



## KENTUCKY BOARD OF PHYSICAL THERAPY

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*Matthew G. Bevin*  
Governor

*Scott D. Majors, Esq.*  
Executive Director

### MINUTES OF MEETING March 15, 2018

Board Members: Talia Barton, PT, Chair  
Dan Martin, PT, Chair-Elect  
Edward Dobrzykowski, PT  
Ron Pavkovich, PT  
Tom Pennington, PT  
Linda Pillow, PT  
Jeff Vincent, Public Member

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

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD

FSBPT Director: Ron Barbato, PT

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Talia Barton, at 9:00 a.m. on Thursday, 03/15/18, at the Board office. A quorum was present.

#### **KPTA Liaison Report**

Dr. Kuperstein reported on the Worker's Compensation bill as it pertained to the Certificate of Need process. She explained that the bill would eliminate the Certificate of Need for various forms of therapy practices.

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

The Board reviewed the draft minutes of the 01/18/18 Board meeting.

**Action taken:** Following review and discussion of a proposed amendment to the draft minutes, Mr. Dobrzykowski made a motion to approve the minutes of the Board meeting of 01/18/18 with one typographical correction. The motion was seconded by Mr. Martin, which carried.

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

##### **Physical Therapy Licensure Compact**

Mr. Kelly informed the Board that the Kentucky State Police (KSP) informed him that the FBI is requiring the Board to amend the language of KRS 327.310 as it pertains to criminal background checks before it will issue an ORI number. The Kentucky Physical Therapy Association (KPTA) immediately offered its assistance and support. Mr. Kelly reported that, with tremendous assistance provided by KPTA and

Representative Melinda Gibbons Prunty, Board staff was able have HB 398 filed on an emergency basis to amend KRS 327.310 so it comports with the FBI's requirements. Mr. Kelly noted that he anticipates HB 398 will pass both the House and Senate this legislative session, and it could become effective in late March.

Additionally, Mr. Kelly reported that an emergency regulation amendment was filed and approved for 201 KAR 22:020, 201 KAR 22:040, and 201 KAR 22:070 removing the May 1, 2018 effective date for the criminal background check requirement. This will enable the Board to continue to issue credentials while it seeks to obtain an ORI number and while it notifies and educates the PT and PTA educational programs in Kentucky. Mr. Kelly also reported that regular proposed amended administrative regulations have been filed to accompany the emergency regulations. Finally as to this issue, Mr. Majors reported that the FSBPT and the Physical Therapy Compact Commission have been kept informed of the Board's efforts to address the matter.

Mr. Majors also distributed to the members a copy of the press release issued by the Compact Commission concerning its special meeting held on 02/09/18 to address Colorado's status as a member state. During this meeting, the full Commission voted to reinstate Colorado as a member in good standing with the Commission.

#### **Administrative Regulation – 201 KAR 22:170**

Mr. Kelly reported to the Board on the status of the proposed new administrative regulation, 201 KAR 22:170, which incorporates the Rules implemented by the Physical Therapy Compact Commission into the Board's administrative regulations.

#### **HB 465 – Board Reorganization**

Mr. Kelly reported that HB 465 pertaining to board reorganization was filed in the 2018 Legislative Session. Ms. Talia Barton also provided a report to the Board concerning a meeting she attended on 02/21/18 in Frankfort with Public Protection Cabinet staff and members of other licensing boards to discuss the Cabinet's proposed reorganization of licensing boards.

**Action taken:** No action taken.

#### **CAPTASA**

Mr. Pennington and Mr. Dobrzykowski both gave a report to the Board concerning their attendance of the 2018 CAPTASA conference in Lexington on 01/26-27/18. Mr. Pennington discussed presentations relative to the disease of addiction, collaborative approaches for substance abuse, the dynamics of addiction and recovery, and psychiatric disorders in addiction. Additionally, Mr. Pennington reported that he attended an AA meeting as an observer, and his conference attendance provided him a greater understanding of the disease of addiction. Mr. Dobrzykowski discussed conference presentations he attended relative to the pit falls into and during recovery, alcohol abuse and the elderly, current trends in drug use, internet gaming addiction, and internet pornography addiction.

#### **Medical Review Panel**

Mr. Kelly reported to the Board that he received a call from a former Board member who expressed concerns with the process on how physical therapists are selected to serve on the state's Medical Review Panels. Mr. Kelly briefly explained the procedure on how a physical therapist is chosen to serve, and he explained that Board staff provide an updated licensure list to the Medical Review Panel at the beginning of every month. From this list, Mr. Kelly noted, the plaintiff and the defendant each choose a physical therapist, and in turn, they choose the third member of the panel. Additionally, Mr. Kelly informed the Board that the Medical Review Panel process is currently in litigation.

