



## KENTUCKY BOARD OF PHYSICAL THERAPY

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*Matthew G. Bevin*  
Governor

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Executive Director

### MINUTES OF MEETING May 17, 2018

Board Members: Talia Weinberg, 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

Guest: Lauren Rose, PT Student, University of Kentucky

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Talia Weinberg, at 9:02 a.m. on Thursday, 05/17/18, at the Board office. A quorum was present.

#### **KPTA Liaison Report**

Dr. Kuperstein reported that on 05/17/18 a Zoom video conference will be held for all Kentucky physical therapist and physical therapist assistant students. During the conference, KPTA representatives Beth Ennis and Ramona Carper will be providing an update on all current legislative issues including the Physical Therapy Compact. Additionally, Dr. Kuperstein reported that there would be an additional Zoom video conference made available to all KPTA members.

Dr. Kuperstein reported the KPTA Board released a summary that included information on SB 121, an act relating to motor vehicle reparations.

Dr. Kuperstein further reported that KPTA may propose guidelines that will come from the passage of HB 2, the Workers Compensation Act. Additionally, KPTA representatives attended the proposed 2018 Kentucky Worker's Compensation Schedule where a reduction of reimbursement fees was recommended. KPTA has written a letter of opposition to the proposed fees reduction.

Finally, Dr. Kuperstein reported that KPTA elections are coming up and the nomination committee has been advised of KPTA's concerns with the current gender makeup of KBPT's members and staff, which were reiterated during the meeting.

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

Ms. Weinberg provided the FSBPT Director's report, as FSBPT Director Ron Barbato could not be present. Ms. Weinberg reported that Minnesota and Pennsylvania have elected to accept ProCert, an entity that ratifies continued education. Additionally, Ms. Weinberg informed the Board that the deadline to register for the Regulatory Training for Members and Board staff was on 05/01/18. Finally, Ms. Weinberg reported that Iowa and Nebraska are the 16<sup>th</sup> and 17<sup>th</sup> states to join the Physical Therapy Licensure Compact.

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

The Board reviewed the draft minutes of the 03/15/18 Board meeting.

**Action taken:** Following review and discussion of two proposed amendments to the draft minutes, Mr. Pennington made a motion to approve the minutes of the Board meeting of 03/15/18 with one typographical correction and one substantive addition. The motion was seconded by Mr. Pavkovich, which carried.

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

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

Mr. Kelly reported that the Board's ability to fully participate in the Compact is effectively in a holding pattern until notification is received from the Kentucky State Police and the FBI regarding the issuance of an ORI number. Additionally, Mr. Kelly reported that the criminal background check requirement currently referenced in administrative regulation only includes new applicants and lapsed credential holders, and it does not address applicants for renewal or reinstatement.

Mr. Majors distributed an update from the Compact Commission dated 05/01/18 which addressed the anticipated plan to implement the Compact later this year. He also distributed an announcement that the Compact Commission was requesting public comment on a draft amendment to Rule 2.1 – Criminal Background Check, with a special meeting of the full Commission set for 06/05/18 to review the public comments and the proposed Rule amendment. Finally, Mr. Majors reported that the Commission's Rules and ByLaws Committee was scheduled to meet on 06/20/18 to consider whether additional Rules or ByLaws amendments may be needed this year.

**Action taken:** No action taken.

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

Mr. Kelly reported that HB 465 pertaining to board reorganization failed to pass during the 2018 Legislative Session.

**Action taken:** No action taken.

#### **Offsite Board Meeting**

Mr. Majors reported to the Board that Western Kentucky University was unable to confirm its ability to host a KBPT meeting on the date previously scheduled for the November Board meeting.

**Action taken:** After discussion, the Board suggested staff reach out to the Kentucky PTA programs to attempt to schedule an offsite Board meeting later this year.

#### **Medical Review Panel**

Mr. Kelly reminded the Board that during its March meeting he was asked to research the Medical Review Panel statute to determine if there is an issue concerning confidentiality that would prohibit a credential holder from reporting a violation. Following further review, Mr. Kelly reported that there is nothing within the Medical Review Panel statute that prohibits a credential holder from reporting a violation to the Board. While panel members are unable to discuss their opinions until the final report is issued, once the report has been released a panel member may report the violation to the Board. The Board also discussed the

possibility of disseminating this information in a mass email or via Facebook. Additionally, Mr. Kelly reminded the Board that the Medical Review Panel process is still being litigated.

