



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING August 2, 2018

Board Members: Talia Weinberg, PT, Chair
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
Kelly Ramsey, Licensure Coordinator

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD

Guest: Rick Roe, PT

Member Absent: Dan Martin, PT, Chair-Elect

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Talia Weinberg, at 9:04 a.m. on Thursday, 08/02/18, at the Board office. A quorum was present.

Welcome: New KBPT Employee

Ms. Weinberg introduced to the members the Board's newest employee, Kelly Ramsey, who was appointed on 06/06/2018 to serve as the Board's Licensure Coordinator.

KPTA Liaison Report

Following the last meeting, Mr. Pennington, while serving as KBPT Liaison to KPTA, requested KPTA's input concerning the issues whether: (a) 201 KAR 22:070 should be amended to eliminate the requirement for clinical supervised practice for foreign educated endorsement applicants; and (b) whether foreign educated physical therapists who have failed the NPTE should be permitted to take the NPTE.

Dr. Kuperstein reported that KPTA has no objection to the proposal that KBPT authorize foreign educated individuals to practice in Kentucky with a Compact privilege without separately requiring them to complete the supervised clinical practice requirement referenced in 201 KAR 22:070. Additionally, Dr. Kuperstein reported that KPTA has no objection to foreign educated PTs taking the NPTE or allowing foreign educated PTAs to be credentialed in Kentucky if KBPT votes to amend its regulations accordingly.

Dr. Kuperstein also reported that KPTA has scheduled a fundraiser event on 08/23/18, for Representative Melinda Gibbons Prunty. Ms. Weinberg reminded Board members that, if they decide to attend the fundraiser, it should be in their respective capacities as private citizens and not as Board members.

Dr. Kuperstein reminded the Board that the first joint Conference between INAPTA and KPTA is scheduled for 09/22/18.

Finally, Dr. Kuperstein reported that KPTA has been inundated with phone calls from recent graduates asking about continued competency requirements for their first renewal cycle.

KPTA Annual PT Award

Ms. Weinberg announced that Mr. Pennington was this year's recipient of KPTA's 2018 Outstanding Physical Therapist Award. The Board congratulated Mr. Pennington on his award.

Minutes for Previous Regular Meeting

The Board reviewed the draft minutes of the 05/17/18 Board meeting.

Action taken: Following review and discussion of proposed amendments to the draft minutes, Mr. Pennington made a motion to approve the minutes of the Board meeting of 05/17/18, as amended. The motion was seconded by Mr. Vincent, which carried.

Board Discussions, Committees and Opinion Requests

Physical Therapy Licensure Compact

Mr. Kelly reported that the amendments to KRS 327.310 were submitted to the Kentucky State Police and the Board is awaiting updated information from the FBI concerning the issuance of an ORI number. The Board discussed waiting an additional thirty days to allow the FBI to reconsider the amended changes to KRS 327.310. The Board authorized Mr. Kelly to pursue other means if at the end of the allotted time he has not received any notification concerning the issuance of an ORI number.

Mr. Majors reported that the Physical Therapy Compact went live on 07/09/18, with Missouri, North Dakota, and Tennessee being the first states able to issue Compact privileges, and with Mississippi and Oregon following shortly thereafter. Mr. Majors reviewed with the Board members the fee schedule for each of the five states able to issue Compact privileges.

Additionally, Mr. Majors reported that the Compact Commission's Rules and Bylaws Committee is reviewing proposed amendments to potentially twenty different sections of the Rules and Bylaws. Mr. Majors reported that proposed amendments were sent to the Executive Board which is scheduled to review the proposals during its meeting on 08/15/18. Once the changes have been submitted for public comment, a link will be posted on the Board's website and the information will be disseminated to the Board members and to KPTA leadership.

Finally, Mr. Majors reported that he has submitted his name for possible appointment to the PT Compact Policy Taskforce, which will be responsible for drafting an operational policy manual for the Physical Therapy Compact Commission. Mr. Majors informed the Board that he has submitted Ms. Ramsey's name as an alternate.

