



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF SPECIAL MEETING September 22, 2016

Board Members: Tina Volz, PT, Chair
Ron Barbato, PT, Chair-Elect
Troy Grubb, PT
Virginia Johnson, Public Member
Dan Martin, PT
Linda Pillow, PT
Talia Weinberg, PT

Board Staff: Scott D. Majors, Executive Director
Krista Barton, Executive Secretary
Beth Bell, Licensure Coordinator
Stephen Curley, Investigator
Louis D. Kelly, Esq., Board Counsel

Board Agents: 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 the Board's Chair, Tina Volz, at 8:58 a.m. on Thursday, 09/22/16, at the Board office. A quorum was present.

Minutes for Previous Regular Meeting

The Board reviewed the minutes of the 08/04/16 Board meeting.

Action taken: Following review and discussion of amendments to the draft minutes suggested by Mr. Barbato, Ms. Pillow made the motion to approve the minutes of the Board meeting of 08/04/16, as amended. The motion was seconded by Ms. Johnson, which carried.

Board Discussions, Committees and Opinion Requests

Proposed Physical Therapy Licensure Compact

Mr. Majors and Mr. Kelly provided an update on the Physical Therapy Licensure Compact. Currently, there is a Licensing & Occupation Interim Committee meeting tentatively scheduled for 11/28/16 at which the compact bill is scheduled for a first reading. Mr. Majors also reported that he and Mr. Kelly are scheduled to deliver an educational webinar concerning the compact to KPTA membership on December 7, 2016.

Action taken: No action taken.

Renewal IT Meeting with Kentucky Interactive

Mr. Majors and Mr. Curley reported that staff had met with Bob Evancho to discuss the upcoming renewal cycle. Mr. Majors proposed a few formatting changes to the paper and online renewal applications.

Action taken: Mr. Barbato made a motion to approve the proposed changes to the revised renewal applications and have staff submit the revisions to the LRC for approval. The motion was seconded by Mr. Martin, which carried.

KBPT Database Replacement

Mr. Curley reported that the development of the new database is on schedule for implementation shortly prior to the next renewal cycle. While Kentucky Interactive ("KI") has experienced a few development issues, it has been working to resolve them in a timely manner. Mr. Curley also reported that, after discussing the timeline with KI, the implementation of the system may need to be postponed until after the renewal cycle is completed if the database is not completed in time for staff to test and become acquainted with it by 11/01/16.

Action taken: No action taken.

2017-2019 Jurisprudence Exam

Mr. Majors reported that the Jurisprudence Exam (JE) workgroup will meet on 10/13/16. Mr. Majors will circulate the list of available questions to the Board at the November meeting.

Action taken: No action taken.

Scope of Practice Workgroup

The Board had a lengthy discussion regarding the proposed changes to 201 KAR 22:053. The draft changes had been forwarded to the Executive Committee of KPTA for discussion at their Board meeting on 09/09/16. Mr. Martin and Dr. Kuperstein explained that KPTA was concerned that some of the proposed changes would have an impact on the standard of care.

Action taken: Following discussion, Mr. Grubb made a motion to table this discussion until the November meeting. The motion was seconded by Ms. Weinberg, which carried. Mr. Barbato was opposed.

Additionally, the Board would like to schedule a meeting with KPTA leadership to discuss their concerns with the proposed changes to 201 KAR 22:053. Mr. Martin was asked to contact Ms. Lisa Volz of KPTA to set up a meeting prior to the November Board meeting.

Monitoring Procedures and Requirements

Mr. Majors asked the Board for clarification on the terms that he is authorized to present to the FARB Board of Directors at its meeting in Chicago on 09/29/16.

Action taken: Following discussion, Mr. Barbato made the motion that Mr. Majors propose that KBPT expects no expenses to be assessed by FARB to develop the monitoring program, and the contribution from KBPT staff as presenters should be on a one time basis that needs to be funded by FARB. The motion was seconded by Ms. Johnson, which carried.

FSBPT – 2016 Annual Meeting

Mr. Majors briefly discussed with the Board the schedule for the upcoming FSBPT Annual conference in Columbus, OH, and reported that Mr. Kelly and Mr. Fingerson will be presenters at the conference. Mr. Barbato reviewed with the Board the Delegate Assembly Motions.