**Action taken:** After discussion, the Board authorized staff to draft information regarding the Medical Review Panel and include a brief description of the process in which a physical therapist may be chosen to serve on the panel, and to include information explaining that the Board is not part of this process. Additionally, the Board asked that Mr. Kelly keep the Board apprised of the litigation process.

### **Disciplinary Reporting**

Mr. Curley reported that the new Disciplinary Reporting portal is active.

**Action taken:** No action taken.

### **FSBPT Foreign Educated Applicant Requirements**

Ms. Barton reported that new requirements have been established for foreign educated applicants to supply a TOEFL score and an Educational Credential Evaluation to FSBPT prior to NPTE registration, and these changes will not affect the Board or require a change of policy. The current application process requires the submittal of both a TOEFL score and an Education Credential Evaluation. Additionally, Mr. Majors reported that, by an amendment to its administrative regulation, the Board previously adopted the new TOEFL scores that are scheduled to take effect in 2020.

**Action taken:** No action taken.

### **Foreign PTA Credentialing & Clinical Supervised Practice**

Ms. Barton reported that, at its November 2017 meeting, the Board decided to explore the possibility of amending the regulations to allow foreign-educated PTAs to become credentialed in Kentucky. Additionally, Ms. Barton discussed the possibility of the Board reviewing the requirements of supervised clinical practice for foreign-educated endorsement candidates.

**Action taken:** Mr. Dobrzykowski made the motion that Board staff compile additional relevant information related to changes the Board may consider making to 201 KAR 22:070 with regards to foreign-educated PTs and PTAs, and to provide this information to the Board at its next meeting. The motion was seconded by Ms. Pillow, which carried. Additionally, Ms. Weinberg requested that Mr. Pennington, in his role as KBPT liaison assigned to KPTA, request KPTA's feedback on the premise of allowing foreign-educated PTAs to become credentialed in Kentucky and the possibility of removing the requirements of supervised clinical practice for foreign-educated physical therapists who seek to be credentialed in Kentucky.

### **Staff Reports and Discussions**

The Board reviewed the following staff reports from:

- (a) Robin Betian, a PTA from Illinois who has never attended a CAPTE accredited PTA school requested the Board to allow her to become a credentialed PTA in Kentucky.

**Action taken:** After a brief discussion, the Board authorized staff to advise Ms. Betian that the Board's subject administrative regulation requires all PTA applicants to complete a CAPTE accredited program and pass the NPTE, and the Board is not authorized to waive this requirement.

- (b) Ben Waide, PT, who sought clarification from the Board on advertising equipment on his business website that is available for purchase via Amazon, and whether such proposed conduct is permitted within the Practice Act. Mr. Waide noted that he does receive a percentage of the sales.

**Action taken:** After a brief discussion, the Board authorized staff to advise Mr. Waide that, as long as he discloses this information on his website, there is nothing within the Practice Act that would prohibit him from including an advertising link on his website.

- (c) Rick Roe, PT, who formally applied for reinstatement of his Kentucky license to practice physical therapy, appeared before the Board and offered a presentation in support of his reinstatement application.

**Action taken:** Following discussion, Mr. Pennington made a motion for the Board to: (1) take Mr. Roe's application under advisement; (2) direct staff to request Mr. Roe to voluntarily enter into a contract with the IPTPC Program and to demonstrate strict compliance with the Program during his participation; (3) direct staff to advise Mr. Roe that, by the Board's next regularly scheduled meeting, he must complete the Practice Exam & Assessment Tool (PEAT) offered by FSBPT and share the results with the Board to consider; and (4) revisit the status of Mr. Roe's application during its next regularly scheduled meeting. The motion was seconded by Mr. Martin, which carried.

- (d) Kyongho Pak, a PTA Examination Applicant, who inquired whether PTAs in Kentucky may perform dry needling and Grade V mobilizations if otherwise properly trained, certified and competent to perform the interventions, and while under the supervision of a PT who is similarly trained, certified and competent.