During this discussion, Dr. Kuperstein, serving in her role as KPTA Liaison, voiced several concerns that individuals have brought to the attention of KPTA concerning serving on the Medical Review Panel. The concerns are relative to reimbursement amounts, the fact that you cannot decline serving on the panel, and confidentiality issues vis-a-vis the Board's mandatory reporting requirements found in the statute.

**Action taken:** After a lengthy discussion, the Board asked Mr. Kelly to review the Medical Review Panel statute and provide a report at the May meeting to determine if there is a confidentiality issue that prohibits a PT from meeting the Board's mandatory reporting requirements.

#### **FSBPT – Model Board Action Guidelines**

Mr. Dobrzykowski, Mr. Curley and Mr. Kelly reported they participated in a FSBPT webinar on Model Board Action Guidelines on 02/28/18. The webinar provided an outline and matrix of the available program for disciplinary actions. Both Mr. Curley and Mr. Kelly suggested that model disciplinary guidelines are not something that this Board should necessarily adopt at this time considering the well-established disciplinary process the Board currently utilizes. Additionally, they reported this tool was designed for jurisdictions that do not have an established disciplinary process or do not have an abundant disciplinary caseload.

#### **FAQ Temporary Permit**

Mr. Curley presented the FAQ Temporary Permit document previously drafted by Ms. Beth Bell for the Board's website. The Board members and Dr. Kuperstein reviewed the document and approved it for posting on the website pending the amended changes.

#### **Updated PACE Brochure**

Mr. Curley presented the revised PACE brochure that was drafted by staff and previously approved by Mr. Fingerson. The Board approved the revised PACE brochure.

#### **Change of Address Portal**

Mr. Curley gave a brief presentation of the Change of Address Portal that is now available to all credential holders via the website.

#### **Interactive Applicant Portal**

Mr. Curley reported that the Interactive Portal is currently in production, and he gave a brief presentation to the Board on the functionality of the program.

#### **Monitor Training Program**

Mr. Curley reported that he has been in contact with the Monitor Training Program taskforce, and this process is ongoing. He will give an update at the May Board meeting.

#### **Disciplinary Reporting**

Mr. Curley discussed with the Board the possibility of creating a Disciplinary Reporting page on the Board's website. Previously this information was published in the biannual Board newsletter; however, as of March of 2017, the Board is no longer publishing newsletters. The Board approved staff to begin designing a page on the website to facilitate easy access to disciplinary actions.

#### **APTA and FSBPT New Partnership**

Mr. Majors reported that the APTA and FSBPT have embarked upon a new partnership via aPTitude. When a credential holder signs up for aPTitude and (s)he completes any APTA continued competency, the certificates of completion are automatically populated into the credential holder's account.

#### **Staff Reports and Discussions**

The Board reviewed the following staff reports from:

- (1) Amanda Gabehart, PT, who sought clarification on whether a physical therapist can initiate and build a plan of care for home health aides for bathing purposes. Following discussion, the Board instructed staff to respond by informing Ms. Gabehart that there is nothing in the Kentucky Physical Therapy Practice Act that prohibits a physical therapist from providing recommendations to home health aides regarding bathing. However, the physical therapist must make it clear that the recommendations are not skilled physical therapy services or part of the Plan of Care.

- (2) KBPT staff brought an endorsement application before the Board for review. The endorsement applicant had previous discipline in Texas for treating a patient without the required reassessment. After the Board reviewed the application, Mr. Pavkovich made a motion to issue a credential with no restrictions once the application process is completed. The motion was seconded by Mr. Vincent, which carried.
- (3) James Mountain, PT, who sought clarification on whether a physical therapist is able to provide nutritional recommendations and questioned how to bill such services. Following discussion, the Board instructed staff to respond by stating that there is nothing in the Kentucky Physical Therapy Practice Act which prohibits a physical therapist from providing nutritional recommendations to patients; however, staff were instructed to advise that, before doing so, a physical therapist should check with the Kentucky Board of Licensure and Certification for Dieticians and Nutritionists to ensure that such activities would not violate its laws or regulations. Regarding the question on billing and insurance reimbursement, the Board does not delve into reimbursement issues.
- (4) Theresa Luecke, who sought clarification on whether a physical therapist is able to administer medication through Iontophoresis. Following discussion, the Board instructed staff to respond that physical therapists are permitted to administer medication through Iontophoresis as long as it is within the physical therapy Plan of Care.

