



## KENTUCKY BOARD OF PHYSICAL THERAPY

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*Matthew G. Bevin*  
Governor

*Scott D. Majors, Esq.*  
Executive Director

### MINUTES OF MEETING July 20, 2017

Board Members: Ron Barbato, PT, Chair  
Talia Weinberg, PT, Chair-Elect  
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

KPTA Liaison: Janice Kuperstein, PT, PhD

Board Guests: Larry Brown, Commissioner  
Department of Professional Licensing, Public Protection Cabinet  
  
Ruby King, Credentials Branch Manager  
Kentucky Board of Nursing

Board Members Absent: Troy Grubb, PT  
Virginia Johnson, Public Member  
Tina Volz, PT

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Ron Barbato, at 9:03 a.m. on Thursday, 07/20/17, at the Board office. A quorum was present.

#### **Minutes for Previous Regular Meeting**

The Board reviewed the draft minutes of the 05/11/17 Board meeting.

**Action taken:** Following review and discussion of the proposed amendments to the draft minutes, Ms. Weinberg made the motion to approve the minutes of the Board meeting of 05/11/17, as amended. The motion was seconded by Ms. Pillow, which carried.

#### **Board Discussions, Committees and Opinion Requests**

##### **Memorandum of Agreement & Ratification**

Mr. Majors explained to the Board that, as of 07/05/17, he accepted a position with the Public Protection Cabinet's Department of Professional Licensing as its Deputy Commissioner. However, he has been

asked to serve as interim Executive Director to the Kentucky Board of Physical Therapy until the issuance of the Executive Order.

**Action taken:** After a brief discussion, Ms. Pillow made a motion to retroactively ratify Mr. Majors' actions taken on behalf of KBPT from 07/05/17 through 07/31/17. The motion was seconded by Ms. Weinberg, which carried.

Mr. Majors presented the Board with a proposed Memorandum of Agreement that would authorize him to continue to act as the interim Executive Director to KBPT, as assigned by the Public Protection Cabinet. The Memorandum of Agreement would include a monthly fee of \$7,500, to be paid to the Public Protection Cabinet, and be effective from 08/01/17 through 06/30/18.

**Action taken:** Following discussion, Ms. Weinberg made a motion to approve the Memorandum of Agreement, as amended. The motion was seconded by Ms. Pillow, which carried.

### **Physical Therapy Licensure Compact Commission Organizational Meeting**

Mr. Majors reported that he attended the Physical Therapy Licensure Compact Commission's first meeting on 06/14/17, via WebEx. He briefly summarized the information that had been previously disseminated to the Board members on 06/15/17 regarding the meeting. The Board members had a lengthy discussion on whether to assess a state fee for issuance of the Compact privilege.

**Action taken:** The Board elected to defer until the September meeting the issue whether to assess a state fee, and Mr. Majors was instructed to gather information from other Compact states concerning the state fees scheduled to be assessed for the Compact privilege. Additionally, Board members were requested to review the following two topics, and to be prepared to discuss these topics at the September Board meeting: (a) waiving the fees associated with active duty military and their spouses; and (b) whether the Jurisprudence Exam will need to be completed prior to issuance of the Compact privilege in Kentucky.

### **KPTA Letter to KBPT**

Mr. Barbato summarized a letter he received as KBPT Chair from Patrick Myers, KPTA President. In that letter, KPTA expressed a concern with a perceived lack of transparent communication between KPTA, FSBPT and KBPT. Additionally, Dr. Janice Kuperstein noted that KPTA was concerned that Kentucky was not represented within the Compact Commission's Officers or on either the Rules Task Force or the Bylaws Task Force following the elections held by the Commission during its meeting on 06/14/17. Mr. Barbato reported that, following Mr. Majors' appointment to the Department of Professional Licensing on 07/05/17 in a role that will enable him to serve as KBPT's interim Executive Director and to continue to serve as Kentucky's Compact Delegate, the Compact Commission appointed Mr. Majors to serve on its Rules Task Force.

