



KENTUCKY BOARD OF PHYSICAL THERAPY

312 Whittington Parkway, Suite 102

Louisville, Kentucky 40222

Phone (502) 429-7140

Fax (502) 429-7142

<http://pt.ky.gov>

Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING January 19, 2017

Board Members: Ron Barbato, PT, Chair
Talia Weinberg, PT, Chair-Elect
Troy Grubb, PT
Dan Martin, PT
Linda Pillow, PT
Tina Volz, 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, KPTA Liaison

Board Guests: Trent Doud, Pharmacy Student
Daniel Ehringer, Pharmacy Student
Ty Franklin, Pharmacy Student

Board Members Absent: Virginia Johnson, Public Member

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Ron Barbato, at 9:01 a.m. on Thursday, 1/19/17, at the Board office. A quorum was present.

Ms. Weinberg made a motion to go into Executive Session pursuant to KRS 61.810(1)(c) regarding discussions of proposed or pending litigation against or on behalf of the Board. The motion was seconded by Ms. Volz, which carried. Mr. Barbato recused himself from this portion of the meeting and left the room. Mr. Curley, Ms. Barton and Dr. Kuperstein were not present in the meeting room during the Board's discussion of this matter.

Ms. Pillow made a motion to come out of closed session. The motion was seconded by Mr. Grubb, which carried.

Action taken: No action taken.

Public Comment

Dr. Kuperstein read a prepared statement to the Board concerning action taken during its November 2016 meeting regarding the FSBPT's determination that an NPTE applicant's test score was not valid. Dr.

Kuperstein stated that she disagreed with the Board's decision and that she felt the Board was not apprised of all of the pertinent information prior to taking action during the November 2016 meeting.

Action taken: No action taken.

Mr. Barbato returned to the Board room at 9:28 a.m.

Minutes for Previous Regular Meeting

The Board reviewed the draft minutes of the 11/17/16 Board meeting.

Action taken: Following review and discussion of the proposed amendments to the draft minutes, Mr. Grubb made the motion to approve the minutes of the Board meeting of 11/17/16, as amended. The motion was seconded by Ms. Weinberg, which carried.

Agenda Change

Chairman Barbato requested that, beginning with the January 2017 meeting and for all future meetings, the KPTA and KBPT Liaisons prepare a combined report to be presented at the beginning of each regular Board meeting immediately following approval of the minutes for the prior meeting.

KPTA/KBPT Liaison Report

KPTA's Liaison, Dr. Kuperstein, reported that KPTA Board is continuing to work with KBPT with regards to the Proposed Physical Therapy Licensure Compact.

Dr. Kuperstein further reported that many KPTA Board members have written letters to the Governor's office urging the administration to retain the KBPT as an independent Board. Drafts were developed with input from Leigh Ann Thacker, Lisa Volz, and Beth Ennis.

Dr. Kuperstein further reported that the Therapy Alliance Legislative Day will be held at 9:30 a.m. on February 8th in the Capitol Rotunda in Frankfort. Following a brief opening ceremony, members will disburse to meet with their state legislators. Talking points this year will center on the Compact for Physical Therapy legislation; #ChoosePT; and the profession's efforts to combat the opioid epidemic in Kentucky

Dr. Kuperstein also reported that the recreation therapists have revised their bill. They performed many of the changes that had been requested; however, there were language issues that KPTA believes need to be addressed before it may take a neutral stance on the bill. The OTs had a few additional comments to add and KPTA is awaiting a response.

Finally, Dr. Kuperstein reported that the University of Kentucky would be happy to host a KBPT meeting in November. She shared that they now have the capability to conduct a live audio/video feed to Hazard Community & Technical College for the public portion of the meeting.

KBPT's Liaison, Mr. Martin, reported that he presented the proposed changes to 201 KAR 22:020 regarding Temporary Permits and Remediation to KPTA. He informed the Board that KPTA is supportive of the proposed changes.

Board Discussions, Committees and Opinion Requests

Commonwealth's Reorganization through the new Department of Occupations and Professions

The Board reviewed and discussed Executive Orders 2016-849, 2016-855, and 2016-859 relative to the Governor's state boards and agencies reorganization plan.