**Action taken:** Following discussion, the Board instructed staff to advise Mr. Pak that, while PTAs in Kentucky are not expressly prohibited from performing dry needling or Grade V mobilizations, and while ultimately it is up to the supervising PT to determine whether the PTA (and the PT herself/himself) have the requisite skill, training and experience to perform these procedures and the PT has included these interventions to be a part of the plan of care, the Board considers these procedures to require specialized training beyond that provided within the traditional PTA degree academic and clinical requirements, and to also note for Mr. Pak APTA's position that PTAs should not perform these procedures.

- (e) KBPT staff brought an examination application before the Board for review. The examination applicant failed to disclose that she/he was issued a citation for "possession/purchase/attempted purchase/have another purchase alcohol." Mr. Fingerson reviewed the application and letter of explanation and did not recommend IPTPC participation at this time.

**Action taken:** Ms. Pillow made a motion to approve the examination application and issue a credential with no restrictions once the applicant passes the exam. The motion was seconded by Mr. Pennington, which carried.

- (f) KBPT staff brought a foreign-educated endorsement application before the Board for review. The applicant requested that the supervised clinical practice requirement be waived because she/he has completed transitional education and is currently working as a physical therapist in another jurisdiction.

**Action taken:** After a discussion, Ms. Pillow made the motion to deny waiving the clinical supervised practice requirement because the documentation submitted did not demonstrate functional equivalence to satisfy the requirements in 201 KAR 22:070, the Board's administrative regulation requiring supervised clinical practice for foreign-education applicants. The motion was seconded by Mr. Martin, which carried.

- (g) KBPT staff brought an examination application before the Board for review. The examination applicant disclosed that she/he gave a false name and address to an officer, and this charge was dismissed.

**Action taken:** Mr. Pavkovich made the motion to approve the application and issue a credential once the applicant passes the exam. The motion was seconded by Mr. Vincent, which carried.

- (h) KBPT staff brought an examination application before the Board for review. The examination applicant disclosed that she/he was charged with felony embezzlement in 1998. The applicant supplied documentation that restitution was paid.

**Action taken:** After discussion, Mr. Pennington made a motion to approve the application and issue a credential with no restrictions once the applicant passes the exam. The motion was seconded by Ms. Pillow, which carried.

- (i) KBPT staff brought an endorsement application before the Board for review. The endorsement applicant disclosed that she/he was arrested for retail theft in 2011. The applicant completed rehabilitative intervention.

**Action taken:** Mr. Martin made a motion to issue a credential once the application process is completed. The motion was seconded by Mr. Vincent, which carried.

- (j) KBPT staff brought an examination application before the Board for review. The examination applicant failed to disclose that she/he was issued a citation for public intoxication. Mr. Fingerson reviewed the application and letter of explanation and did not recommend IPTPC participation at this time.

**Action taken:** Ms. Pillow made a motion to approve the application and issue a credential with no restrictions once the applicant passes the exam. The motion was seconded by Mr. Dobrzykowski, which carried.

- (k) KBPT staff brought an endorsement application before the Board to review. The endorsement applicant failed to disclose that she/he was issued a citation for "possession/purchase/attempted purchase/have another purchase alcohol." Mr. Fingerson reviewed the application and letter of explanation and did not recommend IPTPC participation at this time.

**Action taken:** Ms. Pillow made a motion to issue a credential with no restrictions once the application process is completed. The motion was seconded by Mr. Martin, which carried.

## **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 08/02/18 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 involves allegations of a credential holder who treated a patient without following proper reassessment requirements. Mr. Curley reported that the investigation revealed other credential holders who allegedly treated patients without following the reassessment regulation.

**Action taken:** After discussion, the Complaint Committee made a motion to open a Board Initiated Complaint (BIC) on all the credential holders in question under the 2018 Complaint Committee, and authorize Board staff to forward the information on the facility to the appropriate entity with enforcement oversight. The motion was seconded by Ms. Pillow, which carried.

### **2018 Complaint Committee**

**BIC2018-03:** The Complaint Committee gave a brief history on this credential holder. Additionally, Mr. Kelly reported the credential holder, through counsel, submitted a counter to the Board's proposed Settlement Agreement.

**Action taken:** Following discussion, Mr. Pavkovich made the motion to reject the credential holder's counteroffer, for staff to notify the credential holder concerning the Board's offer to resolve the action informally, and to proceed to administrative hearing as scheduled on 08/01/18 if settlement is not obtained prior to hearing. This motion was seconded by Mr. Pennington, which carried.