**Action taken:** Following considerable discussion, the Board authorized Mr. Barbato to respond to the letter by referencing information that was available to the Board and its staff prior to the Compact Commission's meeting on 06/14/17. A draft letter of response was circulated to the members for their review during the meeting. Mr. Barbato shall provide the Board a status update at the September meeting, if warranted.

### **KBPT Commission Delegate**

The Board ratified that Mr. Majors, in his capacity as interim Executive Director, will continue to serve as the Commission Delegate for Kentucky until further notice, and he is authorized to serve in this capacity as Kentucky's Delegate at the Rules Task Force meeting in Alexandria, Virginia on 07/22-23/17.

**Action taken:** After discussion, Ms. Pillow made a motion to approve Mr. Majors' travel reimbursement for the Rules Task Force meeting in Alexandria, Virginia. Ms. Weinberg seconded the motion, which carried.

### **PTLC Commission Calendar**

Mr. Majors disseminated the PTLC Commission Calendar to the Board members for review.

**Action taken:** No action taken.

### **KPTA/KBPT Liaison Report**

Dr. Kuperstein, KPTA's Liaison, reported that KPTA's Annual Conference is scheduled to be held in Bowling Green, Kentucky on 09/08-09/17.

### **Criminal Background Checks**

Mr. Kelly reported that one of the new requirements of enacting the Compact is that all applicants for licensure in Kentucky must have a criminal background check that is completed by the Kentucky State Police and the Federal Bureau of Investigation. Ms. Ruby King, Credentials Branch Manager from the Kentucky Board of Nursing (KBN), gave a detailed presentation on KBN's process for criminal background checks.

**Action taken:** After discussion, the Board decided to codify the new background check requirements within 201 KAR 22:020; 040; and 070, as mandated by KRS 327.310. Ms. Pillow made a motion for Board staff to draft and file proposed amendments to the Board's administrative regulations relating to credentialing to require a nationwide criminal background investigation by means of fingerprint check by the Kentucky State Police and the Federal Bureau of Investigation, at the applicant's expense, effective January 1, 2018, contingent upon the Board's ability to fully participate in these law enforcement agencies' requirements. The motion was seconded by Ms. Weinberg, which carried.

### **Changes to Physical Therapy Act**

Mr. Kelly informed the Board that the Compact has been officially added into the Physical Therapy Practice Act as KRS 327.300.

**Action taken:** No action taken.

### **FSBPT Alternate Approval Pathway**

Mr. Majors reported that he received information from FSBPT that the system it currently has in place is unable to accommodate KBPT's lifetime limit per its administrative regulation 201 KAR 22:020; thus, KBPT does not qualify for FSBPT's Alternative Approval Pathway.

**Action taken:** After discussion, the Board decided to revisit this issue in six months.

### **FSBPT Jurisprudence Assessment Model**

Mr. Majors reported that the FSBPT has offered to develop our Jurisprudence Exam.

**Action taken:** After discussion, the Board decided to continue to develop the Jurisprudence Exam internally with the assistance of item writers selected by the Board.

### **FSBPT New Member and Administrator Training**

Mr. Martin gave a brief report to the Board concerning his attendance of FSBPT's New Member and Administrator Training in June. He discussed presentations relative to Board members using a separate email address for all board business, the value of tracking statistical information via the phone system, and ensuring that Boards ratify actions taken between meetings.

**Action taken:** No action taken.

### **KBPT Board Liaison to KPTA Continuing Competency Committee**

Mr. Majors reported that Ms. Tina Volz inquired if another Board member would be interested in assuming the role of the Board Liaison to the KPTA Continuing Competency Committee.

**Action taken:** After a brief discussion, Ms. Pillow made the motion for Ms. Weinberg to assume the role of KBPT Liaison to the KPTA Continuing Competency Committee. The motion was seconded by Mr. Martin, which carried.

