



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING September 20, 2018

Board Members: Talia Weinberg, PT, Chair
Dan Martin, PT, Chair-Elect
Edward Dobrzykowski, PT
Ron Pavkovich, PT
Tom Pennington, PT
Linda Pillow, PT

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

Guests: Ron Barbato, PT, FSBPT Director
Steve Hammons, PT, Academic Coordinator of Clinical Education,
Somerset Community College
Ron Meade, PT, PTA Program Director, Somerset Community College
William Montgomery, PT Student, Bellarmine University

Member Absent: Jeff Vincent, Public Member

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, 09/20/18, at Somerset Community College before the PTA student body. A quorum was present.

KPTA Liaison Report

Dr. Kuperstein reported that KPTA has not had its annual meeting, and thus she had nothing to report at this time. Additionally, Dr. Kuperstein thanked Mr. Kelly for the document he prepared for KPTA explaining that a physical therapist, while serving on the Medical Review Panel, would still be under the obligation to report any violation they may encounter to the Board.

FSBPT Director's Report

Mr. Barbato provided a detailed explanation of the purpose, function, and outline of the different governing bodies of the FSBPT for the benefit of the PTA students in attendance at the Board meeting. Additionally, he reported that FSBPT is currently working on a Board Assessment Tool that will allow FSBPT's member boards to assess and create strategic planning. Finally, Mr. Barbato reported that FSBPT is finalizing the Board Action Guidelines Tool for Disciplinary Action and the tool will be discussed at the 2018 Delegate Assembly.

Minutes for Previous Regular Meeting

The Board reviewed the draft minutes of the 08/02/18 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 08/02/18, as amended. The motion was seconded by Ms. Pillow, which carried.

Board Discussions, Committees and Opinion Requests

2019-2021 Jurisprudence Exam Item Writers

Mr. Majors and Dr. Kuperstein explained the process by which the Board produces and develops the Jurisprudence Exam. Additionally, Dr. Kuperstein reported there would be a teleconference meeting within the next two weeks when each of the three item writers is expected to submit approximately eight questions for review. The final product will be distributed to the members at the November Board meeting for the full Board to review and select the final twenty questions for the 2019-2021 Jurisprudence Exam.

Action taken: No action taken.

Physical Therapy Licensure Compact

Mr. Kelly reported that the FBI is expected to issue an ORI number to KBPT in the near future. This will enable KBPT to receive an FBI criminal background check on all exam, endorsement and reinstatement applicants per the requirement of KRS 327.300, the Physical Therapy Licensure Compact statute. Mr. Kelly reminded the Board that, once the ORI number is issued, staff will have six months from that date to implement the background check requirement. In turn, staff will have sufficient time to emphasize this new requirement to the students in the state's three (3) Physical Therapy programs and the five (5) Physical Therapy Assistant programs.

Mr. Majors reported that KBPT staff has scheduled a teleconference next week with the IT departments of the Compact Commission and Kentucky Interactive/Kentucky.gov to discuss the seamless transfer of data between KBPT and the Compact Commission.

Additionally, Mr. Majors reported that the Compact Commission is drafting a policy manual that will assist with the interpretation of the Bylaws and Rules of the Compact Commission. Mr. Majors also reported that the Executive Board of the Compact Commission met yesterday to consider recommended changes to the Rules and Bylaws. He informed the Board that these proposed changes will be posted for public comment on the Board's website, and all comments will be considered and discussed at the Compact Commission's annual meeting on 10/28/18.

Foreign PTA Credentialing & Clinical Supervised Practice

Mr. Kelly advised that, after further review and consultation with staff, his legal opinion is that an amendment to KRS Chapter 327 is required before the Board is authorized to make amendments to the supervised clinical practice requirements within 201 KAR 22:070. Following discussion, the consensus of the Board was to table this subject for further review in 2019, in concert with KPTA Leadership, and to examine the feasibility of opening up the Physical Therapy Practice Act during the 2020 legislative session.

Mr. Kelly further advised that an amendment to 201 KAR 22:070 is likely legally sufficient to facilitate the credentialing of foreign educated PTAs without the need for an amendment to KRS Chapter 327. Following discussion, the Board requested that Mr. Kelly prepare draft language for an amendment to this regulation for the Board's consideration at the November meeting.

FSBPT 2018 Annual Conference

The Board discussed 2018 FSBPT Motion DEL-18-01, which is to adopt the Areas of Focus as they currently read. Mr. Majors informed the Board that there are contested elections scheduled for four (4) FSBPT positions for which KBPT's voting delegate must cast a vote.

Action taken: Following discussion, Mr. Dobrzykowski made the motion for the Board to authorize Mr. Martin, as the Board's voting delegate, to exercise his discretion with his vote following the presentation of additional information from FSBPT representatives and the candidates seeking the contested positions. The motion was seconded by Mr. Pavkovich, which carried.