**BIC2018-04:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2018-06:** The Complaint Committee reported that this case involves allegations of a possible term protection violation.

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

**C2018:07:** The Complaint Committee reported that this case involves a complaint alleging falsification of documentation.

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

**C2018-08:** The Complaint Committee reported this case involves possible substandard care.

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

### **IPTPC Report**

Mr. Fingerson presented his written IPTPC report dated 05/09/18. IPTPC cases which previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

Mr. Fingerson informed the Board that Mr. Tom McGinnis was no longer compliant with his IPTPC Contract.

**Action taken:** Following discussion, Mr. Pennington made the motion for the Board's General Counsel to attempt to negotiate a voluntary surrender agreement whereby Mr. McGinnis would refrain

from practice until he becomes IPTPC compliant for 3 months and obtains a fitness for duty referral from his therapist. This motion was seconded by Mr. Pavkovich, which carried.

### **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. No monitoring reports were considered by the Board.

**Action taken:** No action taken.

## **REPORTS AND OTHER BUSINESS**

### **Legal Report**

Mr. Kelly updated the Board on the status of amendments to 201 KAR 22:020, KAR 22:040, and KAR 22:070. He also discussed potential additional amendments relating to the reinstatement application process, including a proposed 45 day grace period for reinstatement applicants following a lapsed credential.

Mr. Kelly led a discussion with the Board over the existing regulations contained in 201 KAR Chapter 22 for purposes of sunset review as required under KRS 13A.3102 and KRS 13A.3104.

**Action taken:** Mr. Martin made a motion to authorize Board staff to sign and send certification letters concerning its existing regulations to the LRC staff. The motion was seconded by Mr. Dobrzykowski, which carried.

Mr. Kelly also advised the Board of recent publications involving professional licensing boards in Louisiana, California, Wisconsin, and Nebraska. Additionally, he advised the Board of publications regarding telemedicine and licensure for military spouses.

Mr. Majors reported that the Board has experienced consistent delays recently while sending and receiving verifications between Kentucky and other jurisdictions by U.S. Mail. In several instances the Board has waited for more than two weeks to receive a verification from another jurisdiction, which has resulted in delays in processing applications. Mr. Majors further stated that FSBPT has an active task force reviewing the verification processes of all jurisdictions, and specific guidelines to help render uniformity and efficiency to this process may be submitted for consideration at the CBA Forum conducted as part of the FSBPT Annual Conference and Delegate Assembly in October. Finally, Mr. Majors proposed that, once the task force's work of collecting this information is completed and distributed, the Board may want to examine these guidelines and determine whether changes to its verification procedures may be appropriate through amendments to its regulations.

Mr. Majors also noted that Kentucky Interactive, the Board's IT development team, will need to be provided the 2019-2021 Jurisprudence Examination (JE) by mid-January of 2019 in order to post this in April 2019 for the next credentialing cycle. For this reason, the Board authorized Mr. Majors to contact former Board members to determine their willingness to serve as Item Writers for the next JE and to provide the Board a report at its next meeting.

## **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.

**Action taken:** No action taken.

### **Department of Insurance**

Mr. Majors circulated copies of a quarterly malpractice report submitted by the Department of Insurance with the Public Protection Cabinet concerning health care providers with settlement and/or judgments, dated 04/18/18, covering the periods from 01/01/18 through 03/31/18.

**Action taken:** No action taken.

### **CBT Comment Survey and Candidate Satisfaction Survey Report**

Mr. Majors reported the results of the latest CBT comment survey and satisfaction survey report, dated 04/09/18.

### **KBPT Staffing**

Mr. Majors provided the Board a status report concerning the process to fill the Board's Licensure Coordinator position. He advised that, following a review of over 150 written applications and first and second interviews of multiple candidates, he extended an offer of employment to Ms. Kelly Ramsey, who has accepted and is scheduled to begin her new position with the Board on 06/06/18.

