the Leadership Issues Forum set for 08/01-02/15 and to provide the Board an update at the next meeting.

Appointment

Mr. Majors reported that Mr. Barbato has been appointed to the FSBPT's Resolution Committee. He is scheduled to serve as Chair of the Committee in 2017.

Articles of Interest

Mr. Majors circulated copies of topical articles of interest which addressed issues presented by the U.S. Supreme Court's decision involving the North Carolina Dental Board as well as a separate article pertaining to Kentucky's pension funds.

Opinion Requests

The Board reviewed the following opinion requests from:

(1) Lindsay Hall, DPT Student, who inquired about having a link to her website posted on the Board website. The Board authorized staff to notify Ms. Hall that she would not be able to have her website listed as a resource on the Board website, and to forward her request to the Kentucky Physical Therapy Association.

(2) Sreejesh Chirayath, PT, a foreign educated applicant, submitted a portfolio of work experience to replace the educational deficiencies listed in the FCCPT Educational Credential Evaluation Report. Following discussion and review of 201 KAR 22:070 Section 1(2)(a), the Board determined that the regulation pertains to educational deficiencies in general education coursework only; however, the applicant also lacks courses in professional education. Therefore, Mr. Grubb made the motion to deny the applicant's request to accept his work experience in place of the educational requirements. The motion was seconded by Ms. Volz, which carried.

(3) Michael Chua, PT, DPT, APTA-CCI, CDP, NASM-SFS, PT, a foreign educated applicant, requested that the Board accept his supervised practice from the state of Tennessee. After reviewing the documentation submitted by Mr. Chua, the Board determined that the supervised practice was comparable to Kentucky's requirements. Therefore, Mr. Barbato made a motion to accept Mr. Chua's supervised practice from Tennessee. The motion was seconded by Ms. Johnson, which carried.

(4) Katherine Howe, PT, who submitted a request for hardship extension for the 2015 Continued Competency audit. The Board determined that Ms. Howe failed to submit a plan regarding her completion of the required continued competency hours. Therefore, Mr. Barbato made the motion to deny the request for a hardship extension, and to have staff inform Ms. Howe that she may resubmit her request with a detailed plan. The motion was seconded by Ms. Weinberg, which carried.

(5) Kim A. Sutter, PT, who submitted a request for hardship extension for the 2015 Continued Competency audit. The Board determined that Ms. Sutter failed to submit a plan regarding her completion of the required continued competency hours. Therefore, Ms. Pillow made the motion to deny the request for a hardship extension, and to have staff inform Ms. Sutter that she may resubmit her request with a detailed plan. The motion was seconded by Mr. Barbato, which carried.

Civil Matters and Investigations

2014 Complaint Committee

C2014-07: A quorum of the Board appeared at the Board office for the purpose of conducting an Administrative Hearing. The Board's Chair-Elect, Tina Volz, served as Acting-Chair in the absence of Board Chair Karen Ogle, who disqualified herself from any consideration of the case due to her role as a member of the Complaint Committee which had investigated the matter. For this same reason, Board Member Troy Grubb disqualified himself from any consideration of the case.

Assistant Attorney General Stuart Cobb was present. Immediately prior to commencement of the hearing, the parties announced that the Respondent wished to submit a written settlement proposal. This proposal was considered and reviewed in detail by the Board, following which Ms. Pillow made the motion to accept the proposed settlement agreement. The motion was seconded by Ms. Weinberg, which carried. Ms. Volz reviewed all of the substantial terms of the settlement agreement with the Respondent who acknowledged his understanding and agreement. Ms. Volz entered an Order approving and adopting the settlement agreement on behalf of the Board.

C2014-18: The Complaint Committee gave a brief history that this case involves substandard care by the credential holder having failed to follow a plan of care. The Complaint Committee reported that it concluded a violation had occurred and further action was warranted; however, the Committee wanted to

seek input from the full Board on the issue of further action to be taken. Following consideration and discussion, Ms. Volz made a motion to authorize Board Counsel to issue a Private Admonishment against the credential holder, with a fine of \$250, and to give Counsel the authority to move forward with formal charges if the Private Admonishment was not accepted by the credential holder. The motion was seconded by Ms. Johnson, which carried.