Monitoring Training Program

Mr. Curley and Dr. Kuperstein reported that development and implementation of the Monitoring Training Program is on schedule, and changes were incorporated into the training course materials. Mr. Curley will provide an update at the November Board meeting.

Action taken: No action taken.

Minimum Data Set

During the August Board meeting, Ms. Weinberg discussed the possibility of the Board participating in the FSBPT Minimum Data Set (MDS) program, and she asked Mr. Majors to request a copy of the questions for the Board members to review before the September Board meeting. Mr. Majors disseminated the MDS questions to the members for review. After discussion, the consensus of the Board was that, due to privacy concerns expressed by members of the Board with several of the questions the MDS requires be asked, there was insufficient interest for the Board to engage in the MDS initiative at the present time.

Additionally, Mr. Curley presented an updated map that included PT and PTA demographic data relative to several counties where PTs and PTAs are currently employed. Mr. Curley reported that a map reflecting data for all 120 counties in Kentucky will be presented to the Board once completed.

Action taken: No action taken.

Kentucky Higher Education Assistance Authority

Mr. Majors reported that KBPT received a letter from the Kentucky Higher Education Assistance Authority (KHEAA) requesting that changes be made to the current Memorandum of Understanding between KHEAA and KBPT. The Board discussed whether KBPT's current application forms that include questions about KHEAA student loan defaults will require revisions. After discussion, the Board decided there was no need to revise KBPT's applications at this time.

Action taken: After discussion, Mr. Dobrzykowski made a motion for the Board to enter into a new Memorandum of Understanding with KHEAA. The motion seconded by Mr. Pavkovich, which carried.

Kentucky Medicaid Partner Portal Application (KY MPPA)

Mr. Majors reported to the Board that the Kentucky Department of Medicaid Services in Frankfort has requested that several licensing boards, including KBPT, include a link or portal on its website to the new Kentucky Medicaid Partner Portal Application. After discussion, the Board members determined that there was insufficient interest in housing a link on KBPT's website.

Action taken: No action taken.

Institute for the Study of Free Enterprise

Ms. Weinberg informed the Board that there is a presentation scheduled at the University of Kentucky on 09//20/18 by the Institute for the Study of Free Enterprise concerning the current climate of deregulating professions.

Action taken: No action taken.

North Carolina Medical Board

Mr. Majors reported to the Board that the medical licensing boards in Texas and North Carolina have taken emergency measures recently when presented with a natural disaster to authorize out-of-state medical providers to practice within the state without undergoing the formal application process.

Action taken: No action taken.

Offsite Board Meeting

Mr. Majors reported to the Board that the Physical Therapy program at Western Kentucky University is interested in hosting a Board meeting in 2019.

Action taken: After discussion, Mr. Pennington offered to contact Western Kentucky University representatives and inquire about the 2019 meeting schedule. Mr. Pennington will provide the members a report at the November Board meeting.

Staff Reports and Discussions

The Board reviewed the following staff reports:

- (a) KBPT staff brought an examination application before the Board for review. The applicant has been charged with two DUI offenses in the past five years. Mr. Fingerson reviewed the application and letter of explanation and recommended offering the exam applicant a voluntary IPTPC agreement.

Action taken: After discussion, Ms. Pillow made a motion to authorize staff to contact the credential holder and offer her/him voluntary participation in IPTPC. The motion was seconded by Mr. Pavkovich, which carried.

- (b) KBPT staff brought an endorsement application before the Board for review. The applicant answered “yes” to the application question “have you ever been the subject of reprimand or disciplinary action with regard to any professional license or certificate or been sanctioned by any licensing authority?” The applicant sent in a letter of explanation with supporting documents.

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

- (c) KBPT staff brought an endorsement application before the Board for review. The applicant answered “yes” to the application question “have you ever been the subject of reprimand or disciplinary action with regard to any professional license or certificate or been sanctioned by any licensing authority?” Additionally, the applicant answered “yes” to the application question “do you have any unresolved or pending complaints, investigations or disciplinary actions filed against you with any professional licensing authority?” The applicant sent in a letter of explanation and supporting documents.

Action taken: After discussion, Mr. Pennington made the motion to issue a credential with no restrictions once the application process is completed. The motion seconded by Mr. Pavkovich, carried.

- (d) R2018-21 – Rick Roe, Reinstatement Application

Mr. Roe appeared before the Board to discuss his pending reinstatement application.

Action taken: After discussion, Mr. Pavkovich made a motion to authorize Board Counsel to offer Mr. Roe a reinstatement agreement with specified terms, and for Board staff to

administratively reinstate Mr. Roe when all terms are met. The motion was seconded by Ms. Pillow, which carried.

