



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING November 15, 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
Kelly Ramsey, Licensure Coordinator

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD

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 9:03 a.m. on Thursday, 11/15/18, at the Board office. A quorum was present.

KPTA Liaison Report

Dr. Kuperstein reported that KPTA's lobbyist, Leigh Ann Thacker, has been notified that the reorganization bill has been pre-filed and KPTA is requesting the Board's opinion on the bill. She also reviewed the process by which KPTA nominees are selected. Finally, Dr. Kuperstein reported that the six nominees for Board member vacancies have been submitted to the Governor's office.

Minutes for Previous Regular Meeting

The Board reviewed the draft minutes of the 09/20/18 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 9/20/18, as amended. The motion was seconded by Mr. Martin, which carried.

Board Discussions, Committees and Opinion Requests

2019-2021 Jurisprudence Exam Item Writers

Mr. Majors reported that the 2019-2021 Jurisprudence Exam (JE) Item Writers' Task Force, consisting of Debra Turner, Janice Kuperstein, and Troy Grubb, had several meetings to examine potential questions for the next JE. Dr. Kuperstein circulated the item writers' list of twenty-eight proposed questions for the Board to review.

Action taken: Following discussion, Mr. Pavkovich moved that the Board approve a set of twenty of these questions, as revised, to serve as the 2019-2021 JE. The motion was seconded by Mr. Martin, which carried.

Additionally, during the review of the proposed 2019-2021 Jurisprudence Exam questions the Board reviewed a question pertaining to the telehealth regulation 201 KAR 22.160. After discussion, the Board authorized Board Counsel to draft proposed language to amend 201 KAR 22.160 Section 3, and for Mr. Majors to present the proposed changes at the January Board meeting for review.

FSBPT 2018 Annual Conference

Ms. Weinberg, Mr. Martin, Mr. Pennington, Mr. Kelly, Mr. Curley, and Mr. Majors recently attended the 2018 FSBPT Annual Meeting and Delegate Assembly in Reston, Virginia, and each provided a brief report. The consensus of those who attended was that the Annual Meeting and Delegate Assembly was a success. Additionally, Mr. Majors reported that he has been elected as the Vice-Chair of the Council of Board Administrators.

Action taken: No action taken.

INAPTA & KPTA 2018 Joint Conference

Ms. Weinberg, Mr. Dobrzykowski, Mr. Pennington and Mr. Kelly attended the INAPTA & KPTA 2018 Joint Conference on 09/22/18 at Bellarmine University in Louisville. Mr. Dobrzykowski presented an abridged version of his presentation on "Continuing the Momentum of Rehabilitation Services Transition to Population Health Management and Value: Is There a Prescient Opportunity for Ambulatory (Outpatient) Physical Therapy?" Mr. Kelly presented on the "Legal and Ethical Issues Related to Technology in Physical Therapy."

Action taken: No action taken.

Physical Therapy Licensure Compact

Mr. Majors reported that the second annual meeting of the Physical Therapy Licensure Compact Commission was held on 10/28/18, and he disseminated a PowerPoint presentation that addressed the salient topics covered during the meeting. Mr. Majors reported to the Board that he was elected to the Executive Board of the Compact Commission and he was reappointed to the Rules and Bylaws Committee. Mr. Majors informed the Board that, because the Commission's Rules and Bylaws were amended during the Commission's meeting, the Board would need to amend 201 KAR 22.170 to incorporate the latest Rules and Bylaws. Additionally, Mr. Majors and Ms. Ramsey reported on the progress of facilitating the FBI criminal background check.

Action taken: No action taken.

Foreign PTA Credentialing & Clinical Supervised Practice

Mr. Kelly discussed with the Board the proposed draft language for the amendment to 201 KAR 22:070 that would allow the Board to credential foreign educated PTAs.

Action taken: After discussion, Mr. Pennington made a motion to accept the proposed amendment change to 201 KAR 22:070 regarding foreign educated PTA credentialing and subsequently authorize Board staff to make any technical changes that would not affect the substantive aspects of the regulation's intent. The motion was seconded by Mr. Martin, which carried.

2019 Continued Competency Audit

Mr. Majors, Ms. Barton and Mr. Curley discussed several changes that staff would like the Board to consider for the upcoming 2019 Continued Competency Audit. Mr. Majors reported that in the past staff randomly audited 5% of physical therapists and 5% of physical therapist assistants. Staff is proposing to increase the audit to 10% of physical therapists and 10% of physical therapist assistants with the understanding that the current audit process may require additional modifications. Additionally, the Board carefully examined the Board's current fine structure with respect to the audit.