#### **2015-2017 Audit**

Ms. Barton reported to the Board that the 2015-2017 continued competency audit has been completed, and a final report will be given at the September meeting.

**Action taken:** No action taken.

#### **2017 Offsite Board Meetings**

Mr. Majors reported that the September Board meeting is tentatively scheduled to be conducted at Bellarmine University. Further information will be provided to the members closer in time to the meeting.

**Action taken:** No action taken.

#### **KBPT/KPTA Differences in Purpose & Functionality**

Ms. Bell presented a document outlining the functional differences between the KBPT and the KPTA. This document was put together at the request of KPTA which was discussed by the Board at the May meeting.

**Action taken:** The Board approved the document, as amended, and it will be posted on the Board's website for informational purposes and shared with KPTA.

#### **Cabinet for Health & Family Services**

Mr. Majors explained that medical review panels are being created to review any medical malpractice claim before the case may proceed to circuit court. Mr. Majors informed the Board that he received a letter from the Cabinet for Health and Family Services requesting a current list of licensees and any additional information regarding credentials for individuals to serve on the review panels. Additionally, Mr. Majors reported that he authorized staff to submit a copy of the Board's database on a monthly basis to the Cabinet for Health and Family Services.

**Action taken:** No action taken.

#### **Opinion Requests**

(1) C.C.: Mr. Kelly gave a brief history that this individual was flagged during the 2017-2019 renewal cycle for a possible DUI. The Board voted on 04/17/17 to authorize staff to contact the credential holder and offer him/her voluntary participation in IPTPC. The credential holder responded with a letter raising several questions and concerns regarding the IPTPC program. At the May Board meeting, the Board authorized Counsel to contact the credential holder and offer to clarify and address any remaining concerns he/she had with the IPTPC program. The credential holder submitted a letter declining participation with the IPTPC program, and requested to personally address the Board regarding this issue. Mr. Kelly reached out to the credential holder, inviting him/her to the July Board meeting, but the credential holder did not respond.

**Action taken:** After discussion and consideration of the recommendation made by Mr. Fingerson that this credential holder enter into a two year mandatory IPTPC agreement, Ms. Pillow made a motion to authorize Board staff to issue a Board Order requiring the credential holder to sign an IPTPC agreement within twenty days and, if the credential holder fails to respond, for the Board to further authorize Counsel to file a notice of hearing and formal charges. The motion was seconded by Ms. Weinberg, which carried.

(2) J.S., Examination Applicant: The applicant has been charged with two DUI offenses in the past ten (10) years. Board staff reported that a letter was sent to the applicant suggesting he/she contact Mr.

Fingerson with IPTPC. Additionally, staff reported that the individual has passed his/her NPTE, but has not been issued a credential.

**Action taken:** After discussion, Ms. Weinberg made a motion for the Board to issue an Order requiring the credential holder to sign an IPTPC agreement within twenty days and, if the credential holder fails to timely respond, for the Board to deny issuing the credential. The motion was seconded by Ms. Pillow, which carried.

(3) Patrick Myers, PT who sought clarification for questions relating to the professional and ethical boundaries to mandate a licensed physical therapist to use a specific treatment methodology or tool. The Board was also provided documents produced from ongoing litigation in the United States District Court for the Southern District of Indiana involving this issue.

**Action taken:** Following considerable discussion, the Board instructed Counsel to draft a response to Mr. Myers, citing to the applicable provisions of the Physical Therapy Practice Act and its corresponding administrative regulations, which address the questions presented relative to the practice of physical therapy and the ethical standards.

(4) Dr. Janice Kuperstein, PT who sought clarification on whether two UK faculty members would be considered appropriate clinical instructors for a foreign educated endorsement applicant serving supervised practice. Both individuals are not listed as clinical instructors; however, they both work within a CAPTE physical therapy program and supervise students within a clinical setting.