Action taken: No action taken.

Remediation Committee

Mr. Majors reported to the Board that he will be a participant in a panel presentation on Remediation at the FSBPT Annual Conference in Columbus, OH. Currently, the Board has a few questions regarding the appropriate role that should be assumed by the Remediation Committee.

Action taken: After a brief discussion, the Board decided to table any discussion on Remediation until the November Board meeting.

FSBPT – Practice Review Tools

Mr. Majors reported that he had received notice from FSBPT that the Practice Review Tools (PRTs) are going to be discontinued as of 11/30/16.

Action taken: No action taken.

FCCPT – PT Healthcare Workers Certification Visas

Mr. Majors reported that the FCCPT received notice that its attempt to renew its process for healthcare workers certification visa approval with the United States Immigration Service has tentatively been rejected. This would impact FCCPT's ability to issue Healthcare Workers Certification Visas. The FCCPT was given until 09/21/16, to respond the denial of the renewal application. Mr. Majors will provide an update to the Board at the November meeting.

Action taken: No action taken.

Audit 2015 – 2017 Fine Structure

Mr. Majors discussed with the Board the fine structure for the upcoming 2017 Continued Competency Audit.

Action taken: Mr. Grubb made a motion to adopt and apply the fine structure from the Policy and Procedure manual for the 2017 audit. The motion was seconded by Ms. Johnson, which carried.

Also, Mr. Majors informed the Board that the Policy and Procedure Manual has been updated to include the removal of the HIV continued competency requirement in the fine structure of the audit.

Action taken: Mr. Grubb made a motion to amend the current Policy and Procedure manual to reflect the changes of the fine structure regarding the removal of the HIV continued competency requirements. The motion was seconded by Ms. Weinberg, which carried.

2017 Board Appointments

Following discussion, the Board tabled the 2017 Board appointments until the November Board meeting except for the 2015 and 2016 Complaint Committees and the Compact Workforce Group.

Action taken: Ms. Pillow made the motion that (1) Mr. Grubb replace Ms. Volz on the 2016 Complaint Committee; (2) Mr. Grubb assume the position of Chair on the 2015 Complaint Committee; and

(3) Mr. Barbato assume the position of Chair on the 2016 Complaint Committee. The motion was seconded by Ms. Weinberg, which carried.

Ms. Johnson made a motion that Ms. Weinberg replace Ms. Volz on the Compact Workforce Group effective 01/01/17; however, if Ms. Volz is not reappointed to the Board prior to the January Board meeting, Ms. Weinberg shall replace Ms. Volz immediately. The motion was seconded by Mr. Martin, which carried.

Opinion Requests

The Board reviewed the following opinion requests from:

(1) Marlon Fiel, PT, who sought clarification concerning PTs performing cupping therapy, and inquiring whether cupping therapy could be billed under manual therapy.

Action taken: Following discussion, the Board instructed staff to respond by advising that there is nothing in the Practice Act that prohibits a PT from performing cupping therapy. The Board encourages Mr. Fiel to review the Standards of Practice for Physical Therapists as referenced in 201 KAR 22:053 Section 1(1)(b). Also, the Board does not regulate billing and Mr. Fiel should contact his payer.

(2) KBPT staff, which brought an examination application before the Board for review. The examination applicant failed to answer “yes” on question 8 concerning being convicted of or having any pending charges for a felony, misdemeanor, or any crime in the courts of this state or any other state, territory or county. During a routine background check the applicant was found to have multiple charges.

Action taken: Ms. Weinberg made the motion for the Board to open an investigation and file a Board Initiated Complaint, BIC2016-21 and to permit the applicant to sit for the next scheduled examination. The motion was seconded by Ms. Johnson, which carried.

Civil Matters and Investigations

2015 Complaint Committee

C2015-11: The Complaint Committee reported that as of 09/14/16, the Board’s General Counsel has not been contacted by the credential holder. There will be a status update provided at the November Board meeting.

Action taken: No action taken.

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

Action taken: No action taken.

