



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING November 17, 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

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

Board Members Absent: Talia Weinberg, PT

Liaison Members Absent: Janice Kuperstein, PT, PhD, KPTA Liaison

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Tina Volz, at 9:03 a.m. on Thursday, 11/17/16, at the Board office. A quorum was present.

Minutes for Previous Regular Meeting

The Board reviewed the minutes of the 09/22/16 Board meeting.

Action taken: Mr. Martin made a motion to approve the minutes of the Board meeting of 09/22/16 with no changes. This motion was seconded by Mr. Barbato, which carried.

The Board reviewed the minutes of the 11/04/16 Special Board meeting in Columbus, OH.

Action taken: Mr. Barbato made a motion to approve the minutes of the Special Board meeting of 11/04/16 with no changes. This motion was seconded by Ms. Johnson, which carried.

Board Discussions, Committees and Opinion Requests

2016 FSBPT Annual Meeting and Delegate Assembly

The members of the Board, Mr. Kelly, Mr. Fingerson and Mr. Majors recently attended the 2016 FSBPT Annual Meeting and Delegate Assembly in Columbus, Ohio. Ms. Volz congratulated Mr. Barbato on being newly elected to the FSBPT Board of Directors. Ms. Pillow gave a report to the Board concerning a session on the U.S. Healthcare system and an online course offered by Duke University for foreign

educated physical therapist applicants that includes topics on cultural competence, federal and state government supervision, statutes and regulations, and guidance and practice in various physical therapy settings. Following discussion concerning the appropriateness of requiring this course for such applicants in Kentucky, the Board elected to table this for a future meeting.

Proposed Physical Therapy Licensure Compact

Mr. Majors and Mr. Kelly provided an update on the Physical Therapy Licensure Compact. Mr. Kelly, Mr. Majors and either Ms. Volz, or Mr. Barbato will be attending a meeting with the Licensing & Occupation Interim Committee on 11/28/16. An update will be provided to the Board at the next regularly scheduled meeting.

Action taken: No action taken.

Proposed Monitoring Training Program

Mr. Majors reported that he met with the FARB Board of Directors on 09/29/16 to discuss the development of a monitoring program. Mr. Majors proposed a collaboration in the design of this program between FARB and Board staff that would result in a well-developed program. The program would be marketable to other entities and there would be no cost associated with the development of the program for KBPT. Mr. Majors anticipates receiving a response from FARB in January of 2017, and he will update the Board at the January meeting.

Action taken: No action taken.

2016 FARB Regulatory Law Seminar

Mr. Majors reported that he attended the FARB conference in Chicago, IL on 09/30/16. He circulated materials presented during the conference, and he briefly discussed that a large portion of the conference revolved around the Supreme Court's North Carolina Dental Examiner decision.

Action taken: No action taken.

KBPT Database Replacement

Mr. Curley reported that, during the testing phase of the new database, staff discovered multiple changes needing to be implemented in order to have an end product that would meet our needs. The developers have been working to address the suggested changes to create a database that has the same capabilities and functionality. Also, Mr. Curley briefly discussed an article that was circulated to the Board on Social Security numbers. He informed the Board that the new database would no longer include the full Social Security number for security purposes, and we would use the license number and the FSBPT identification number for tracking purposes.

Action taken: No action taken.

Modification of Initial License Application

Mr. Majors requested Board approval to modify the current license application form to include the FSBPT identification number.

Action taken: Mr. Barbato moved to authorize modification of the Initial License Application form with the Legislative Research Commission to include the FSBPT identification number. The motion was seconded by Mr. Grubb, which carried.

2017-2019 Jurisprudence Exam

Mr. Majors reported that the 2017-2019 Jurisprudence Exam (JE) Item Writers' Task Force, consisting of Tom Pennington, Debra Turner, and Peggy Block, had several meetings to examine potential questions for the next JE. Mr. Majors circulated the item writers' list of twenty-six proposed questions for the Board to review.

Action taken: Following discussion and some revisions, Ms. Pillow moved that the Board approve a set of twenty of these questions, as revised, to serve as the 2017-2019 JE. The motion was seconded by Mr. Martin, which carried.

