



KENTUCKY BOARD OF PHYSICAL THERAPY

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Steve L. Beshear
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING September 17, 2015

Board Members: Karen Craig Ogle, PT, Chair
Tina Volz, PT, Chair-Elect
Troy Grubb, 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

Board Members Absent: Ron Barbato, PT
Virginia Johnson, Public Member
Linda Pillow, PT

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Karen Ogle, at 9:13 a.m. on Thursday, 09/17/15, at the University of Kentucky College of Health Sciences, Lexington, Kentucky. A quorum was present.

Minutes for Previous Regular Meeting

Following discussion and review, Ms. Volz made the motion to approve the minutes of the Board meeting of 07/30/15, seconded by Ms. Weinberg, which carried.

Board Discussions, Committees and Opinion Requests

FSBPT – Leadership Issues Forum

Ms. Volz reported on the Leadership Issues Forum she attended in Alexandria, VA on 08/01-02/15. She briefly discussed the topic of dry needling and how the FSBPT has recently put together a task force that developed dry needling competencies.

Mr. Majors briefly summarized several topics of the conference, including an open forum on the Licensure Compact; NPTE requirements; the Minimum Data Set; the U.S. Supreme Court case involving the N.C. Board of Dental Examiners; and a new Continued Competency model.

Monitoring Procedures and Requirements

Mr. Curley reported that there were some unforeseen issues with the monitoring program revolving around the offline option. These issues are currently being rectified by Kentucky Interactive and the final program will be made available to the Monitoring Task Force within the next week.

New Board Member and Administrative Training

Ms. Weinberg gave a brief overview of the FSBPT's New Board Member and Administrative Training session she attended in early June in Alexandria, VA. She spoke briefly about the specific differences between the state licensure Boards.

Administrative Hearings Training Course

Mr. Majors reported on the training he attended in Frankfort on 06/12/15. He gave a brief overview of a session that focused on the unrepresented party and how much assistance the hearing officer should provide to those individuals who choose to represent themselves.

Meetings to Discuss Licensure Data

Mr. Majors reported that he will be attending a meeting on 09/22/15 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. He will give a detailed report at the November Board meeting.

Proposed Physical Therapy Licensure Compact

Mr. Majors reviewed with the Board in detail the most recent draft version of the Physical Therapy Licensure Compact. He reported that there was a meeting on 08/01/15-02/15 of the drafting team to review all the issues that were presented at the Leadership Issues Forum. Board members discussed in length various aspects of the Compact. Mr. Majors asked for all Board members to review the Compact before the annual FSBPT meeting and an update will be provided at the November meeting.

2016 Board Meeting Schedule

Following consideration of various conferences which are expected to be held in 2016, and in an effort to avoid conflicts with the scheduling of these conferences, Mr. Grubb made the motion for the Board to establish the following schedule for its Board meetings. The motion was seconded by Ms. Weinberg, which carried:

Board Meetings: 9:00 a.m. to approximately 5:00 p.m.

January 14

March 17 – tentative meeting at Bellarmine University

May 19

July 28

September 15

November 17

2016 Board Appointments

Following discussion, the Board made the following appointments, effective 01/01/16, unless otherwise noted:

- (1) 2016 Board Chair: Pursuant to the vote taken by the board in September of 2014, Ms. Volz shall assume the position of Chair, effective 01/01/2016;
- (2) 2016 Board Chair-Elect: Ms. Weinberg moved that Mr. Barbato be appointed 2016 Board Chair-Elect, seconded by Mr. Grubb, which carried;
- (3) 2016 Complaint Committee: Decisions concerning appointment to this Committee were passed until the November meeting due to the absences of three members;

- (4) 2016 Remediation Liaison Members: Decisions concerning appointment to this Committee were passed until the November meeting due to the absences of three members;
- (5) 2016 ADA Accommodations Liaison Members: Decisions concerning appointment to this Committee were passed until the November meeting due to the absences of three members;
- (6) 2016 KBPT Board Member Liaison to KPTA: Decisions concerning appointment to this Committee were passed until the November meeting due to the absences of three members;
- (7) 2016 Continued Competency Liaison to KPTA: Decisions concerning appointment to this Committee were passed until the November meeting due to the absences of three members; and
- (8) 2016 Finance Board Member Liaisons: Ms. Weinberg moved that Ms. Volz and Mr. Barbato be appointed as 2016 liaison members to KBPT staff concerning questions relating to finance. This motion was seconded by Mr. Grubbs, which carried.