### **2018 Offsite Board Meeting**

Mr. Majors reported to the Board that he contacted Western Kentucky University about hosting the September Board meeting. Mr. Harvey Wallmann of Western Kentucky University (WKU) responded that, unfortunately, due to space limitations, WKU is unable to host the September 2018 Board meeting. During a break, Mr. Majors reached out to Mr. Wallmann to inquire if KBPT's meeting on 11/15/18 would be a more feasible date to host an offsite Board meeting. Mr. Majors reported that Mr. Wallmann informed him that it is currently Spring Break and he would need additional time to respond, however, he did mention that Thursdays, in general, pose a problem with the availability of space.

**Action taken:** Mr. Majors will report back to the Board at the May meeting.

## **Civil Matters and Investigations**

### **2017 Complaint Committee**

**BIC2017-05:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2017-06:** The Complaint Committee reported that the credential holder is now expected to appear before the Board at its meeting on 05/17/18 to review terms of a proposed settlement agreement.

**Action taken:** No action taken.

**C2017-15:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**C2017-41:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken. Ms. Talia Barton recused herself and left the room during the entire discussion of this case.

**C2017-42:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2017-45:** The Complaint Committee reported that this case involves allegations of a possible term protection violation.

**Action taken:** The Complaint Committee recommended and moved to close this case due to insufficient evidence. The motion was seconded by Mr. Pennington, which carried.

### **2018 Complaint Committee**

**2016-16:** (By virtue that the original members of the 2016 Complaint Committee are no longer members of the Board, this case was reassigned to the 2018 Complaint Committee.) The Complaint Committee reported that the credential holder, Steve Shepherd, has signed the proposed Agreed Order of Voluntary Surrender, and Board staff forwarded the information to CMS.

**Action taken:** The Complaint Committee recommended and moved to accept the proposed Agreed Order of Voluntary Surrender. The motion was seconded by Ms. Pillow, which carried.

**BIC2018-03:** The Complaint Committee gave a brief history on this credential holder including issuing a Board Initiated Complaint at the January Board meeting for failing to follow a Board Order regarding IPTPC compliance.

**Action taken:** The Complaint Committee reported that, after receiving the response from the credential holder, it recommended and moved to authorize Board Counsel to offer a Settlement Agreement with specific terms, as authorized by the Board, and if the credential holder fails to enter into the proposed Settlement Agreement within twenty days, for the Board to authorize Counsel to file a Notice of Hearing and Formal Charges. The motion was seconded by Mr. Pavkovich, which carried.

**BIC2018-04:** The Complaint Committee reported that this is a new case dealing with alleged fraudulent billing and supervision/delegation issues.

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

**C2018-05:** The Complaint Committee reported that this case involves an endorsement applicant who has a misdemeanor conviction issued in West Virginia for destruction of property.

**Action taken:** After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to take no action. The motion was seconded by Ms. Pillow, which carried.

### **IPTPC Report**

Mr. Fingerson presented his written IPTPC report dated 03/06/18. 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 on a credential holder who signed a voluntary IPTPC agreement prior to being issued a credential. He reported that the individual has been compliant with all the terms and conditions of his/her agreement. Board staff reported that the credential holder sent in a formal request to the Board to be released from IPTPC.

**Action taken:** After discussion and upon the recommendation of Mr. Fingerson, the Board authorized the credential holder to be released from IPTPC.

### **Update on Monitoring Probations**

The Board noted the following credential holders who are presently being monitored: Sabrina Pletz, PTA; Donald Bruce Taylor, PT; and Andrea Brown, PT. A Monitoring report was submitted by the Board-appointed monitor for Mr. Taylor and considered by the Board.

**Action taken:** No action taken.

## **REPORTS AND OTHER BUSINESS**

### **Legal Report**

Mr. Kelly updated the Board on several pending bills before the General Assembly in the 2018 Regular Session. He also updated the Board on a recent Open Meetings decision involving the University of Louisville and a court case in Alabama regarding that state's disciplinary databank.

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

#### **Physical Therapy Compact Update**

Mr. Barbato gave a brief update on the progress of the Physical Therapy Compact. Currently, there are fifteen member states and about eight or nine additional states have bills pending in their respective 2018 legislative sessions pertaining to the Physical Therapy Compact. The Physical Therapy Compact is tentatively scheduled to begin issuing licenses mid-2018. Additionally, Mr. Barbato reported that Kentucky is not the only member state currently experiencing difficulties obtaining an ORI number.