Action taken: No action taken.

Proposed Physical Therapy Licensure Compact

Mr. Majors and Mr. Kelly provided an update on KBPT's bill concerning the Physical Therapy Licensure Compact. Mr. Kelly, Mr. Majors and Ms. Volz attended the meeting with the Licensing and Occupation Interim Committee on 11/28/16 in Florence, Kentucky.

Action taken: No action taken.

KBPT Database Replacement

Mr. Curley reported that the new database went live on 12/15/16. There have been numerous problems associated with the design and implementation of the database; however, staff has devoted a considerable amount of time rectifying these issues with Kentucky Interactive, and these efforts have resulted in several improvements made to the software program.

Action taken: No action taken.

KBPT Newsletter and Social Media

During the November Board meeting the Board directed Mr. Kelly to investigate whether a Twitter account will allow the Board to restrict comments and to research the costs of a mass email program. Mr. Kelly reported that there is no way to prohibit individuals from commenting on a Twitter account. Additionally, Mr. Kelly reported that the pricing for Constant Contact, a third party vendor providing mass email service, is determined by the number of individuals on a user's list and whether the user wants a professional email template. The cost of the program without the template is \$50-\$60 per month, and the cost of the program with the template is \$60-\$70 per month.

Action taken: After discussion, the consensus of the Board was to not create a Twitter account and to move forward with posting information via the Facebook account. Additionally, Ms. Volz made a motion to authorize the procurement of the Constant Contact program that would include the professional template. The motion was seconded by Ms. Weinberg, which carried.

FSBPT Supervised Clinical Practice Performance Evaluation for Foreign Educated PTs

Board Members and staff participated in a webinar regarding a new online tool available through the FSBPT for use in evaluating foreign educated applicants. Leslie Adrian, FSBPT's Director for Professional Standards, presented the webinar and gave an informative review of the tool. She informed the Board that the tool is available free of charge to all member boards, that it was developed specifically for physical therapists, and that it is determined to have content validity. Prior to beginning the webinar the Board discussed with staff the current process in place for evaluating the clinical skills of foreign educated applicants.

Action taken: The Board instructed staff to attempt to obtain additional information from Ms. Adrian concerning this tool and to schedule this matter for further discussion at the March Board meeting.

FSBPT NPTE Fee Increase

Mr. Majors reported that FSBPT has approved a fee increase for the NPTE exam from \$400 to \$485, effective 01/01/2018.

Action taken: No action taken.

Opinion Requests

The Board reviewed the following opinion requests from:

(1) Cassie B. Dawson, PT, who sought clarification concerning recent regulations in regards to concussions and who can determine whether to allow a player to return to play.

Action taken: Following discussion, the Board instructed staff to respond by advising Ms. Dawson that this inquiry is not an issue for the Board. Ms. Dawson should refer to the current KHSAA regulations.

(2) Julie Snowden, PT, who requested Category I continued competency hours be awarded for being appointed to serve on the Kentucky State Advisory Committee for Workers Compensation.

Action taken: Following discussion, the Board instructed staff to respond to Ms. Snowden that the current regulation, 201 KAR 22:045, does not allow the Board to award Category I continued competency hours for this position.

(3) Lisa Volz, KPTA Executive Director, who requested the Board to determine whether Category I Continued Competency hours should be awarded for a 2.5 hour lecture given to nursing students about physical therapy.

Action taken: Following discussion, the Board instructed staff to respond to Ms. Volz that, under the current practice, presenting a lecture for 2.5 hours would not qualify for Category I Continued Competency hours.

(4) Matt Loyd, PT, who requested clarification concerning billing practices in the workplace pertaining to RUG levels.

Action taken: Following discussion, the Board instructed staff to respond to Mr. Loyd that billing is not considered a Board issue unless fraud has occurred, and to provide Mr. Loyd a reference to the relevant portions of the Board's Physical Therapy Practice Act and its corresponding administrative regulations pertaining to fraudulent billing practices.

(5) Mr. Barbato, PT, who received a question from a credential holder pertaining to discharge summaries relative to required signatures within the electronic medical record. The inquiry focused upon the following: "If there are multiple disciplines listed on the discharge summary and the PT signs the document, does that mean they are substantiating all of the data on the form, or just the data relative to physical therapy?"