Scope of Practice Workgroup

Mr. Grubb reported that the work group established to examine 201 KAR 22:053 has met and the process is ongoing and under review.

KBPT Website Photographs

Ms. Barton reported that the headshot photographs taken at the July meeting were recently e-mailed to all members. The photographs will be posted on the website shortly after the Board meeting.

Articles of Interest

Mr. Majors circulated copies of topical articles of interest which addressed issues dealing with the growing negative trend towards some licensure agencies as well as a separate article on the modernization of HIPAA.

Opinion Requests

The Board reviewed the following opinion requests from:

- (1) Katherine Howe, PT, who submitted a request for hardship extension for the 2015 Continued Competency audit for the Board's review at the July meeting. The request was denied because she failed to submit a plan regarding her completion of the required continued competency hours. Ms. Howe resubmitted her request for a hardship extension that included a plan on how she would complete the continued competency requirements. After review, Ms. Volz made a motion to grant a hardship extension. The motion was seconded by Mr. Grubb, which carried.
- (2) Kim A. Sutter, PT, who submitted a request for hardship extension for the 2015 Continued Competency audit for the Board's review at the July meeting. The request was denied because she failed to submit a plan regarding her completion of the required continued competency hours. Ms. Sutter resubmitted her request for a hardship extension that included a plan on how she would complete the continued competency requirements. After review, Mr. Grubb made a motion to grant a hardship extension. The motion was seconded by Ms. Volz, which carried.
- (3) Jefferson Musgrave, PT, who inquired about using manual therapy skills for the purpose of sports enhancement for athletes, not to manage pathology. The Board authorized staff to send a letter to Mr. Musgrave stating that, if he is representing himself as a physical therapist in the performance of services, he would fall under the purview of the Board's Physical Therapy Practice Act and its corresponding administrative regulations.
- (4) Laurence N. Benz, PT, who sought advice from the Board concerning a business dispute his company has with a contractor which involves the exercise of independent professional judgment by the company's physical therapists. Following review and discussion, the Board authorized staff to notify Mr.

Benz that the nature of his inquiry does not fall within the jurisdiction of the Board to address, as the Physical Therapy Practice Act and its corresponding administrative regulations are silent on the issue presented.

Civil Matters and Investigations

In view of the fact that three Board members were not present for this meeting, and in view of the requirements pertaining to Kentucky's Open Meetings Law, the Board announced the need to depart from its current policy and procedures relating to the recusal of current members of the 2014 and 2015 Complaint Committees during the Board's consideration of the reports from these Committees and the votes cast by the Board relating to these reports.

2014 Complaint Committee

C2014-07: The Complaint Committee reported that the credential holder in this case submitted a request for relief from the home health restriction in his Settlement Agreement. The Complaint Committee recommended and moved to deny the request. The motion was seconded by Ms. Volz, which carried.

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 the credential holder accepted the Private Admonishment and requested an extension of thirty days to pay the associated fine. The Complaint Committee recommended and moved to accept the payment schedule, and also authorized Board Counsel to inform the credential holder that the fine must be paid in full by the end of October. This motion was seconded by Ms. Volz, which carried.

BIC2014-19: The complaint committee recommended and moved to authorize Board Counsel to draft a Private Admonishment which will be offered to the credential holder if (s)he fulfills within three months, pays fines and costs and completes a Continued Competency course on Differential Diagnosis that has been approved by the Board. The Board instructed Counsel that, if the previous terms are not timely accepted, Counsel is authorized to move forward with the Notice of Hearing that was filed previously. This motion was seconded by Ms. Volz, which carried.

2015 Complaint Committee

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

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

BIC2015-08: The Complaint Committee reported that this case involves a credential holder possibly practicing outside their scope of practice. After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss the case due to insufficient evidence. The motion was seconded by Mr. Grubb, which carried.

C2015-10: The Complaint Committee reported that this case was passed to the November meeting.

C2015-11: The Complaint Committee reported that this case involves possible fraud and material deception and is currently ongoing. Additionally, Board Counsel reported that he had spoken with a member of the credential holder's family to ascertain if (s)he intended to continue practicing in the future. The credential holder is currently not practicing and is unable to participate in an investigation. Thus, Board Counsel will follow up with the credential holder and give a report at the March meeting.