BIC2014-19: The Complaint Committee gave a brief history that this case involves a civil judgment in a malpractice action. The Complaint Committee reported that it recommended discipline; however, the Committee sought input from the full Board on the degree of discipline it deemed appropriate for the credential holder. Following consideration and discussion, Ms. Pillow made a motion to authorize Board Counsel to draft and submit a proposed settlement agreement with the following terms: (a) three year suspension, fully probated; (b) monitoring every other month for the first year and quarterly monitoring for the remaining two years; (c) Continued Competency course on Differential Diagnosis taken within six months and approved by the Board; and (d) fines and costs. 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. This motion was seconded by Mr. Barbato, which carried.

2015 Complaint Committee

C2015-01: The Complaint Committee reported that Ms. Jill Dixon was selected by the Committee to serve as monitor in this case, and the Complaint Committee recommended and moved that the Board vote to ratify Ms. Dixon to serve in this capacity. The motion was seconded by Mr. Barbato, which carried.

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

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

C2015-07: The Complaint Committee reported that this case involves a possible term protection violation. 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. Weinberg, which carried.

BIC2015-08: The Complaint Committee reported that this case is ongoing.

C2015-10: Board Counsel reported that this case is scheduled for a default show cause hearing on 08/03/15, at which the hearing officer is scheduled to address the Board's motion to issue a recommended order of default. The hearing officer's order is to be considered by the Board at its September meeting, and therefore this was passed as ongoing.

C2015-11: The Complaint Committee reported that this case involves possible fraud and material deception. The Board authorized Board staff to contact the credential holder to find out if (s)he has any intention of practicing again. Staff will report to the Complaint Committee in September. This case is ongoing.

BIC2015-12: The Complaint Committee reported that this case is ongoing.

BIC2015-13: The Complaint Committee reported that, after discussing this case with the Board's Investigator and Counsel, and after determining that the Respondent has not complied with the Board's Order which was authorized at the last meeting, the Complaint Committee recommended and moved that the Board authorize Counsel to prepare an Immediate Temporary Suspension (ITS) for Mr. Majors' signature on behalf of the Board, and to prepare a Notice of Hearing and Charges citing, *inter alia*, failure to comply with the Board's orders. The motion was seconded by Ms. Pillow, which carried.

C2015-14-18 & 20: The Complaint Committee reported that these credential holders practiced without a credential after 03/31/2015. Following review of the information provided by Board staff that all of the credential holders accepted the proposed Private Admonitions and paid their respective fines, the

Complaint Committee recommended and moved that all six of these cases should now be closed. The motion was seconded by Ms. Volz, which carried.

C2015-19: The Complaint Committee reported that during the renewal/reinstatement process this credential holder practiced physical therapy on a lapsed credential, and at the previous meeting the Board had authorized Board Counsel to prepare a settlement agreement, which was signed by the credential holder.

C2015-21: The Special Complaint Committee recommended and moved to depart from the current policy and procedures with respect to Complaint Committee members voting on complaints, with respect to this particular case, due to the fact that three Board members are recusing from any participation or consideration of this case. The motion was seconded by Ms. Weinberg, which carried. Ms. Ogle, Ms. Volz and Mr. Grubb recused themselves and left the Board room during discussion of the case. The Complaint Committee reported that this case involves a possible violation of failing to respect the rights and dignity of all patients. 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. Weinberg, which carried.

C2015-22: The Complaint Committee reported that this credential holder allegedly supervised an applicant who worked as a physical therapist assistant without a Board-issued temporary permit. The Complaint Committee recommended and moved to open an investigation for the limited purpose of determining the number of days the Respondent practiced without a valid credential. Additionally, once this number is determined, the Board authorized Counsel to issue a Private Admonishment that would include a base fine of \$250 plus \$100 per each day that the applicant worked without a temporary permit. The motion was seconded by Ms. Pillow, which carried.

C2015-23: The Complaint Committee reported that this exam candidate practiced without a Board-issued temporary permit. The Complaint Committee recommended and moved to open an investigation for the limited purpose of determining the number of days the Respondent practiced without a valid credential. Additionally, once this number is determined, the Board authorized Counsel to issue a Private Admonishment that would include a base fine of \$250 plus \$70 per each day that applicant worked without a temporary permit. The motion was seconded by Ms. Johnson, which carried.

C2015-24: 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.

BIC2015-25: The Complaint Committee reported that this case involves a credential holder involved in a pending lawsuit. The Complaint Committee recommended and moved to authorize an initiating complaint by the Board. The motion was seconded by Ms. Weinberg, which carried.

C2015-26: The Complaint Committee reported that this case involves possible substandard care and failure to respect the rights and dignity of all patients. The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Ms. Weinberg, which carried. Mr. Grubb recused himself during the discussion and vote in this matter.