Civil Matters and Investigations

Ms. Weinberg made the motion to retire into Executive Session pursuant to KRS 61.810(1)(j) to discuss deliberations of judicial or quasi-judicial bodies regarding individual adjudications which may lead to the discipline of credential holders. The motion was seconded by Mr. Pennington, which carried. Subsequently, Ms. Weinberg made the motion to come out of Executive Session. The motion was seconded by Mr. Pavkovich, which carried.

Action taken: No action taken.

While in open session the Board met with credential holders in case numbers BIC2018-03, BIC2018-17, and R2018-20.

Ms. Weinberg made the motion to return to Executive Session pursuant to KRS 61.810(1)(j) to discuss deliberations of judicial or quasi-judicial bodies regarding individual adjudications which may lead to the discipline of credential holders. The motion was seconded by Mr. Pavkovich, which carried. Subsequently, Ms. Weinberg made the motion to come out of Executive Session. The motion was seconded by Mr. Pennington, which carried. The Board returned to open session and voted on the following cases.

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 04/17. 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. The credential holder at the last prehearing conference agreed to appear before the Board during the September meeting; however, the credential holder failed to appear. This case is ongoing.

Action taken: No action taken.

C2017-15: The Complaint Committee reported that this case involves a credential holder who was convicted of third degree sexual assault and a class D felony for tampering with evidence. Board Counsel reported that the credential holder has signed the proposed Settlement Agreement and will appear before the Board at the November meeting.

Action taken: No action taken.

2018 Complaint Committee

BIC2018-03: The credential holder in this case, Camden Campbell, appeared before the Board to review the terms of his signed Settlement Agreement. During this appearance the Board informed Mr. Campbell while in open session that he is currently in violation of his Settlement Agreement due to his failure to comply with his IPTPC program agreement.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to open a Board Initiated Complaint (BIC), file formal charges, and draft a proposed Settlement Agreement with specified terms. The motion was seconded by Mr. Pennington, which carried.

BIC2018-04: The Complaint Committee provided a brief history that this case involves possible fraudulent billing, supervision, and delegation issues.

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.

BIC2018-06: The Complaint Committee reported that this case involves allegations of a term protection violation; however, Board staff has determined that the individual subject of the investigation has removed the term “physical therapy” from the advertisement in question.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to close this case as the individual is no longer in violation. The motion was seconded by Mr. Pavkovich, which carried.

C2018-08: The Complaint Committee provided a brief history that this case involved possible substandard care.

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

BIC2018-09 – The Complaint Committee reported that the credential holder in this case has accepted the Private Admonishment; however, the individual has not paid the associated fine. The credential holder has until 01/31/19 to pay her/his fine. The case will remain open until payment has been received.

Action taken: No action taken.

BIC2018-10 – The Complaint Committee reported that the credential holder in this case has accepted the Private Admonishment and has paid the associated fine.

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

BIC2018-11 – The Complaint Committee reported that the credential holder in this case has accepted the Private Admonishment; however, the individual has not paid the associated fine. The credential holder has until 01/31/19 to pay her/his fine. The case will remain open until payment has been received.

Action taken: No action taken.

BIC2018-12 – The Complaint Committee reported that this case involves a credential holder who has an adverse action in Indiana regarding continued competency. Board staff reported that the credential holder is now in good standing with Indiana.

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

C2018-13 - The Complaint Committee reported that this case involves allegations of a credential holder involved in lewd and immoral conduct. During this investigation, it has been determined that the credential holder may have provided treatment in violation of 201 KAR 22:053.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to file a Notice of Hearing and formal charges and to draft a proposed settlement agreement with specified terms. The motion was seconded by Ms. Pillow, which carried.

C2018-14 – The Complaint Committee reported that this case involves a possible term protection violation. Mr. Kelly reported that the individual has signed a Letter of Agreement.

Action taken – The Complaint Committee recommended to close this case. The motion was seconded by Mr. Pavkovich, which carried. Mr. Dobrzykowski had previously recused himself from any discussion or vote concerning this case.

C2018-15 - The Complaint Committee reported that this case is ongoing.

Action taken – No action taken.

BIC2017-17 - The Complaint Committee provided a brief history that his case involves a credential holder who possibly falsified her/his examination application. The credential holder appeared before the Board to explain their failure to report a DUI.

Action taken: Following discussion, the Complaint Committee recommended and moved to take no action and close this case due to the sufficiency of the explanation. The motion was seconded by Mr. Pavkovich, which carried.

BIC2018-18 – The Complaint Committee reported that this case involves an exam applicant who possibly practiced without a Temporary Permit.

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

BIC2018-19 - The Complaint Committee reported that this case involves a complaint that was previously closed involving possible supervision violations. New information received by Board staff was considered.