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

BIC2015-13: The Complaint Committee reported that a Notice of Hearing and Formal Complaint were filed on 07/31/15, and a telephonic prehearing conference was scheduled for 09/11/15 with the assigned

hearing officer. However, the credential holder has since complied with the Board's Order requiring the credential holder to undergo a substance abuse evaluation and is awaiting the results of the evaluation. Additionally, the Complaint Committee reported that there is a possibility that the credential holder practiced while (s)he was under an Immediate Temporary Suspension (ITS). The Complaint Committee recommended and moved, dependent on the recommendation from the IPTPC Chair and other information obtained during the investigation, to authorize Board staff to lift the ITS and for Board Counsel to move forward with a proposed Settlement Agreement. The motion was seconded by Ms. Weinberg, which carried.

C2015-22: The Complaint Committee reported that the credential holder has accepted a Private Admonishment and paid the proposed fine of \$650. The Complaint Committee recommended and moved to close this case. The motion was seconded by Ms. Weinberg, which carried.

C2015-23: The Complaint Committee reported that the credential holder has accepted a Private Admonishment and paid the proposed fine of \$530. The Complaint Committee recommended and moved to close this case. The motion was seconded by Ms. Weinberg, which carried.

C2015-24: The Complaint Committee reported that this is ongoing

BIC2015-25: The Complaint Committee reported that this case is ongoing.

C2015-26: The Complaint Committee reported that this case was passed to the November meeting.

C2015-27: The Complaint Committee reported that this case was passed to the November meeting.

C2015-29: The Complaint Committee reported that this is ongoing.

BIC2015-31: The Complaint Committee reported that this case is ongoing.

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. After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss the case due to insufficient evidence. The motion was seconded by Mr. Grubb, 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. After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence of a violation of the Practice Act. The motion was seconded by Ms. Weinberg, which carried.

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 that:

(a) Board staff issue a Board Initiated Complaint (BIC) requiring the credential holder to contact the IPTPC Chair within twenty days of receipt of the BIC;

(b) The credential holder be required to contact the IPTPC Chair and, dependent upon his recommendation, to authorize Board staff to issue an Order: (a) requiring the credential holder to submit to a mental health evaluation approved by IPTPC to determine the credential holder's competence to practice physical therapy; (b) requiring the evaluation must be completed within 20 days; and (c) authorizing the Board's Executive Director to sign the document in substitution of the Board's Chair.

(c) If the credential holder fails to contact the IPTPC Chair within the twenty day time period, to authorize Board staff to issue an Order listing the previous requirements. The motion was seconded by Ms. Weinberg, which carried.

C2015-35: 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 Ms. Weinberg, which carried.

C2015-36: The Complaint Committee reported that this case involves a possible term protection violation by an individual providing physical therapy services without being properly credentialed. The Complaint Committee recommended and moved that the Board authorize an investigation to be opened. The motion was seconded by Mr. Grubb, which carried. Furthermore, the Complaint Committee recommended and moved to authorize Board Counsel to send an Informal Letter of Agreement. The motion was seconded by Ms. Weinberg, which carried.

CE2015-37 through 50: The Complaint Committee reported that all of these cases are credential holders who were deficient with their Continued Competency requirements. The Complaint Committee recommended and moved to authorize Board Counsel to draft Settlement Agreements consistent with the Board's procedure in the 2011-2013 CE Audit process. The motion was seconded by Ms. Weinberg, which carried.

CE2015-51 through 101: The Complaint Committee reported that all of these cases are credential holders who were deficient with their Continued Competency requirements. The Complaint Committee recommended and moved to authorize Board Counsel to draft Private Admonishments consistent with the Board's procedure in the 2011-2013 CE Audit process. The motion was seconded by Ms. Weinberg, which carried.

CE2015-102: The Complaint Committee reported that credential holder failed to respond to the Continued Competency Audit. Board staff reported the credential holder would most likely not return to practice due to serious health related matters. The Complaint Committee recommended and moved to have Board Counsel offer a Settlement Agreement of voluntary surrender with the option of reinstatement if the Continued Competency and reinstatement requirements are fulfilled and the credential holder has paid the associated fine. The motion was seconded by Ms. Weinberg, which carried.