C2015-35: The Complaint Committee reported that this case deals with allegations of fraud and material deception. Additionally, the Complaint Committee reported that Mr. Curley has completed his interview with the credential holder in this case.

Action taken: After reviewing the facts and circumstances of this case the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence. The motion was seconded by Ms. Weinberg, which carried. The Board will review at its November meeting a hearing officer’s recommended order to dismiss the notice of hearing and formal charges.

C2015-103: The credential holder in this action, Ms. Tammy Mills, appeared before the Board, without counsel, to review the terms of a proposed written settlement agreement. These terms include a public reprimand and payment of a \$250.00 fine.

As Board Chair, Ms. Volz reviewed each term of the agreement with Ms. Mills, who acknowledged her understanding, assent, and agreement to all terms of the agreement.

Action taken: The Complaint Committee recommended and moved for the Board to enter a final order approving the subject agreement. The motion was seconded by Mr. Barbato, which carried.

CE2015-37: The Complaint Committee reported that at the August Board meeting the credential holder had completed the required continued competency, paid his/her fine, and signed the proposed Settlement Agreement.

Action taken: The Complaint Committee recommended and moved to accept the signed Settlement Agreement and the Recommended Order of Dismissal, and to enter a Final Order of Dismissal. The motion was seconded by Mr. Barbato, which carried.

2016 Complaint Committee

BIC2016-04: The credential holder in this action, Ms. Sabrina Pletz, appeared before the Board, without counsel, to review the terms of a proposed written settlement agreement. These terms include, but are not limited to: (a) a two year suspension fully probated; (b) quarterly monitoring; (c) payment of a \$500.00 fine; (d) successful completion of a Board approved ethics course within six months; and (e) notifying current and future employers of the settlement agreement.

As Board Chair, Ms. Volz reviewed each term of the agreement with Ms. Pletz, who acknowledged her understanding, assent, and agreement to all terms of the agreement. Ms. Volz provided Ms. Pletz the opportunity to have any questions addressed by the Board.

Action taken: The Complaint Committee recommended and moved for the Board to enter a final order approving the subject agreement. The motion was seconded by Ms. Pillow, which carried.

Additionally, the Board briefly discussed appointing a monitor for Ms. Pletz.

Action taken: The Complaint Committee recommended and moved to approve any one of the following individuals: Margaret Blaine, Chuck Clark, Chris Price, or Stephanie Metzroth as a monitor for Ms. Pletz, as determined by staff. The motion was seconded by Ms. Johnson, which carried.

BIC2016-06: The Complaint Committee reported that there was a prehearing conference scheduled on 09/19/16, and this case is currently ongoing.

Action taken: No action taken.

C2016-07: The Complaint Committee reported that this case involves alleged substandard care.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to offer a Settlement Agreement that must be signed within twenty days with the following terms; payment of a \$500.00 fine, successful completion of a Board approved ethics course and documentation course, and a personal appearance before the Board at the November Board meeting to review terms of the agreement. The motion was seconded by Mr. Grubb, which carried.

C2016-08: The Complaint Committee reported that there was a prehearing conference on 09/16/16, and this case is ongoing.

Action taken: No action taken.

C2016-10: The Complaint Committee reported that this case involves a possible adverse action in West Virginia regarding falsification of a renewal application, and the case is currently ongoing.

Action taken: No action taken.

Additionally, the credential holder has signed an IPTPC agreement as one of the terms of his previous settlement agreement regarding BIC2015-13. The Complaint Committee reported to the Board that, based on information provided by the IPTPC Chair, the individual is in violation of his/her IPTPC agreement.

Action taken: After discussion, the Complaint Committee recommended and moved to authorize Board Counsel to draft a letter to the credential holder explaining that any report of noncompliance with the terms and conditions of his/her settlement agreement would result in a Board determination of a violation of the settlement agreement and authorize the filing a Notice of Hearing and Charges. The motion was seconded by Mr. Grubb, which carried.

C2016-11: The Complaint Committee reported that this case involves allegations of substandard care.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence. The motion was seconded by Mr. Grubb, which carried.