Board Reorganization

Mr. Pennington reported that he attended a reception hosted by Governor Bevin for individuals recently appointed to leadership positions, and there was discussion at this reception concerning possible Board reorganization.

Action taken: No action taken.

FSBPT Regulatory Training

Mr. Dobrzykowski, Mr. Pennington, and Mr. Vincent each gave a report to the Board concerning their attendance of the 2018 FSBPT Regulatory Training in Alexandria, Virginia on 06/08-10/18. They discussed presentations relative to their respective roles as members on a regulatory board, the application of professional standards, and the efficacy of continued competency as a regulatory model.

FSBPT Leadership Issues Forum

Ms. Weinberg discussed with the Board the possibility of participating in the Minimum Data Set program. Ms. Weinberg requested that Board members contemplate whether KBPT should participate, and she advised the Board would discuss this topic again at the September meeting.

Action taken: Ms. Weinberg requested staff to identify the role FSBPT is expected to assume once the data is retrieved from a survey, and she also requested that Mr. Majors attempt to obtain the questions included within the Minimum Data Survey so they may be made available to the Board for review at the September meeting. Additionally, the Board requested an updated map of Kentucky that would identify by geographical region where PTs and PTAs are currently practicing and working.

KY Association of Administrative Adjudicators

Mr. Majors provided a summary of the training conducted on 05/18/18 by the Kentucky Association of Administrative Adjudicators. This training addressed the responsibilities and procedures typically assigned to hearing officers and agency counsel in the context of administrative adjudication.

Executive Branch Ethics Training for Government Attorneys

Mr. Majors provided a summary of the training conducted on 06/04/18 by the staff of the Executive Branch Ethics Commission for government attorneys and for agency ethics officers. This training addressed the responsibilities attending executive branch employees in relation to the Executive Branch Ethics Code codified in KRS Chapter 11A and the Kentucky Rules of Professional Conduct codified in SCR 3.

Legislative Research Commission – Administrative Regulation Training

Mr. Kelly and Mr. Majors each provided a summary of the training conducted on 06/19/18 and 06/21/18 by the Legislative Research Commission's Administrative Regulation Review Subcommittee staff. This training provided an overview of KRS Chapter 13A in relation to the drafting, formatting and technical aspects of promulgating and amending administrative regulations.

2019-2021 Jurisprudence Exam Item Writers

Mr. Majors provided three names for the Board to consider appointing as item writers for the 2019-2021 Jurisprudence Exam: Debra Turner; Troy Grubb; and Janice Kuperstein, all of whom have agreed to serve. Additionally, Mr. Majors reported that in order to have the Jurisprudence Exam (JE) posted by 04/01/2019, Kentucky Interactive has requested that the JE questions be submitted by early January 2019.

Action taken: Mr. Pennington made a motion to approve Debra Turner; Troy Grubb; and Janice Kuperstein to serve as the 2019-2021 Jurisprudence Exam Item Writers. The motion seconded by Ms. Pillow, which carried.

Mr. Majors reported that he would contact the Item Writers and facilitate a conference call meeting by the end of the month and provide a report to the Board at the September Board meeting.

Offsite Board Meeting

Mr. Majors and Ms. Barton reported to the Board that Somerset Community College has agreed to host the September Board meeting on 09/20/18.

Action taken: No action taken.

Monitoring Training Program

Mr. Curley reported that the Monitoring Training Program Taskforce has been working towards a final product to present to the Board. A conference call was conducted during the Board meeting with Board members and Monitoring Training Program Taskforce members present to discuss possible changes to the latest version of the training program, as needed.

Foreign PTA Credentialing & Clinical Supervised Practice

Ms. Weinberg discussed with the Board the possibility of amending the Board's regulations to allow foreign-educated PTAs to become credentialed in Kentucky. Ms. Weinberg also reviewed the requirements of supervised clinical practice for foreign-educated endorsement candidates. The Board considered the response from KPTA that Dr. Kuperstein provided during her KPTA Liaison report.