C2015-27: The Complaint Committee reported that this case involves possible substandard care and failure to practice within the scope of the credential holder's expertise. The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Ms. Johnson, which carried. Mr. Grubb recused himself during the discussion and vote in this matter.

C2015-28: The Complaint Committee reported that this case involves a possible term protection violation. 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. Weinberg, which carried.

C2015-29: 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.

C2015-30: The Complaint Committee reported that this case involves a possible term protection violation. 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. Weinberg, which carried.

BIC2015-31: The Complaint Committee reported that the Kentucky Department of Insurance reported a malpractice settlement against this credential holder. The Complaint Committee recommended and moved to authorize an initiating complaint by the Board. The motion was seconded by Mr. Grubb, which carried.

BIC2015-32: The Complaint Committee reported that this case involves a physical therapist assistant who possibly treated a patient without an evaluation and practiced without supervision. The Complaint Committee recommended and moved to authorize an initiating complaint by the Board. The motion was seconded by Ms. Weinberg, which carried.

C2015-33: The Complaint Committee reported that this case involves a credential holder who possibly failed to respect the rights and dignity of all patients. The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Ms. Pillow, which carried. Mr. Barbato recused himself during the discussion and vote in this matter.

C2015-34: The Complaint Committee reported that this case possibly involves a credential holder who may be impaired by reason of a mental, physical, or other condition that impedes her/his ability to practice competently. The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Mr. Grubb, which carried.

IPTPC Report

Mr. Fingerson presented the IPTPC report dated 07/17/15. IPTPC cases which previously have come to the attention of the Board, or were discussed at length during the Complaint Committees' reports, were reviewed.

Update on Monitoring Probations

The Board noted the following credential holders who are presently being monitored: Ron Cole, PT; Lawrence Tatem, PT; 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, Mr. Kruger and Mr. Jones. In particular, Mr. Grubb, having served as the monitor for Mr. Cole, advised that Mr. Cole has now satisfied all terms and conditions of his Board-Ordered probation and monitoring, and that the Board may now close its consideration of this case.

REPORTS AND OTHER BUSINESS

Legal Report

Administrative Regulations

During the May Board meeting, Mr. Kelly advised that staff would need to review the language of 201 KAR 22:053 to determine whether the recent anti-solicitation legislation should be incorporated into the Board's regulation. During the July Board meeting, Mr. Kelly circulated a draft amendment to 201 KAR 22:053, the Board's regulation concerning the code of ethical standards and standards of practice for physical therapists and physical therapist assistants. Mr. Kelly and Mr. Majors suggested additions to incorporate language pertaining to the recent anti-solicitation legislation. Mr. Barbato made the motion for the Board to authorize the filing of the proposed amendment with the Legislation Research Commission. The motion was seconded by Ms. Volz, which carried.

Additionally, Mr. Kelly reminded the Board that the mandatory HIV/AIDS training requirement under KRS 327.050, 327.060, and KAR 22:040 had been repealed. Mr. Barbato made the motion for the Board to eliminate the language pertaining to the HIV/AIDS requirement in the Board's administrative regulations and authorize the filing of the proposed amendments with the Legislation Research Commission. The motion was seconded by Ms. Pillow, which carried.

Presentation Proposal for 2015 FSBPT Annual Meeting

Mr. Kelly reported that his presentation on Open Records that he submitted to the FSBPT had been approved. He reported that he would circulate information on his presentation to the members at the September Board meeting.

North Carolina State Board of Dental Examiners

Mr. Kelly informed the Board about the findings of his research on issues arising from the decision. He further stated that he and the Mr. Majors would continue to monitor actions in other states and work with other regulatory boards on potential remedial options.

KBPT Declaratory Opinions

After discussing the statutory and legal ramifications of declaratory opinions, the Board directed Mr. Kelly to compile a summary list of all previous declaratory opinions for review.

Investigator's Use of Firearms

After discussing the matter the Board declined to adopt a formal policy with respect to the Investigator's use of a firearm. The Board noted that the Investigator was free to exercise his discretion on the using a firearm as long as he complied with all pertinent state and federal laws.

KPTA Liaison to KBPT Report

APTA House of Delegates

Dr. Kuperstein reported to the Board that a motion was passed that will allow components to amend their bylaws to allow PTAs a full vote at the component level. Thus, a motion has been made to the KPTA to make such an amendment to the current Bylaws.

Reimbursement

Dr. Kuperstein reported to the Board that the KPTA is working with the Department of Medicaid Services in an effort to eliminate the PT/PTA differential.