IPTPC Report

Mr. Majors presented the IPTPC report dated 09/07/15 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.

Update on Monitoring Probations

The Board noted the following credential holders who are presently being monitored: Jeremy Kruger, PT; Tiffiney S. Bentley, PT; Timothy Jones, PTA; and Donald Bruce Taylor. Monitor reports were submitted by the Board-appointed monitors and considered by the Board for Ms. Bentley and Mr. Kruger.

The Board also reviewed and discussed a monitoring report from Dr. Kuperstein and her response to Mr. Kruger's request to be relieved from further monitoring. Following discussion, Mr. Grubb made the motion for the Board to relieve Mr. Kruger from the remaining monitoring visits. The motion was seconded by Ms. Weinberg, which carried.

The Board also reviewed and discussed the monitoring report for Ms. Bentley. The Board instructed staff to advise the monitor that she should retrieve Ms. Bentley's patient records herself during each monitoring visit.

REPORTS AND OTHER BUSINESS

Legal Report

Administrative Regulations

General Counsel reported that staff completed revisions to 201 KAR 22:020, :040 and :070 which eliminate the HIV/AIDS education requirement for licensure, renewal, and foreign-educated applicants,

respectively. Counsel stated that the revisions were submitted to Legislative Research Commission for review. Counsel recommended that the Board withhold issuing the amendments to 201 KAR 22:053 while litigation is currently pending on the anti-solicitation law that prompted that amendment. After brief discussion, Ms. Volz made a motion to wait to file the amendments until litigation is finalized on the anti-solicitation law. The motion was seconded by Ms. Weinberg, which carried.

Presentation Proposal for 2015 FSBPT Annual Meeting

Counsel gave a summary of the presentation he will be making at the 2015 FSBPT Annual Meeting in October on email practices for Board members and staff.

KBPT Declaratory Opinions

Counsel reported that he completed the summary of the Board's Declaratory Opinion and presented it for the Board's review. He recommended the Board examine the opinions for review to ensure that all opinions are consistent with current Board policies and interpretations.

KPTA Liaison to KBPT Report

Kentucky Healthcare Transparency Bill

Dr. Kuperstein reported to the Board that the Healthcare Transparency bill language has changed slightly based on feedback from the Kentucky Department of Insurance.

Occupational Therapist

Dr. Kuperstein reported to the Board that a bill is expected to be filed addressing certificate of need issues for occupational therapists, which the KPTA will support.

Athletic Trainers

Dr. Kuperstein reported to the Board that a bill again is expected to be filed allowing athletic trainers to bill insurance.

KPTA Electronic Voting

Due to the absence of a quorum during the recent KPTA business meeting, the decision was made to conduct elections electronically from 09/21-28/15.

State Innovation Model (SIM) Model Design

Dr. Kuperstein reported to the Board that KPTA has been very well represented with a presence at essentially every meeting of the State Innovation Model. KPTA is confident that important relationships have been developed, and there is a substantial potential for the role of Physical Therapy to be more valued within the evolving system.

Reimbursement

Dr. Kuperstein reported to the Board that the Department of Medicaid Services has developed a modifier to effect a change in reimbursement for intervention provided by a PTA. KPTA is currently working with the Commissioner to eliminate this change; however, one of the issues used to support the change is that PTAs are not licensed.

Acupuncture

Mr. Majors reported that he was notified by a KPTA representative that the State Advisory Committee of Acupuncture under the Board of Medical Licensure is considering making changes to its statute, and KBPT was asked to review the changes to determine whether it has any concern regarding scope of practice issues or term protection. Mr. Kelly informed the Board that the bill has not been pre-filed. The Board asked Dr. Kuperstein to ask KPTA if it would keep KBPT informed once the bill has been filed.

KBPT Liaison to KPTA Report

Ms. Ogle reported that she attended the KPTA Fall meeting as the KBPT representative. She also informed the Board that KPTA had received the letter regarding tiered licensure.

New Business

Executive Director Performance Evaluation

Ms. Ogle briefly discussed the upcoming scheduled annual evaluation of Mr. Majors. She explained that the criteria was set last year and informed the Board members she would be sending out the evaluation survey. She asked that everyone respond as quickly as possible in order to have the results ready for discussion at the November meeting.