**Action taken:** Following considerable discussion, the Board informed Dr. Kuperstein that the individuals would not be prohibited from serving as clinical instructors under 201 KAR 22:070.

Additionally, Dr. Kuperstein sought clarification on whether hours worked as a faculty person would be considered towards the total number of hours for supervised practice requirements.

**Action taken:** After a lengthy discussion, the Board informed Dr. Kuperstein that there was nothing in the regulation that prohibited an individual from including hours spent as a faculty member towards supervised practice.

### **Civil Matters and Investigations**

In view of the fact that three Board members were not present for this meeting, the Board announced the need to depart from its policy and procedures relating to the recusal of current members of the 2016 and 2017 Complaint Committees during the Board's consideration of the reports from these Committees and the votes cast by the Board relating to these reports.

#### **2016 Complaint Committee**

**C2016-16:** The Complaint Committee reported that the complaint is ongoing.

**Action taken:** No action taken.

**C2016-21:** The credential holder in this action, Michael Chumbler, appeared before the Board, without counsel, to review the terms of a Settlement Agreement that was approved by the Board at the January 2017 Board meeting. The terms include mandatory IPTPC participation and an appearance before the Board prior to being issued a credential.

As Board Chair, Mr. Barbato reviewed the terms of the Settlement Agreement with Mr. Chumbler, who acknowledged his understanding, assent and agreement to all terms of the agreement.

**Action taken:** After providing Mr. Chumbler the opportunity to have his questions addressed by the Board, and following discussion, Mr. Martin made a motion to issue Mr. Chumbler a credential. The motion was seconded by Ms. Weinberg, which carried.

**C2016-22:** The Complaint Committee gave a brief history that this case involves allegations of fraud and material deception.

**Action taken:** The Complaint Committee recommended and moved to authorize Board Counsel to prepare a proposed Settlement Agreement with the following terms; (a) three years of probation; (b) three years of monitoring with the ability to petition for release after successfully completing two years; (c) completion of continued competency courses in documentation and ethics; and (d) payment of a fine, the exact amount of which to be proposed by Counsel during negotiations and to be approved by the Board. The motion was seconded by Ms. Pillow, which carried.

**BIC2016-23:** The Complaint Committee gave a brief history that this case involves possible violation of the standards of supervision.

**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 Mr. Martin, which carried.

### **2017 Complaint Committee**

**BIC2017-03:** The Complaint Committee gave a brief history that this case involves a credential holder failing to notify the Board of a Malpractice Settlement during the 2015 renewal cycle.

**Action taken:** The Complaint Committee recommended and moved to authorize Board Counsel to issue a Private Admonishment against the credential holder, with a fine of \$250, and to give Counsel the authority to move forward with formal charges if the Private Admonishment is not timely accepted by the credential holder. The motion was seconded by Mr. Martin, which carried.

**BIC2017-04:** The credential holder in this action, Donald Bruce Taylor, appeared before the Board with his counsel, Mr. David Kaiser, to review the terms of the proposed settlement agreement. These terms include, but are not limited to: (a) thirty day suspension, probated for two years; (b) monitoring for two years, thus supplanting the previous monitoring requirement and extending the monitoring period by one year; and (c) restriction of home health practice.

As Board Chair, Mr. Barbato reviewed each term of the agreement with Mr. Taylor, who acknowledged his understanding, assent, and agreement to all terms of the agreement.

**Action taken:** After providing Mr. Taylor the opportunity to have his questions addressed by the Board, and following discussion, Ms. Weinberg made the motion for the Board to approve and file of record the subject Settlement Agreement. This motion was seconded by Ms. Pillow, which carried.

**BIC2017-05:** The Complaint Committee reported that the credential holder in this case had a trial date scheduled on 07/18/17, which has been continued until 12/19/17. This case is ongoing.