Action taken: After discussion, the consensus of the Board was that it has no issue with this situation as long as the discharge summary comports with the law. Mr. Barbato agreed to relay the Board's position to the subject credential holder.

Civil Matters and Investigations

2015 Complaint Committee

C2015-11: The Complaint Committee reported that as of 01/18/17, the Board's General Counsel has not been contacted by the credential holder. There will be a status update provided at the March Board meeting.

Action taken: No action taken.

BIC2015-12: The Complaint Committee gave a brief history that this case involves a credential holder who answered yes to question 11 of having "a malpractice or civil judgment entered against you relating to your practice of physical therapy."

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

BIC2015-13: Mr. Kelly gave a brief history that this case involves a credential holder who was placed under an Immediate Temporary Suspension (ITS) after the November Board meeting. The credential holder requested an emergency hearing that took place on 12/22/16. The hearing officer issued Findings of Fact; Conclusion of Law and a Final Order on 01/05/17 that upheld the ITS. Additionally, Mr. Kelly reminded the Board that a Notice of Hearing and Formal Complaint for the underlying complaint and investigation was filed on 12/06/16, and that he would request that the hearing officer schedule a prehearing conference so an administrative hearing may be scheduled.

Action taken: After discussion, the Complaint Committee recommended and moved to authorize Counsel to offer a Settlement Agreement that would require the credential holder to register with a drug testing facility approved by the IPTPC Chair and to submit to a drug test. The credential holder would be eligible to have his/her credential reinstated if the test results are deemed favorable by the IPTPC Chair and Board Chair. Ms. Volz recused herself from any consideration of this matter.

2016 Complaint Committee

C2016-16: The Complaint Committee reported that the complaint is ongoing. Additionally, after the November Board meeting a Notice of Hearing was filed for failure to respond to a Board Order. The credential holder has since submitted his/her response.

Action taken: The Complaint Committee recommended and moved that the Board authorize its Counsel to file a Motion to Dismiss the Administrative Action before the hearing officer. The motion was seconded by Ms. Weinberg, which carried. Ms. Volz recused herself from any consideration of this matter.

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

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to close this case due to insufficient evidence. The motion was seconded by Ms. Pillow, which carried. Ms. Volz recused herself from any consideration of this matter.

BIC2016-21: The Complaint Committee gave a brief history that this case involves allegations of attempting to obtain a license or certificate by fraud or material misrepresentation. The Complaint Committee reported that the individual has signed the proposed Settlement Agreement.

Action taken: The Complaint Committee recommended and moved to accept the signed Settlement Agreement. The motion was seconded by Ms. Weinberg, which carried. Ms. Volz recused herself from any consideration of this matter.

C2016-22: The Complaint Committee reported that this case involves allegations of fraud and material deception.

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

BIC2016-23: The Complaint Committee reported this case involves allegations of violations of the standards of supervision.

Action taken: The Complaint Committee recommended and moved to open a Board Initiated Complaint (BIC). The motion was seconded by Ms. Volz, which carried.

IPTPC Report

Mr. Fingerson presented the IPTPC report dated 01/11/17. 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. Monitor reports were submitted by the Board-appointed monitors and considered by the Board. The Board discussed at length a matter of compliance regarding Ms. Bentley and the terms of her Settlement Agreement as it pertains to solo practice.

Action taken: Following a review of Ms. Bentley's Settlement Agreement and discussion of her potential noncompliance with one or more of the required terms, Ms. Volz made a motion to open a Board Initiated Complaint (BIC). The motion was seconded by Ms. Pillow, which carried.

REPORTS AND OTHER BUSINESS

Legal Report

Administrative Regulations – 201 KAR 22:020 and 201 KAR 22:053

Mr. Kelly reported that the proposed amendments to 201 KAR 22:020 and 201 KAR 22:053 were submitted to LRC after the November Board meeting. There is a public hearing scheduled for 01/30/17, and Mr. Kelly or Mr. Majors will appear before the Administrative Regulation Review Subcommittee on 02/10/17.