Scope of Practice Workgroup

The Scope of Practice workgroup reported that the KPTA workgroup delegation was in support of the proposed changes to 201 KAR 22:053.

Action taken: Following discussion, Mr. Grubb made a motion to accept the recommendations of the Scope of Practice Workgroup in relation to the proposed changes to 201 KAR 22:053, and to authorize staff to file an amendment to the regulation with the Legislative Research Commission. The motion was seconded by Ms. Johnson, which carried.

Remediation Committee

Mr. Grubb reported that Mr. Majors was a member of a panel presentation regarding Remediation at the FSBPT Annual Conference in Columbus, OH. Mr. Grubb gave a brief overview of the salient aspects of the presentation and discussed with the Board whether there is any merit in continuing with the Remediation process for exam applicants.

Action taken: After a lengthy discussion, Mr. Barbato moved to abolish the Remediation Committee and authorize staff to file an amendment to 201 KAR 22:020 to delete from the regulation Section 2(3) pertaining to remediation. The motion was seconded by Mr. Grubb, which carried.

FCCPT – PT Healthcare Workers Certification Visas

Mr. Majors reported that the FCCPT has responded to the United States Immigration Service regarding the rejection of their renewal application by taking proactive measures to address the listed deficiencies. Mr. Majors will give update the Board at the January meeting if new additional information becomes available.

Action taken: No action taken.

KPTA Nominations for KBPT Membership

Mr. Majors reported that he had received copies of the applications of the three nominees that the KPTA submitted to the Governor's office, and no appointment/re-appointment has yet been made.

Action taken: No action taken.

Temporary Permit Regulation

Mr. Martin brought to the Board's attention several concerns he had with the current language of 201 KAR 22:020 Section 5 regarding Temporary Permits. These concerns included the timeframe in which the supervising physical therapist is required to date and co-sign the documentation which may, in certain situations, be impractical and unnecessarily burdensome, and are inconsistent with the manner in which PT students are supervised.

Action taken: Following discussion, Mr. Grubb moved for the Board to file with the Legislative Research Commission an amendment to 201 KAR 22:020 Section 5(2) by:

- (1) substituting the word "A" for "The" at the beginning of the subsection;
- (2) deleting the language following the word "permit" in Section 5(2)(c);
- (3) substituting the words "an alternate" for the words "a temporary" in Section 5(2)(d);
- (4) filing corresponding amendments to the Board's Supervisory Agreement for Applicant With Temporary Permit form and to modify this form by permitting multiple physical therapist supervisors to be listed.

This motion was seconded by Mr. Martin, which carried.

KBPT Newsletter and Social Media

Mr. Kelly reported that he has created a Facebook government account for KBPT page and has assigned administrator privileges to himself pending further instruction from the Board. The Board discussed using social media as a tool to communicate with credential holders in a more timely manner than the circulation of a bi-annual newsletter. Also, the Board discussed the creation of a Twitter account and researching the cost of a mass email program like Constant Contact.

Action taken: The Board asked Mr. Kelly to investigate whether a Twitter account will allow the Board to restrict comments. Additionally, Mr. Kelly is to research the costs of a mass email program.

2017 Board Appointments

Following discussion, the Board made the following appointments, effective 01/01/17, unless otherwise noted:

- (1) 2017 Board Chair: Pursuant to the vote taken by the Board in September 2015, Mr. Barbato shall assume the position of Chair, effective 01/01/2017;
- (2) 2017 Board Chair-Elect: Pursuant to the vote taken by the Board in May 2016, Ms. Weinberg shall assume the position of Chair-Elect, effective 01/01/2017;
- (3) 2017 Complaint Committee Members: Ms. Volz moved that Mr. Barbato and Ms. Weinberg be appointed to the 2017 Complaint Committee. The motion was seconded by Mr. Grubb, which carried;
- (4) 2017 ADA Accommodations Committee/Liaison Members: Ms. Volz moved that Mr. Grubb and Ms. Pillow continue to serve as the ADA Accommodations Liaison Members until the FSBPT assumes the responsibility of approving ADA Accommodations. The motion was seconded by Mr. Grubb, which carried.
- (5) 2017 Continued Competency Liaison to KPTA: Ms. Volz moved that she currently continue as the Continue Competency Liaison and Ms. Pillow serve as an alternate if Ms. Volz is not reappointed. The motion was seconded by Mr. Grubb, which carried.
- (6) 2017 Finance Workgroup Members: Ms. Volz moved that Mr. Barbato and Ms. Weinberg serve as the 2017 Finance Workgroup members. The motion was seconded by Mr. Grubb, which carried.