**Action taken:** No action taken.

**BIC2017-06:** The Complaint Committee reported that the credential holder in this administrative action remains under Immediate Temporary Suspension (ITS). Additionally, there is a pre-trial conference in the underlying criminal action scheduled for 08/18/17. This case is ongoing.

**Action taken:** No action taken.

**C2017-10-R:** The Complaint Committee gave a brief history that this credential holder failed to renew his/her credential before the 03/31/17 deadline and continued to practice on a lapsed credential. The credential holder has accepted the Private Admonishment that was offered after the May Board meeting.

**Action taken:** No action taken.

**C2017-11:** The Complaint Committee gave a brief history 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 close this case due to insufficient evidence. The motion was seconded by Ms. Pillow, which carried.

**C2017-12:** The Complaint Committee gave a brief history that this case involves allegations of failure to respect the rights and dignity of a patient.

**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 Mr. Martin, which carried.

**C2017-13:** The Complaint Committee gave a brief history that this case involves allegations of failure to respect the rights and dignity of a patient.

**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 Mr. Martin, which carried.

**C2017-14:** The Complaint Committee reported that this case involves allegations of a credential holder failing to discontinue services when a reassessment had not been completed.

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

**C2017-15:** The Complaint Committee reported that this credential holder self-reported that (s)he has been criminally charged with 3<sup>rd</sup> degree rape. The credential holder has signed an Agreed Order of Voluntary Temporary Suspension.

**Action taken:** The Complaint Committee recommended and moved to accept the Agreed Order of Voluntary Temporary Suspension and to open an investigation. The motion was seconded by Mr. Martin, which carried.

**CE2017 16-33:** The Complaint Committee reported that all of these cases involve credential holders who were deficient with their Continued Competency requirements.

**Action taken:** The Complaint Committee recommended and moved to authorize Board Counsel to draft Private Admonishments consistent with the Board's procedure as established in the 2013-2015 CE Audit process and as affirmed by the Board for the 2015-2017 CE Audit process. The motion was seconded by Ms. Pillow, which carried.

**CE2017 34-36:** The Complaint Committee reported that all of these cases involve credential holders who were deficient with their Continued Competency requirements.

**Action taken:** The Complaint Committee recommended and moved to authorize Board Counsel to draft Settlement Agreements consistent with the Board's procedure as established in the 2013-2015 CE Audit process and as affirmed by the Board for the 2015-2017 CE Audit process. The motion was seconded by Mr. Martin, which carried.

### **IPTPC Report**

Mr. Fingerson presented his written IPTPC report dated 05/01/17. IPTPC cases which previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

Additionally, Mr. Fingerson reported to the Board that the credential holder in C2012-11, who has violated his/her IPTPC agreement, has been in contact with him (Mr. Fingerson) and is scheduled for an assessment in August. Staff reported that the credential holder has signed an Agreed Order of Temporary Suspension.

**Action taken:** After considering this information, Ms. Pillow made a motion to accept the Agreed Order of Temporary Suspension and authorize staff to administratively reinstate the credential holder prior to the September Board meeting if both the IPTPC Chair and Board Chair agree that the results from the assessment are favorable. The motion was seconded by Mr. Martin, which carried.

### **Update on Monitoring Probations**

The Board noted the following credential holders who are presently being monitored: Tiffiney S. Bentley, PT, Sabrina Pletz, PTA, and Donald Bruce Taylor, PT. Monitor reports were submitted by the Board-appointed monitors and considered by the Board.

Additionally, Mr. Curley presented the Board a list of three names for individuals to be considered as a replacement monitor for Donald Bruce Taylor.

**Action taken:** Following review and discussion, the Board decided on Marissa Frost, PT to serve as Mr. Taylor's new monitor. Mr. Curley shall contact Mr. Taylor and Ms. Frost concerning appropriate next steps for this process.