Mr. Majors reported that the Board's request of LRC that it make a technical amendment to 201 KAR 22:053 regarding a clerical error was approved, and this corrective amendment became effective on 11/16/16.

Articles

Mr. Kelly discussed articles concerning an applicant's ADA claim filed with the Florida Bar Association, licensing issues addressed by the California Board of Nursing, the Nevada Board of Dentistry, and the Pennsylvania Board of Pharmacy, and several articles on telehealth.

FSBPT Director's Report

Mr. Barbato reported that there are eight states that are considering Compact legislation in their respective 2017 legislative sessions. The PTA exam was administered to 1500 exam applicants on 01/12/16, and no issues have been reported. The FCCPT has been given a directive they will no longer be able to vet foreign educated individuals who do not have a doctorate. Thus far, the FCCPT has not received a response from the United States Citizenship and Immigration Services (USCIS) regarding its rejection of their renewal application, and FCCPT is pursuing steps to compel USCIS to take action without further delay.

KBPT Executive 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 Board received ten fewer initial examination applications for the first two quarters of FY 2017 than the Board received for the same time period in FY 2015. He will monitor this development and report to the Board at its next meeting whether data from the third quarter of FY 2017 appears to represent a trend toward decreased application filings with the Board.

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 01/04/17 covering the period from 10/01/16 through 12/31/16.

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) met with Board staff on 11/21/16 to conduct an on-site assessment of the Board's documents on file in relation to its record retention policy. Following this assessment, KDLA representatives provided Board staff with a pricing list of the various options available to the Board for archiving and replicating purposes. Staff is in the process of boxing documents associated with lapsed licenses prior to 2007, financial records prior to 2014, and patient records associated with closed complaints. Once this process is completed, staff intend to transfer these boxes to KDLA for archiving purposes, and this process is expected to create additional storage space in the Board's offices.

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 88.32% for all jurisdictions, while the overall satisfaction rating for Kentucky was listed at 100% in the first quarter, 90.9% in the second quarter, 95.7% in the third quarter, and 98.6% in the fourth quarter.

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.

BoardEffect

Mr. Majors informed the Board that its contract with BoardEffect is effective through the month of June, and the Board will need to provide early notice if it decides not to renew the contract. He asked the Board members to give serious thought whether they would like to continue with the program.

Action taken: This Board will discuss this matter at the March meeting.

May Board Meeting

Mr. Barbato requested the May meeting be moved from 05/18/17, to either 05/11/17 or 05/25/17, due to a professional scheduling conflict.

Action taken: The Board agreed to reschedule the Complaint Committee meetings to 05/10/17 and the Board meeting to 05/11/17, which will transform this to a special meeting.

2017 Board Meeting Locations

Mr. Majors reported that he sent letters to the program administrators for the Physical Therapy and Physical Therapy Assistant education programs as to whether they would be interested in hosting a Board meeting in 2017. Thus far, Mr. Majors has received responses from several educational programs expressing interest in hosting a meeting at their locations.

Action taken: The Board will discuss this matter at the March meeting.

New Business

Sports Medicine Licensure Clarity Act

Ms. Pillow reported on the Sports Medicine Licensure Clarity Act (H.R. 302), a bill that will help protect healthcare professionals. Currently, healthcare professionals are not covered by their liability insurance when they travel across state borders to provide healthcare to athletic teams. The bill would close that loophole and require liability insurance to cover healthcare providers when they cross state borders to provide care for athletes.

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. KPTA Therapy Alliance Legislative Day
(02/08/17 – Frankfort, KY)
- d. 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.)
- e. Leadership Issues Forum (LIF)
(07/29-30/17 – Alexandria, VA)
- f. CLEAR – 2017 Annual Education Conference
(09/13-16/17 – Denver, CO)
- g. FARB – 2017 Regulatory Law Seminar
(10/05-08/17 – Savannah, GA)
- h. FSBPT – 2017 Annual Meeting, Conference and Delegate Assembly
(11/02-04/17 – Santa Ana Pueblo, NM)

New Licensee/Reinstatement/Renewal Applications

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

Mr. Grubb made the motion to adjourn the meeting at 3:26 p.m., seconded by Ms. Pillow, which carried.

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