State Innovation Model (SIM) Model Design

Dr. Kuperstein reported that the KPTA remains actively engaged with the State Innovation Model (SIM). The first draft of the Value-based Health Care Delivery and Payment Methodology Transforming Plan will be distributed in advance of the August Workgroup Meetings.

Student Conclave and Fall FUNction

Dr. Kuperstein reported that the Student Conclave and Fall FUNction will be held on 09/11/15. Mr. Brengelman will be presenting a session at the Kentucky Conclave titled "Getting Your License, Keeping Your License, and Losing Your License: Legal Aspects of the Kentucky Board of Physical Therapy." After discussion, Ms. Weinberg made a motion to have Ms. Ogle contact Mr. Brengelman on behalf of the Board and request that he clarify to KPTA and to his audience that he is not there as an agent of the Board or representing the Board's policies. The motion was seconded by Ms. Volz, which carried. Mr. Barbato dissented.

New Business

Memorial

Following discussion and consideration, Ms. Weinberg made the motion to have Board staff contact former Board members to inform them of the death of Ms. Nancy Brinly, and to provide them an opportunity to make a donation in her memory to one of the charities listed in her obituary. The motion was seconded by Ms. Pillow, which carried.

Director's Report

Financial Report

The Board reviewed monthly, quarterly and 2015 YTD annual FAS3 financial reports addressing the Board's revenues and expenditures. Mr. Majors also provided a report concerning the Board's surplus remaining at the end of FY 2014-2015.

State Executive Directors Meeting

Mr. Majors reported that the next Executive Directors meeting has been scheduled for 08/19/15.

Ethics and Boundaries Assessment Services

Mr. Majors provided information concerning the Ethics and Boundaries Assessment Services, LLC, as a tool to consider in determining appropriate terms and conditions of disciplinary action.

BoardEffect Software

Ms. Rita Auritt, a representative with BoardEffect, a company specializing in producing, marketing, and servicing software for government organizations, addressed the members by discussing one of the company's software products. This product is currently used by the Kentucky Real Estate Commission for organization of its documents that are reviewed at each Commission meeting, and Ms. Auritt demonstrated the product's features. Following discussion, the Board agreed to table discussion about this product for a future meeting.

Department of Insurance

Mr. Majors circulated copies of the quarterly malpractice report submitted by the Department of Insurance Public Protection Cabinet, concerning health care providers with settlement and/or judgments, dated 07/06/15 covering the period from 04/01/15 through 06/30/15. No credential holders of the Board were listed.

FSBPT Ethics and Legislation Committee

Mr. Majors reported that FSBPT has decided not to schedule a second meeting this calendar year, but another teleconference of the committee will be conducted in the near future. Mr. Majors is working with Committee member Joni Kalis, PT, a former member of the Arizona Board of Physical Therapy, on drafting a resource to be made available to all member boards concerning disciplinary guidelines.

Staff Evaluations

Mr. Majors reported that he completed staff evaluations on Ms. Sims, Mr. Curley and Mr. Kelly, and they were available to the members for review.

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 92.5% for all jurisdictions, while the overall satisfaction rating for Kentucky was listed at 93% for one listed quarter and a satisfaction rating of 100% for the most recent quarter.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences

- a. FSBPT – Leadership Issues Forum
(08/01-02/15 – Alexandria, VA)
Tina Volz and Scott Majors to serve as KBPT’s authorized representatives.
- b. CLEAR – 2015 Annual Educational Conference
(09/17-19/15 – Boston, MA)
Linda Pillow to serve as KBPT’s authorized representative.
- c. FARB – 2015 Regulatory Law Seminar
(10/01-04/15 – Denver, CO)
Mr. Majors and Mr. Kelly to serve as KBPT’s authorized representatives.
- d. FSBPT – 2015 Annual Meeting, Conference and Delegate Assembly
(10/15-17/15 – Orlando, FL)
Ms. Volz to serve as KBPT’s authorized Primary Voting Delegate;
Mr. Grubb to serve as KBPT’s authorized Alternate Voting Delegate;
Mr. Majors to serve as FSBPT’s fully-funded administrator; and
Ms. Ogle, Mr. Barbato and Ms. Johnson to serve as KBPT’s fully-funded and authorized representatives.
- e. CAPTASA – 2016 Conference Workshop
(01/29-30/16 – Lexington, KY)
- f. 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 Ms. Weinberg, which carried. The lists are attached to these minutes.

A motion was made by Ms. Weinberg to adjourn the meeting at 5:34 p.m. The motion was seconded by Ms. Pillow, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director