## **REPORTS AND OTHER BUSINESS**

### **Legal Report**

#### **Administrative Regulation – 201 KAR 22:070**

Mr. Kelly updated the Board on the recent changes to 201 KAR 22:070 that were recently approved by the Interim Joint Committee on Health and Welfare, including an adjustment to the required TOEFL scores and the approval of FSBPT's Performance Evaluation Tool.

#### **Articles**

Mr. Kelly shared updates in other jurisdictions regarding licensure portability, anti-competitiveness, and unauthorized practices.

#### **Americans with Disabilities Act**

Mr. Kelly brought up potential ADA issues as they relate to the Board's application for credentialing. Mr. Kelly said he would work with Mr. Majors to provide some recommendations as to potential changes in the application to ensure ADA compliance, and a report will be provided to the Board at the September meeting.

### **FSBPT Director's Report**

Mr. Barbato informed the Board that the Model Disciplinary Guidelines will be presented at FSBPT's Leadership Issues Forum (LIF) in July. He explained that the document will be a useful tool, particularly for jurisdictions that do not have experience with disciplinary actions and fines. Additionally, Mr. Barbato reported that FSBPT is currently drafting a response to a document released by the APTA called, *Best Practice for Physical Therapist Clinical Education (RC-14-14)*. He explained that this report proposes what APTA is considering the best approach to educate and credential physical therapists. He briefly

reviewed topics relating to clinical internships that result in mandatory residencies and tiered licensure, and he noted that this will likely be a topic discussed at LIF in July.

## **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 distributed a financial worksheet highlighting in greater detail the Board's revenue, personnel and operating expenses, quarterly allotments and annual appropriations. Mr. Majors also reported that he met with the members of the 2017 Finance Workgroup on 07/19/17 to discuss in greater detail the Board's revenue, personnel and operating expenses, quarterly allotments and annual appropriations.

**Action taken:** No action taken.

### **Commonwealth Office of Technology**

Mr. Majors reported that the wireless access point located in the Board's conference room was scheduled to be removed by the Commonwealth Office of Technology in the near future, and a new wireless access point was scheduled to be installed in the Board of Dentistry's offices which KBPT members and staff will be able to access. Mr. Majors further reported that he experienced several outages of his email account over the past two weeks as a result of the transition of his duties from KBPT to the Public Protection Cabinet, but that this issue appears to have been resolved.

### **Department of Insurance**

Mr. Majors circulated copies of the quarterly malpractice report submitted by the Department of Insurance Public Protection Cabinet concerning health care providers with settlement and/or judgments, dated 07/12/17 covering the period from 04/01/17 through 06/30/17.

**Action taken:** No action taken.

### **KBPT School Presentations**

Ms. Bell and Ms. Barton provided a brief report on their presentation at the University of Kentucky on 05/22/17.

**Action taken:** No action taken.

### **Conferences and Meetings Relating to Physical Therapy**

The Board reviewed the following schedule of upcoming conferences

- a. Leadership Issues Forum (LIF)  
(07/29-30/17 – Alexandria, VA)  
(2017 KBPT Voting Delegate Talia Weinberg shall serve as KBPT's authorized representative.)
- b. CLEAR – 2017 Annual Education Conference  
(09/13-16/17 – Denver, CO)
- c. FARB – 2017 Regulatory Law Seminar  
(10/05-08/17 – Savannah, GA)
- d. FSBPT – 2017 Annual Meeting, Conference and Delegate Assembly  
(11/02-04/17 – Santa Ana Pueblo, NM)  
(Louis Kelly and Stephen Curley shall serve as KBPT co-presenters fully funded by FSBPT.)

### **New Licensee/Reinstatement/Renewal Applications**

**Action taken:** Ms. Weinberg 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.

Ms. Weinberg made the motion to adjourn the meeting at 4:08 p.m., seconded by Ms. Pillow, which carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott D. Majors". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping underline.

Scott D. Majors  
Executive Director