Action taken: Following discussion, the Board instructed Mr. Kelly and Mr. Majors to draft language for a proposed regulation change to 201 KAR 22:070. The Board agreed to review and discuss this proposed language at the September Board meeting.

Performance Measures and Strategic Planning

Mr. Majors discussed the current anti-regulatory climate within state legislatures, which reinforces the need of KBPT to be proactive in its approach to professional regulation. Mr. Majors further suggested the Board consider the efficacy of developing specific performance measures and/or a strategic plan concerning the manner by which the Board conducts business. Mr. Majors provided the Board with examples of strategic plans filed by the Boards of Physical Therapy in Texas and Oregon. Mr. Majors also informed the Board that FSBPT has created a Taskforce that may offer assistance with the creation of a strategic plan for Kentucky.

Action taken: The Board instructed Mr. Majors to continue to explore this topic and provide an updated report during the September Board meeting.

Medical Review Panel

Mr. Kelly provided the Board a list of frequently asked questions pertaining to the Medical Review Panel.

Action taken: No action taken.

Email Staff Disclaimer

Ms. Ramsey discussed with the Board the current staff protocol while addressing inquiries received via email and telephone regarding interpretation of the Kentucky Physical Therapy Practice Act and its corresponding administrative regulations. Ms. Ramsey also inquired whether a need exists to clarify this protocol by including in any email response a disclaimer to protect staff.

Action taken: After brief discussion, the Board decided an email disclaimer was not presently necessary, and that the current process of emailing the Chair for guidance would suffice.

Staff Reports and Discussions

The Board reviewed the following staff report:

KBPT staff brought an examination application before the Board for review. The applicant has already taken and passed the NPTE; however, the applicant failed to disclose in the application that she/he was issued a citation for "operating a motor vehicle under/influence of alcohol/drugs." Mr. Fingerson reviewed the application and letter of explanation and did not recommend IPTPC participation at this time.

Action taken: After discussion, Mr. Pennington made a motion to authorize Board staff to issue the applicant her/his credential; to open a Board Initiated Complaint (BIC); and to require the applicant to appear before the Board at the September meeting. The motion was seconded by Mr. Pavkovich, 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 has been under an Immediate Temporary Suspension (ITS) since 04/2017. Board Counsel has received a signed proposed Settlement Agreement. However, the credential holder has failed to appear before the Board on multiple occasions to review the terms of her/his Settlement Agreement. Staff informed the Board that a notice of hearing has been filed and a prehearing conference call has been scheduled for 08/17/18. During the prehearing conference call Counsel intends to schedule a hearing for 11/14/18 if the credential holder fails to appear before the Board at the September meeting

Action taken: No action taken.

C2017-15: The Complaint Committee gave a brief history that this case involves a credential holder who was convicted of third degree sexual assault and a class D felony for tampering with evidence.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to offer a proposed Settlement Agreement with specific terms, as authorized by the Board. The motion was seconded by Ms. Pillow, which carried.

C2017-41: Board staff presented this case before the full Board for discussion, as Mr. Martin was absent from both the Complaint Committee and Board meeting, and as Ms. Weinberg, the remaining member of the Complaint Committee, recused herself from any discussion of this case and left the room. The complaint involved a credential holder who allegedly failed to follow proper reassessment and documentation guidelines.

Action taken: After reviewing the facts and circumstances of this case, Mr. Pennington made a motion to dismiss the complaint due to lack of evidence. The motion was seconded by Ms. Pillow, which carried. Mr. Dobrzykowski dissented.

C2017-42: The Complaint Committee reported that this case involved a facility and three Board Initiated Complaints were opened during the May Board meeting on credential holders employed by the facility.

Action taken: Following discussion, the Complaint Committee recommended and moved to close this case. The motion was seconded by Mr. Vincent, which carried.