C2016-12: The Complaint Committee reported that this case involves allegations of substandard care.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence. The motion was seconded by Mr. Grubb, which carried.

C2016-13: The Complaint Committee reported that this case involves allegations of substandard care.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence. The motion was seconded by Mr. Grubb, which carried.

C2016-14: The Complaint Committee reported that this case involves a possible impairment by reason of mental, physical, or other condition of a credential holder.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to close this investigation due to insufficient evidence. The motion was seconded by Ms. Weinberg, which carried.

C2016-16: The Complaint Committee reported that the credential holder failed to submit a response.

Action taken: The Complaint Committee recommended and moved that the Board file an order, requiring the credential holder to respond within twenty days. The motion was seconded by Ms. Johnson, which carried.

C2016-17: The Complaint Committee reported that this case involves alleged substandard care.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence. The motion was seconded by Ms. Pillow, which carried.

C2016-18: The Complaint Committee reported that this is ongoing.

Action taken: No action taken.

C2016-19: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

IPTPC Report

Mr. Fingerson presented the IPTPC report dated 09/13/16. 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: Tiffiney S. Bentley, PT and Donald Bruce Taylor, PT. A monitor report was submitted by Ms. Jill Dixon, the Board-appointed monitor, and considered by the Board for Ms. Bentley. Mr. Curley addressed the Board concerning Ms. Bentley's current practice. He reminded the Board that there is a stipulation under the terms of her Settlement Agreement that the credential holder is not permitted to engage in any solo practice.

Action taken: Following discussion, Ms. Johnson made a motion to have Board Counsel draft a letter requesting Ms. Bentley to respond within twenty days by explaining the structure of her current practice. Further, Counsel is authorized to issue a Board Order if Ms. Bentley fails to respond within the allotted timeframe, and Counsel is further authorized to file a Notice of Hearing if Ms. Bentley fails to respond to the Order within twenty days. The motion was seconded by Ms. Pillow, which carried.

REPORTS AND OTHER BUSINESS

Legal Report

Administrative Regulation – 201 KAR 22:045

Mr. Kelly updated the Board on the progress of the proposed amendment to 201 KAR 22:045 regarding hardship extensions.

Action taken: No action taken.

Amendment to 201 KAR 22:053 – Clerical Correction

Mr. Majors reported that there needs to be a technical correction to 201 KAR 22:053 Section 4(2). He informed the Board that under certain circumstances LRC may allow a technical correction conducted by LRC staff without seeking formal legislative committee approval.

Action taken: Mr. Majors will request LRC staff to make the change to 201 KAR 22:053 Section 4(2) through the technical correction process. If the LRC staff does grant the requested change, however, the Board may seek to incorporate the clerical correction with any amendments the Board may file to the Scope of Practice administrative regulation.

Dry Needling

Mr. Kelly provided the Board with recent updates regarding Dry Needling.

Action taken: No action taken.

State Licensing Board Antitrust Act

Mr. Kelly provided information regarding the history of the Local Government Antitrust Act of 1984 and how possible amendment to this legislation may provide a partial remedy to address the deterioration of the doctrine of sovereign immunity as it relates to Board members.

Action taken: No action taken.

Proposed Amendment – Model Settlement Agreement

Mr. Kelly discussed proposed amendments to the Model Settlement Agreement.

Action taken: Ms. Volz made a motion to incorporate the proposed amendments to the Model Settlement Agreement. The motion was seconded by Mr. Barbato, which carried.

KBPT Credential Eligibility - Undocumented Immigrants

Mr. Kelly provided an update on credential eligibility for undocumented immigrants.

Action taken: The Board tabled this discussion until the November meeting.

KBPT and KPTA Liaison Reports

Dr. Kuperstein and Mr. Martin informed the Board that the KPTA was very supportive of the Compact. Additionally, Dr. Kuperstein informed the Board that she did a brief presentation on the Compact at a state chapter business meeting.