Mr. Majors also noted that, despite the staff shortage experienced by the Board over the past 4 months, the primary duties associated with the Board's licensure process have been completed in a timely and high-quality manner, due to the commitment to professionalism and excellence demonstrated by staff members Krista Barton and Stephen Curley on a daily basis. Mr. Majors also provided the Board several examples over the past 4 months in which Ms. Barton and Mr. Curley have performed tasks that are outside their typical job duties to ensure that licensure tasks that are normally performed by the Board's Licensure Coordinator are timely addressed. Mr. Majors also provided the Board a detailed overview of Ms. Barton's comp time earned since 02/01/18 and her accumulated comp balance through the 05/15/18 pay period. He suggested that the Board consider giving special recognition to these employees for their special efforts performed during this time of critical staff shortage.

**Action taken:** Following discussion, Mr. Vincent made the motion for the Board to approve Ms. Barton – on a one time basis -- to receive a "block 50" if Ms. Barton's accumulated comp balance exceeds 239.99 hours and if she is otherwise eligible to receive it per 101 KAR 2:102 Section 5. This motion was seconded by Ms. Pillow, which carried.

In response to questions from the Board, Mr. Majors noted the differences between a state merit position and a non-merit position as it relates to the state's pay grades, job classifications, salary compensation, and the Board's ability to adjust that compensation. Mr. Majors also noted that the Board approved a 5% annual pay increase for Ms. Barton during its meeting on 11/17/16, but this increase had not been implemented.

**Action taken:** Following discussion, Mr. Pavkovich made the motion for the Board to approve a 6% increase in Ms. Barton's annual compensation. This motion was seconded by Mr. Pennington, which carried. The Board further instructed Mr. Majors to examine future educational conferences and opportunities that Ms. Barton and Mr. Curley may find relevant to their positions, and to provide the Board a report at its next meeting to determine whether staff attendance at such conferences can be funded by the Board.

Ms. Barton and Mr. Curley were not present in the meeting room during any portion of the Board's discussion of the KBPT Staffing agenda topic.

### **KBPT School Presentations**

Ms. Barton briefly reported on the school presentation at Somerset Community College on 03/23/18. Additionally, Ms. Barton informed the Board that a school visit is scheduled for the University of Kentucky

on 05/21/18. She reported that there will be approximately 63 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. Kentucky Association of Administrative Adjudicators  
(05/18/18 – Frankfort, KY)  
Mr. Majors requested the Board to authorize his reimbursement for the \$125 registration fee he paid out of personal funds to the Kentucky Association of Administrative Adjudicators training.  
  
**Action taken:** Ms. Pillow made the motion to authorize reimbursement to Mr. Majors for the \$125 registration fee to the Kentucky Association of Administrative Adjudicators training. The motion was seconded by Mr. Pavkovich, which carried.
- b. KBEC – Executive Branch Ethics for Government Attorneys  
(06/04/18 – Frankfort, KY)  
Mr. Majors shall serve as KBPT’s representative during this training, which is being provided at no cost to state agencies.
- c. Regulatory Training for Members and Board Staff  
(06/08-10/18 – Alexandria, VA)  
For FSBPT’s Regulatory Training seminar, Mr. Majors reported that FSBPT has now agreed to fully-fund the attendance of three KBPT members: Mr. Dobrzykowski, Mr. Pennington, and Mr. Vincent, each of whom shall serve as KBPT’s representatives during this training.
- d. FSBPT’s Leadership Issues Forum (“LIF”)  
(07/14-15/18 – Alexandria, VA)  
Mr. Pennington made a motion that Ms. Weinberg serve as the Alternative Voting Delegate for KBPT which will enable her to be fully-funded by FSBPT to attend this year’s Leadership Issues Forum. The motion was seconded by Ms. Pillow, which carried.
- e. INAPTA & KPTA 2018 Joint Conference  
Legal and Ethical Issues Related to Technology in Physical Therapy  
(09/22/18 – Bellarmine University, Louisville, KY)  
Mr. Kelly shall serve as KBPT’s representative and presenter on Legal and Ethical Issues Related to Technology in Physical Therapy.
- f. FSBPT’s 2018 Annual Meeting and Delegate Assembly  
(10/25-27/18 – Reston, VA)

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

**Action taken:** Mr. Pennington 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. Pennington made the motion to adjourn the meeting at 4:27 p.m., seconded by Ms. Pillow, which carried.

Respectfully submitted,



Scott D. Majors  
Executive Director