2018 Complaint Committee

BIC2018-03: The Complaint Committee gave a brief history on this credential holder. Mr. Kelly reported the credential holder has signed the proposed Settlement Agreement and is scheduled to appear before the Board at its September meeting to review the specific terms of her/his Settlement Agreement.

Action taken: The Complaint Committee recommended and moved to approve the proposed Settlement Agreement. The motion was seconded by Mr. Pavkovich, 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: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to authorize Board Counsel to file a civil suit in Jefferson Circuit Court. The motion was seconded by Mr. Pennington, which carried.

C2018-08: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

BIC2018-09 – The Complaint Committee reported that this case involves allegations of a credential holder failing to discontinue physical therapy services past the reassessment date.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to issue the credential holder a Private Admonishment with a fine of \$500. The motion was seconded by, Mr. Pavkovich, which carried.

BIC2018-10 – The Complaint Committee reported that this case involves allegations of a credential holder failing to discontinue physical therapy services past the reassessment date.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to issue the credential holder a Private Admonishment with a fine of \$500. The motion was seconded by, Mr. Pavkovich, which carried.

BIC2018-11 - The Complaint Committee reported that this case involves allegations of a credential holder failing to discontinue physical therapy services past the reassessment date.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to issue the credential holder a Private Admonishment with a fine of \$500. The motion was seconded by, Mr. Pavkovich, which carried.

BIC2018-12 – The Complaint Committee reported that this case involves a credential holder who has an adverse action in Indiana regarding continued competency.

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

C2018-13 - The Complaint Committee reported that this case involves allegations of a credential holder involved in lewd and immoral conduct.

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

C2018-14 – The Complaint Committee reported that this case involves a possible term protection violation.

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

Mr. Dobrzykowski recused himself from any discussion of this case and left the room.

C2018-15 - The Complaint Committee reported that this case involves a possible term protection violation.

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

BIC2018-16 – The Complaint Committee reported that this case involves a credential holder with an alleged documentation violation.

Action taken: The Complaint Committee recommended and moved to take no action. The motion was seconded by Mr. Pavkovich, which carried.

IPTPC Report

Mr. Fingerson presented his written IPTPC report dated 07/23/18. IPTPC cases which previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

During the May meeting, the Board discussed Mr. Tom McGinnis, a credential holder who was no longer compliant with his IPTPC Contract. The Board authorized Mr. Kelly to negotiate a voluntary surrender agreement. During the August meeting, Mr. Kelly reported that Mr. McGinnis has signed an Agreed Order of Voluntary Temporary Suspension.

Action taken: Following discussion, Mr. Pennington made the motion to accept the proposed Agreed Order of Voluntary Suspension. The motion was seconded by Mr. Dobrzykowski, 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. 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 the status of amendments to 201 KAR 22:020, KAR 22:040, and KAR 22:070. Additionally, Mr. Kelly and Mr. Majors explained that these latest amendments would become effective following hearings before the ARRS and Joint Health & Welfare Committee later this year.

Action taken: Mr. Pennington made a motion to formally ratify the Board's approval for amendments to 201 KAR 22:020, KAR 22:040, and KAR 22:070 that were discussed during the May Board meeting. The motion was seconded by Mr. Vincent, which carried.

Mr. Kelly apprised the Board of recent articles relating to professional licensing Board in Maine, Mississippi, Missouri, New Mexico and Kentucky.

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 07/16/18, covering the periods from 04/01/18 through 06/30/18.

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 07/13/18.

KBPT Staffing

Mr. Majors reported that Ms. Barton's position with KBPT as Executive Administrative Secretary has been determined to be a "policy making" position and is thus ineligible for block 50 consideration, notwithstanding the Board's decision made at the May meeting to approve Ms. Barton's for a block 50 payment. Ms. Majors also reported that, once the minutes for the May meeting were final, the process to determine whether Ms. Barton's salary may be adjusted can proceed.