Director's Report

Financial Report

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

State Executive Directors Meeting

Mr. Majors reported that he and Mr. Kelly appeared at the Executive Directors' meeting held on 08/19/15. Mr. Kelly offered a presentation to the attendees concerning recent litigation and potential ramifications to regulatory boards. Also, Mr. Majors reported that Rita Auritt from BoardEffect gave a presentation during this meeting to the attendees. Mr. Majors recently received updated pricing information and will provide an update to the Board at the November meeting.

FSBPT Ethics and Legislation Committee

Mr. Majors provided an update on the work of FSBPT's Ethics and Legislation Committee, specifically in relation to its work on creating a compilation of Disciplinary Guidelines that could be used by physical therapy licensing boards during their investigation and disciplinary processes.

FSBPT Outstanding Jurisdiction Award

Mr. Majors advised the Board that FSBPT has announced it is creating a new award to be presented at the 2016 FSBPT Annual Conference to an "Outstanding Jurisdiction." Mr. Majors reviewed the criteria listed for consideration of the award. Following discussion, Ms. Volz made the motion for Board staff to closely examine the criteria and take affirmative steps to determine whether the Kentucky Board of Physical Therapy, in the performance and exercise of its scheduled statutory and lawful duties, may warrant serious consideration for receiving this award. Ms. Weinberg seconded the motion.

KBPT Approval Request: Bar Dues

Mr. Majors requested the Board to authorize reimbursement for his dues with the Kentucky Bar Association ("KBA"). Ms. Volz made the motion for the Board to approve reimbursement for Mr. Majors' KBA Dues. The motion was seconded by Ms. Weinberg, which carried.

Dry Needling Competencies

To supplement the information provided by Ms. Volz earlier in the meeting, Mr. Majors reported that FSBPT had prepared and made available on its website its Dry Needling Competencies Report that addresses what practitioners must know and be able to do prior to performing dry needling safely and effectively.

Transition Planning Documentation

Mr. Majors reviewed with the Board a summary of the transitional planning information that has been requested to be provided by the end of October in preparation for the change in gubernatorial administrations.

Kentucky Interactive: Portal for Online Payments

Mr. Majors reported that he, Mr. Curley and Ms. Sims recently met with Bob Evancho of Kentucky Interactive to discuss transitioning from ePay to TPE, a new online payment system, as ePay will no longer be supported effective 01/01/16. Kentucky Interactive has proposed assessing a 3% portal administration fee for all credit card transactions. Ms. Weinberg made a motion to pass the 3% assessment to the credential holders for online credit card payments. The motion was seconded by Ms. Volz, which carried.

Additionally, Ms. Volz made a motion to have Board staff move forward with exploring the feasibility of adopting an online verification process. The motion was seconded by Ms. Weinberg, which carried.

Minutes – November Board Meeting

Mr. Majors asked the Board to consider granting an extension on the deadline for completion of the draft November minutes due to staff vacation schedules. The Board granted a four day extension.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences

- a. CLEAR – 2015 Annual Educational Conference
(09/17-19/15 – Boston, MA)
Linda Pillow to serve as KBPT's authorized representative.
- b. FARB – 2015 Regulatory Law Seminar
(10/01-04/15 – Denver, CO)
Mr. Majors and Mr. Kelly to serve as KBPT's authorized representatives.
- c. 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 and Ms. Johnson to serve as KBPT's fully-funded and authorized representatives.

As Mr. Barbato was recently appointed to FSBPT's Resolution Committee, and is now fully-funded through FSBPT to attend the conference, the Board discussed sending another member as an authorized representative. Mr. Grubb made a motion to approve Ms. Pillow to also attend the FSBPT Annual meeting. The motion was seconded by Ms. Weinberg, which carried.

- d. CAPTASA – 2016 Conference Workshop
(01/29-30/16 – Lexington, KY)
Mr. Grubb made a motion for the Board to pay for the registration fees and associated travel costs for Ms. Weinberg to attend the CAPTASA workshop. Ms. Ogle seconded the motion, which carried.
- e. 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 Mr. Grubb, which carried. The lists are attached to these minutes.

A motion was made by Ms. Weinberg to adjourn the meeting at 4:28 p.m. The motion was seconded by Mr. Grubb, which carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Majors', with a long horizontal flourish extending to the right.

Scott D. Majors
Executive Director