Director's Report

Financial Report

The Board reviewed monthly, quarterly and FY 2017 FAS3 financial reports addressing the Board's revenues and expenditures. Mr. Majors also reported that the Finance workgroup met on 09/21/16 to review a more detailed accounting of the Board's current and historical finances. At Ms. Volz's request, this detailed accounting report will be included in future board packets with the FAS3 reports for the full Board to review. Mr. Majors also reported that he had purchased a retirement gift for Donna Sims on behalf of the Board that was presented to Ms. Sims during her retirement reception held on 08/04/16.

Action taken: Mr. Grubb made a motion that Mr. Majors be reimbursed in the amount of \$120.00 for the Board's purchase of Ms. Sims' retirement gift. The motion was seconded by Ms. Johnson, which carried.

Office Security

Mr. Majors reported that Jefferson Development Group, the Board's landlord, had installed a security camera for the first floor hallway to the 312 Building outside the entrance to the Board's office space. The Board will not incur any increase in its monthly lease obligation as a result of this additional security measure. Mr. Majors also reported that he was able to purchase and install a doorbell at the entrance to the Board's office space at a cost of less than \$30.

Action taken: No action taken.

Affirmative Action Plan

Ms. Bell offered a report concerning the preparation and submission of the Board's most recent Affirmative Action Plan.

Action taken: No action taken.

2016 Fall Newsletter Articles

Mr. Majors circulated several draft newsletter articles which were reviewed by the Board members. In addition to the subjects addressed by these articles, the Board requested that articles also be prepared to address oPTion, aPTitude, the elimination of the mandatory HIV/AIDS CE requirement, and to reaffirm that the completion of the academic requirements for new PT and PTA graduates will satisfy their CE requirements for the biennium in which the academic requirements were completed.

Action taken: Mr. Barbato made a motion that the Board's next newsletter be circulated by the second week of October with the articles as reviewed and discussed. The motion was seconded by Ms. Johnson, which carried.

November Board Meeting Location

Following discussion, the Board elected to schedule its November meeting at the Board's offices in Louisville. In addition, the Board instructed staff to draft a letter that may be addressed to the program administrators for the PT and PTA programs in Kentucky advising them that the Board is interested in conducting at least one of its meetings in 2017 at a location which is convenient for students and faculty to attend, observe and participate in the process. Mr. Majors agreed to draft this letter for the Board's review and possible approval at its next meeting.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences

- a. FARB – 2016 Regulatory Law Seminar
(09/29-10/2/16 – Chicago, IL)
Scott Majors to serve as KBPT's authorized representative.
- b. FSBPT – 2016 Annual Meeting, Conference and Delegate Assembly
(11/04-06/16 – Columbus, OH)
Talia Weinberg to serve as KBPT's authorized Primary Voting Delegate;
Troy Grubb to serve as KBPT's authorized Alternate Voting Delegate;
Scott Majors to serve as FSBPT's fully-funded administrator;
Ron Barbato to serve as FSBPT's fully-funded Resolutions Committee member; and
Tina Volz, Virginia Johnson, Dan Martin and Linda Pillow to serve as KBPT's fully-funded authorized representatives.
- c. FARB – Annual Forum
(01/26-29/17 – San Antonio, TX)
Mr. Grubb made a motion for the Board to pay for registration and associated travel costs for Mr. Kelly to attend the FARB Annual Forum. The motion was seconded by Ms. Johnson, which carried.
- d. CAPTASA – 2017 Conference Workshop
(01/27-28/17 – Lexington, KY)
Ms. Volz made a motion for the Board to pay for registration and associated travel costs for Mr. Martin to attend the CAPTASA Conference Workshop. The motion was seconded by Ms. Weinberg, which carried.
- e. CLEAR – 2017 Annual Education Conference
(09/13-16/17 – Denver, CO)
- f. FSBPT – 2017 Annual Meeting, Conference and Delegate Assembly
(11/02-04/17 – Santa Ana Pueblo, NM)

New licensees/reinstatements/renewal applications

Action taken: Mr. Grubb 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. Pillow, which carried. The lists are attached to these minutes.

A motion was made by Ms. Johnson to adjourn the meeting at 4:01 p.m. The motion was seconded by Mr. Grubb, which carried.

Mr. Martin left the Board meeting at 12:30 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott D. Majors', with a stylized flourish at the end.

Scott D. Majors
Executive Director