Mr. Majors also reported that Mr. Curley is interested in attending the FARB conference in New Orleans, LA, from 01/24-27/19. Staff will examine the presentations scheduled for this conference as they are posted on FARB's website to determine their relevance to Mr. Curley's assigned duties with KBPT.

Mr. Majors also reported that he intends to identify opportunities for Ms. Ramsey to serve as a participant and/or presenter at educational conferences in the future so she may share best practices employed by KBPT with other regulatory boards.

Finally, Mr. Majors advised that, with Mr. Kelly's expected resignation as the Board's General Counsel, effective 12/31/18, the Board needs to develop a process and timetable to replace Mr. Kelly.

Action taken: Mr. Dobrzykowski made the motion to authorize Mr. Majors to initiate the process with the Personnel Cabinet to hire a new General Counsel upon receipt of Mr. Kelly's letter of resignation. This motion was seconded by Mr. Pavkovich, which carried. Mr. Pennington also made the motion to authorize Mr. Majors to conduct initial interviews of applicants for the General Counsel position, and for the Board to establish a committee consisting of Ms. Weinberg, Mr. Martin and Ms. Pillow to conduct interviews of the finalists and to offer a recommendation to the full Board at its meeting on November 15, 2018. This motion was seconded by Mr. Pavkovich, which carried.

Bar Dues

Mr. Majors requested the Board to authorize reimbursement for his dues with the Kentucky Bar Association ("KBA"). Mr. Pennington made the motion for the Board to approve reimbursement for Mr. Majors' KBA Dues. This motion was seconded by Mr. Pavkovich, which carried.

KBPT School Presentations

Ms. Barton briefly reported on the school presentation at the University of Kentucky on 05/21/18. Additionally, Ms. Barton informed the Board that a school visit is scheduled for West Kentucky Community and Technical College on 09/11/18, and Ms. Ramsey will be assisting with the presentation.

Conferences and Meetings Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. 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.
- b. FSBPT Meeting Policy
Ms. Weinberg discussed with the Board changes to the FSBPT's policy of funding members to attend its meetings.

- c. FSBPT's 2018 Annual Meeting and Delegate Assembly
(10/25-27/18 – Reston, VA)
(Dan Martin and Talia Weinberg shall serve as KBPT's Delegate and Alternate Delegate; and Louis Kelly and Stephen Curley shall serve as KBPT's co-presenters fully funded by FSBPT.)

Mr. Dobrzykowski made a motion for the Board to pay for the registration fee and associated travel costs for Mr. Pennington to attend the FSBPT Annual Meeting and Delegate Assembly. Ms. Pillow seconded the motion, which carried.

- d. FSBPT's Leadership Issues Forum
(07/13-14/19 – Alexandria, VA)
- e. FSBPT's 2019 Annual Meeting and Delegate Assembly
(10/24-26/19 – Oklahoma City, OK)
- f. FSBPT's 2020 Annual Meeting and Delegate Assembly
(10/22-24/20 – Oklahoma City, OK)

New Business

Mr. Curley brought before the Board a question relating to supervision of temporary permit holders and PT/PTA students. Currently there is no regulation that addresses supervision ratios as it pertains to temporary permit holders and students. The Board at this time felt that applicants with temporary permits did not need to be included in the supervision ratio.

Action taken: Ms. Weinberg asked Ms. Barton to reach out to the Kentucky/Ohio school consortium to inquire on their thoughts of adding students to the supervision ratio.

Public Comment

Mr. Roe appeared before the Board and submitted a completed PEAT evaluation from FSBPT. Ms. Weinberg informed Mr. Roe that the Board would review his results and discuss his case at the September Board meeting.

New Licensee/Reinstatement/Renewal Applications

Action taken: Mr. Pavkovich 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 examination and reinstatement applicants. This motion was seconded by Mr. Vincent, which carried. The lists are attached to these minutes.

Mr. Pavkovich made the motion to adjourn the meeting at 4:11 p.m., seconded by Mr. Vincent, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director