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

IPTPC Report

Mr. Fingerson presented his written IPTPC report dated 09/10/18. IPTPC cases which previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

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 recent proposed amendments to 201 KAR 22:020; KAR 22:040; and KAR 22:170. The proposed amendments were approved at the September ARRS meeting and are scheduled to be heard at the next Interim Joint Committee on Health and Welfare and Family Services meeting later in October.

Mr. Kelly also provided updates to the Board on recent articles regarding professional licensure from the National Association of State Boards of Accountancy; Federation of State Medical Boards; and updates on Data Bank discipline.

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.

KBPT Staffing

Mr. Majors reported that, after consulting with representatives with the Personnel Cabinet, and in accordance with 101 KAR 3:045, he has determined that (other than a recurring ACE award) there is no standard mechanism available by which Ms. Barton's salary, which currently exceeds the mid-point for her graded, non-merit position, may be increased by the Board so long as she remains in her current position.

Mr. Majors suggested that the Board consider the option of establishing two (2) ungraded, non-merit positions to which Ms. Barton and Mr. Curley would be appointed, which would remove the confines of a graded position, thus allowing the Board to reappoint these staff members at the salary authorized by the Board and create room for future salary adjustments. This could be accomplished by the Board's Chair (as appointing authority) or Executive Director (as authorized designee) submitting a letter to Personnel requesting: (a) establishment of these two (2) positions; (b) the resignation/reappointment of Ms. Barton and Mr. Curley to their new respective ungraded, non-merit positions, including clear reference to their new Board-approved salaries and effective dates, accompanied by Ms. Barton's and Mr. Curley's respective resignation letters from their current positions; and (c) to delimit the Executive Administrative Secretary position, currently occupied by Ms. Barton, and the Investigative Agent II position, currently occupied by Mr. Curley, once vacated.

Action taken: Following extensive discussion, Mr. Pennington made the motion for the Board to authorize Mr. Majors to pursue the steps which he outlined by seeking to establish two (2) new ungraded, non-merit positions to which Ms. Barton and Mr. Curley would be reappointed by the Board, without a break in service upon their respective resignations from their current positions; and, upon their reappointments, for Ms. Barton and Mr. Curley to each receive a salary increase of 7.5% of their current salaries, effective 01/01/19, and an additional salary increase of 7.5% of their then current salaries, effective at the beginning of the next fiscal year, 07/01/19. Ms. Pillow seconded this motion, which carried.

Ms. Barton and Mr. Curley were not present during any portion of the Board's discussion of KBPT staffing.

KBPT School Presentations

Ms. Barton briefly reported on the school presentation at the West Kentucky Community and Technical College in Paducah on 09/11/18.

Conferences and Meetings Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. INAPTA & KPTA 2018 Joint Conference
(09/22/18 – Bellarmine University, Louisville, KY)
As KBPT's featured speakers, Mr. Dobrzykowski shall present on the subject of "Continuing the Momentum of Rehabilitation Services Transition to Population Health Management and Value: Is There a Prescient Opportunity for Ambulatory (Outpatient) Physical Therapy?", and Mr. Kelly shall present on the subject of "Legal and Ethical Issues Related to Technology in Physical Therapy."

- b. 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, respectively; Mr. Majors shall serve as KBPT's Administrator; and Louis Kelly and Stephen Curley shall serve as KBPT's co-presenters – all fully funded by FSBPT. Mr. Pennington has been authorized to attend as a KBPT-funded representative.)
- c. FSBPT's Leadership Issues Forum
(07/13-14/19 – Alexandria, VA)
- d. FSBPT's 2019 Annual Meeting and Delegate Assembly
(10/24-26/19 – Oklahoma City, OK)
- e. FSBPT's 2020 Annual Meeting and Delegate Assembly
(10/22-24/20 – Oklahoma City, OK)

New Business

FSBPT Continuing Competence Committee

Ms. Weinberg reported that she is a member of FSBPT's Continuing Competence Committee and recently attended a committee meeting. She read a mission statement that committee members prepared on FSBPT's current philosophy.

Public Comment

The Board provided the PTA students at Somerset Community College an opportunity to pose questions to the Board members. These were addressed by the Board in open session.

At Dr. Kuperstein's suggestion, Mr. Kelly agreed to draft a document that will provide guidance to school representatives how they may advise prospective students who possess a criminal history concerning their eligibility for potential credentialing by KBPT.

Dr. Kuperstein inquired as to when KBPT could begin issuing Compact privileges once the ORI number is issued. Mr. Majors advised that amendments to the current Commission's Rules and Bylaws, anticipated to take effect on 10/28/18, will require each compact member state to fully implement the FBI's criminal background check requirements prior to issuing compact privileges.

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 examination and reinstatement applicants. This motion was seconded by Mr. Martin, which carried. The lists are attached to these minutes.

Mr. Pavkovich made the motion to adjourn the meeting at 4:40 p.m., seconded by Mr. Martin, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director