2017 Board Meeting Schedule

Following consideration of various conferences which are expected to be held in 2017, and in an effort to avoid conflicts with the scheduling of these conferences the Board established the following schedule for its Board meetings in 2017:

Board Meetings: 9:00 a.m. to approximately 4:00 p.m.

January 19
March 16
May 18
July 20
September 28
November 16

Opinion Requests

The Board reviewed the following opinion requests from:

- (1) Tambra Roe, PT, who sought clarification concerning the formatting of her company's progress note regarding 30 day reassessments.

Action taken: Following discussion, the Board instructed staff to respond by advising Ms. Roe that if the format of the company progress note includes everything referenced in 201 KAR 22:053 Section 5(3)(c), the Board has no issues with the progress note format referenced in her inquiry.

(2) Stephanie Jones contacted the Board for clarification on whether physical therapists are allowed to write therapy orders.

Action taken: Following discussion, the Board instructed staff to respond to Ms. Jones that there is nothing within the Physical Therapy Practice Act that prohibits a physical therapist from writing orders for therapy.

Civil Matters and Investigations

2015 Complaint Committee

C2015-11: The Complaint Committee reported that as of 11/16/16, the Board's General Counsel has not been contacted by the credential holder. There will be a status update provided at the January 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 gave a brief history that at the last meeting the Board voted to close this case due to insufficient evidence. The Complaint Committee informed the Board that there was a Recommended Order of Dismissal that needed to be dismissed.

Action taken: The Complaint Committee recommended and moved to accept the Recommended Order of Dismissal and dismiss the administrative action. The motion was seconded by Mr. Grubb, which carried.

2016 Complaint Committee

BIC2016-06: The Board's General Counsel reported that the Board received a Hearing Officer's Recommended Order of Default in this case, dated 10/28/16, and the Board was thus required to deliberate whether to accept this Recommended Order in issuing the Board's Final Order, pursuant to KRS 13B.120.

Action taken: As Ms. Volz and Mr. Barbato serve on the Complaint Committee which considered the investigation in this case, and as they thus recused themselves from the Board's deliberations in issuing a Final Order, Ms. Volz made a motion for Mr. Grubb to assume the role of Acting Chair in her place. 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. Pillow made a motion for the Board to come out of Executive Session. The motion was seconded by Ms. Johnson.

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

Mr. Grubb 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 Ms. Johnson, which carried.

Mr. Grubb made a motion to revoke Garry Tucker's physical therapy license, number 003618. The motion was seconded by Ms. Johnson, which carried.

C2016-07: The credential holder in this action, Mr. Mitchell Magness, 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 payment of a fine in the amount of \$500.00 and completion of an ethics and documentation course approved by the Board on or before April 30, 2017.

As Board Chair, Ms. Volz reviewed each term of the agreement with Mr. Magness, who acknowledged his understanding, assent, and agreement to all terms of the agreement. Ms. Volz provided Mr. Magness 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 Mr. Grubb, which carried.

C2016-08: The Board's General Counsel reported that the Board received a Hearing Officer's Recommended Order of Default Dismissal in this case, dated 10/17/16, and the Board was thus required to consider the record and to deliberate whether to accept this Recommended Order of Default Dismissal in issuing the Board's Final Order, pursuant to KRS 13B.120.

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

Ms. Pillow 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 Mr. Martin, which carried.

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

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

Mr. Grubb made a motion for the Board to accept the Recommended Order of Default Dismissal. The motion was seconded by Ms. Johnson, which carried.

Mr. Grubb made a motion to revoke Margaret Harris' physical therapist assistant credential, number A00618. The motion was seconded by Ms. Johnson, which carried.

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

Action taken: After discussion, the Complaint Committee recommended and moved to close this case. The motion was seconded by Ms. Pillow, which carried.