#### **Risk Based Regulation**

Mr. Barbato reported on the merits of creating a regulatory environment to be more proactive rather than reactive. The FSBPT is trying to develop materials on how a jurisdiction can identify risks and mitigate said risks up front rather than afterwards.

#### **Ethics Project – Criminal Background Checks and Recidivism**

Mr. Barbato reported that the FSBPT is interested in determining which states, if any, have adopted guidelines or decision trees when administering license applications from applicants with criminal histories.

### **KBPT Executive Director's Report**

#### **Financial Report**

The Board reviewed monthly, quarterly and FY 2018 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 2018 Finance Workgroup on 03/14/18 to discuss in greater detail the Board's revenue, personnel and operating expenses, quarterly allotments and annual appropriations.

**Action taken:** No action taken.

#### **Department of Insurance**

Mr. Majors circulated copies of two quarterly malpractice reports submitted by the Department of Insurance with the Public Protection Cabinet concerning health care providers with settlement and/or judgments, each dated 02/09/18, covering the periods from 07/01/17 through 09/30/17 and 10/01/17 through 12/31/17, respectively.

**Action taken:** No action taken.

## **KBPT Staffing**

Mr. Martin made a motion to go into Executive Session pursuant to KRS 61.810(f) for the purpose of discussing staffing issues. The motion was seconded by Ms. Pillow, which carried.

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

Mr. Pavkovich made a motion to authorize Mr. Majors to restart the advertising and interview phase for the vacant Administrative Specialist III/Licensure Coordinator position, and further authorize him to hire someone from a state approved temporary agency to assist with clerical tasks in the office until the Administrative Specialist III/License Coordinator position is filled. The motion was seconded by Ms. Pillow, which carried.

Additionally, Mr. Pennington made the motion to appoint Mr. Majors as the permanent, full-time Executive Director of the Board of Physical Therapy with an April 9 start date or, alternatively, a start date after April 2 for which the appointment may be processed by the Personnel Cabinet. The motion was seconded by Mr. Martin, which carried.

Mr. Pennington made a motion to go back into Executive Session pursuant to KRS 61.810(f) for the purpose of discussing the salary for Mr. Majors. The motion was seconded by Ms. Pillow which carried.

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

Ms. Pillow made the motion to offer Mr. Majors an annual salary of \$91,500 with a 5% increase after the six month probationary period, as referenced in 101 KAR 3:045 Section 4(1)(a), and to have Mr. Majors continue to serve as Kentucky's Physical Therapy Compact Delegate upon his appointment. The motion was seconded by Mr. Vincent, which carried. Mr. Majors accepted this offer.

## **KBPT School Presentations**

Ms. Krista Barton briefly reported on the school presentations at Bellarmine University, Madisonville Community College, Jefferson Community & Technical College and Hazard Community & Technical College. Additionally, Ms. Barton informed the Board that a school visit is scheduled for Somerset Community College on 03/23/18. She reported that there will be a total of 20 students present, and Mr. Curley will be assisting with the presentation.

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

The Board reviewed the following schedule of upcoming conferences:

- a. Regulatory Training for Members and Board Staff  
(06/08-10/18 – Alexandria, VA)  
Mr. Majors reported that FSBPT only has two seats available for KBPT representatives to attend the Regulatory Training for Members and Board staff. However, if there is a cancellation from another jurisdiction, another seat will become available, and the Board may submit a third name that will be wait listed. Mr. Vincent volunteered to be wait listed. Mr. Martin made a motion to authorize Mr. Dobrzykowski and Mr. Pennington to serve as KBPT's representatives.
- b. FSBPT's Leadership Issues Forum ("LIF")  
(07/14-15/18 – Alexandria, VA)  
Mr. Pennington made a motion that Mr. Martin shall serve as the Primary Voting Delegate for KBPT. The motion was seconded by Mr. Dobrzykowski, which carried. The Alternate Voting Delegate will be determined at the Board's next meeting.
- c. FSBPT's 2018 Annual Meeting and Delegate Assembly  
(10/25-27/18 – Reston, VA)

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

**Action taken:** Ms. Pillow made the motion to review, approve and ratify the list 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. Martin made the motion to adjourn the meeting at 4:16 p.m., seconded by Mr. Pavkovich, 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