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 staff to issue an Immediate Temporary Suspension (ITS). Also, Board Counsel is authorized to draft a Settlement Agreement that would require the credential holder to register with a drug testing facility approved by the IPTPC Chair and submit to a drug test. The credential holder would be eligible to have his/her credential administratively reinstated if the test results are deemed favorable by the IPTPC and Board Chair. The motion was seconded by Ms. Pillow, 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 authorize its General Counsel to file a Notice of Hearing and Formal Charges for failure to respond to a Board order. The motion was seconded by Ms. Johnson, which carried.

C2016-18: The Complaint Committee reported that this case involves possible treatment of patients without a reassessment.

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

C2016-19: The Complaint Committee reported that this case involves possible treatment of patients without a reassessment.

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

C2016-20: The Complaint Committee reported that this case involves possible substandard care.

Action taken: The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Ms. Pillow, which carried.

BIC2016-21: The Complaint Committee reported that this case involves allegations of attempting to obtain a license or certificate by fraud or material misrepresentation. Also, the Complaint Committee informed the Board that no response has been received as of 11/09/16. However, the Board Initiated Complaint was sent out to a second address and signed for on 11/07/16.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to file a Notice of Hearing if no response is received as of 11/27/16 or, alternatively, to attempt to resolve this case through settlement agreement if a response is timely received. The motion was seconded by Ms. Johnson, which carried.

IPTPC Report

Mr. Fingerson presented the IPTPC report dated 11/07/16. 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. Kelly reported to the Board that a letter was sent after the September meeting to Ms. Bentley requesting her to explain the current structure of her practice. Ms. Bentley responded explaining that her current practice is owned by her mother and that there are no other physical therapists employed.

Action taken: Following discussion, Mr. Curley is to contact Ms. Bentley's monitor, Ms. Dixon, and request that she review all the charts to determine whether another physical therapist is employed at the same location to discern if Ms. Bentley is engaging in solo practice. Board staff will provide an update at the January meeting.

REPORTS AND OTHER BUSINESS

Legal Report

Administrative Regulation – 201 KAR 22:045

Mr. Kelly reported that he appeared before the Interim Joint Committee for Health and Welfare on 10/19/16, and no questions were raised concerning the Board's proposed amendments to 201 KAR 22:045. Accordingly, the proposed amendments to this regulation became effective at the end of this Committee's meeting.

Technical Amendment to 201 KAR 22:053 – Clerical Correction

Mr. Majors reported that the LRC Compiler has agreed to accept the Board's request to have the clerical error referenced in 201 KAR 22:053 Section 4(2) addressed and corrected through the technical amendment process set forth in KRS 13A.040(9) and (10) without the Board having to formally file a proposed amendment to this regulation.

KBPT Credential Eligibility - Undocumented Immigrants

Mr. Majors reported that the issue of credential eligibility for undocumented immigrants was not specifically addressed during any of the presentations during FSBPT's 2016 Annual Conference in Columbus, Ohio. Based upon his discussions with FSBPT staff, however, Mr. Majors anticipates that this subject will be addressed in a FSBPT presentation either during FSBPT's 2017 Leadership Issues Forum or FSBPT's 2017 Annual Conference.

KBPT Liaison Report

Mr. Martin informed that there was nothing to report.

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 he met with the members of the Finance Workgroup on 11/16/16 to discuss in greater detail the Board's revenue, personnel and operating expenses, quarterly allotments and annual appropriations.

Action taken: No action taken.

CAPTE

Mr. Majors circulated copies of the most recent CAPTE report which listed pre-accreditation decisions on developing PT and PTA programs.

Action taken: No action taken.

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 10/07/16 covering the period from 07/01/16 through 09/30/16.

Action taken: No action taken.

CBT Comment Summary and Candidate Satisfaction Report

Mr. Majors reported the results of the latest CBT comment survey and satisfaction survey report. This report listed an overall satisfaction rating of 86.9% for all jurisdictions, while the overall satisfaction rating for Kentucky was listed at 100% in the first quarter, 90.9% in the second quarter, and 95.7% in the third quarter.

Action taken: No action taken.

Office Visit with Kentucky Department of Library and Archives

Mr. Majors reported that representatives with the Kentucky Department of Library and Archives (KDLA) have been invited to KBPT's offices on 11/21/16 to conduct an on-site assessment of KBPT's documents on file in relation to its record retention policy. Following this assessment, KDLA is expected to suggest several cost effective steps KBPT may take to transfer custody of some of these documents to KDLA and to possibly have some of these documents converted into electronic media for storage purposes. Mr. Majors will provide an update of this process to the Board members at the next meeting.

Action taken: No action taken.

KBPT School Presentations

Mr. Majors provided a report concerning school presentations conducted, and scheduled to be conducted, by Board staff relating to initial license application and the administration of the Jurisprudence Examination.

Action taken: No action taken.

Staff Performance Evaluations

Mr. Majors offered the Board a summary of his performance evaluations of all KBPT staff over the past year, and he explained the differences between the merit and non-merit positions held by staff. After summarizing Ms. Barton's last two annual performance evaluations as a KBPT non-merit staff member, Mr. Majors requested that the Board consider approving a salary increase for Ms. Barton.

Action taken: Following discussion, Mr. Barbato made the motion for the Board to increase Ms. Barton's annual salary by 5%. The motion was seconded by Mr. Grubb, which carried. Mr. Kelly, Mr. Curley, Ms. Bell and Ms. Barton were not present in the meeting room during the Board's discussion of this matter.

Evaluation – KBPT Executive Director

The Board discussed at length Mr. Majors' performance as Executive Director since his last evaluation in November of 2015.

Action taken: Following discussion, Ms. Volz made the motion for the Board to increase Mr. Majors' annual salary by 5%. This motion was seconded by Mr. Grubb, which carried. No member of the Board's staff was present in the meeting room during the Board's discussion of this matter. Ms. Volz and Mr. Barbato plan to schedule a specific date/time with Mr. Majors later in November to discuss his 2016 written performance evaluation in detail.

2017 Board Meeting Locations

The Board reviewed draft correspondence prepared by Mr. Majors to circulate to the program administrators for the Commonwealth's three Physical Therapy educational programs and its five Physical Therapy Assistant educational programs to gauge their interest in hosting a meeting of the Board in 2017. Mr. Majors agreed to update the Board at its next meeting concerning any response he receives to this invitation.

New Business

Ms. Pillow reported that she received a telephone call regarding a physical therapist student currently on clinical rotation. The student took a random drug test and failed. The individual contacting Ms. Pillow inquired on whether he/she should file a complaint with the Board.

Action taken: After discussion, the consensus of the Board is that the student is under the purview of the educational institution and the Board does not have jurisdiction over the student.

Ms. Johnson left the meeting at 2:30 p.m.

Mr. Majors reported that FSBPT had notified the Board that a PT candidate who recently was administered the NPTE was erroneously administered the same exam form that the candidate received during a subsequent exam administration and, following an assessment, FSBPT had determined that the score was not valid.

Action taken: After discussion, Mr. Grubb made the motion for the Board to not recognize the candidate's score as passing due to FSBPT's determination that the candidate's test score was invalid. The motion further declared that the candidate's exam would not count toward the candidate's lifetime limit of six attempts set forth in 201 KAR 22:020 Section 2(4). Ms. Pillow seconded this motion, which carried. Ms. Volz dissented. Mr. Barbato recused himself and left the meeting room during all consideration and discussion of this matter.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences

- a. FARB – Annual Forum
(01/26-29/17 – San Antonio, TX)
Mr. Kelly to serve as KBPT's authorized representative.
- b. CAPTASA – 2017 Conference Workshop
(01/27-28/17 – Lexington, KY)
Mr. Martin to serve as KBPT's authorized representative.
- c. FSBPT Regulatory Training for Members and Board Staff
(06/09-11/17 – Alexandria, VA)
(Dan Martin and one new KBPT member to serve as KBPT's authorized representatives.)
- d. CLEAR – 2017 Annual Education Conference
(09/13-16/17 – Denver, CO)
- e. FARB – 2017 Regulatory Law Seminar
(10/05-08/17 – Savannah, GA)
- 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 Mr. Barbato, which carried. The lists are attached to these minutes.

A motion was made by Mr. Grubb to adjourn the meeting at 4:00 p.m. The motion was seconded by Mr. Barbato, 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