Action taken: After discussion, Mr. Pennington made a motion to increase the 2019 audit from 5% of physical therapists and physical therapist assistants to 10% of physical therapists and physical therapist assistants. The motion was seconded by Ms. Pillow, which carried. Mr. Dobrzykowski and Ms. Weinberg dissented.

Action taken: After discussion, Mr. Dobrzykowski made a motion to increase the base fine by \$25 for first time offenders from \$100 to \$125, with no change to the \$60 per credit hour fine. The motion was seconded by Mr. Pennington, which carried. Mr. Martin and Ms. Weinberg dissented.

Additionally, the Board discussed issuing a fine for individuals who fail to respond to the Continued Competency Board order.

Action taken: Ms. Pillow made a motion to assess a \$300 base fine to those individuals who fail to respond to the Continued Competency Board order. The motion was seconded by Mr. Pavkovich, which carried. Mr. Martin and Ms. Weinberg dissented.

Renewal Wallet Cards

Mr. Majors and Ms. Weinberg discussed the possibility of staff no longer sending wallet cards by mail to individuals who renew their license/certificate. Mr. Majors reported that Kentucky Interactive would be able to provide a printable version of a wallet card to each renewal applicant as part of the online renewal process.

Action taken: After discussion, the consensus of the Board was to discontinue sending wallet cards as part of the renewal process.

Liability Insurance

Mr. Majors reported that a few years ago he contacted FSBPT to determine whether it could assist member boards by providing an umbrella insurance policy with respect to the FTC anti-competitive exposure. FSBPT's initially responded that it would review the issue; however, FSBPT has since turned its focus towards proposed federal legislation that would offer liability protection for board members, staff and agents. Ms. Weinberg informed the Board that she has a simple consultation rider private policy that is relatively inexpensive.

KPTA Nominations for KBPT Appointments

Mr. Majors reported that KPTA has submitted the following names for consideration by the Governor for the two positions whose terms on the Board will expire in January of 2019: Margaret Blain; Wendy Colley; Sonya Dick; Karen Ogle; Karen Thompson; and Talia Weinberg.

2019 Board Appointments

- (1) **2019 Board Chair:** Pursuant to the vote taken by the Board in November 2017, Mr. Martin shall assume the position of Chair, effective 01/01/2019;
- (2) **2019 Board Chair-Elect:** Ms. Pillow moved that Mr. Pennington shall assume the position of Chair-Elect, effective 01/01/2019. The motion was seconded by Mr. Dobrzykowski, which carried;
- (3) **2018 Complaint Committee Members:** Ms. Pillow moved that Mr. Pennington be appointed to the 2018 Complaint Committee to replace Ms. Weinberg. The motion was seconded by Mr. Dobrzykowski, which carried;
- (4) **2019 Complaint Committee Members:** Ms. Pillow moved that Mr. Martin and Mr. Pennington be appointed to the 2019 Complaint Committee. The motion was seconded by Mr. Dobrzykowski, which carried;

- (5) **2019 ADA Accommodations Committee/Liaison Members:** Ms. Pillow moved that Mr. Dobrzykowski and Mr. Pavkovich be appointed to serve as the ADA Accommodations Liaison Members, effective 01/01/2019. The motion was seconded by Mr. Dobrzykowski, which carried;
- (6) **2019 KBPT Board Member Liaison to KPTA:** Ms. Pillow moved that Mr. Pennington continue to serve as the KBPT Board Member Liaison to KPTA, effective 01/01/2019. The motion was seconded by Mr. Dobrzykowski, which carried;
- (7) **2019 KBPT Continued Competency Liaison to KPTA:** Ms. Pillow moved that Mr. Dobrzykowski be appointed to serve as the Continued Competency Liaison to KPTA, effective 01/01/2019. The motion was seconded by Mr. Dobrzykowski, which carried;
- (8) **2019 Finance Workforce Members:** Ms. Pillow moved that Mr. Martin and Mr. Pennington serve as the 2019 Finance Workforce Members, effective 01/01/2019. The motion was seconded by Mr. Dobrzykowski, which carried;
- (9) **2019 PET Review Committee:** Ms. Pillow moved that Mr. Pavkovich and Mr. Pennington serve as the 2019 PET Review Committee Members, effective 01/01/2019. The motion was seconded by Mr. Dobrzykowski, which carried.

2019 Board Meeting Schedule

Following consideration of various conferences which are expected to be held in 2019, and in an effort to avoid conflicts with the scheduling of these conferences, the Board established the following schedule for Board meetings in 2019.

Board Meetings: 9:00 a.m. to approximately 4:00 p.m.

January 17
 March 21
 May 16
 July 18
 September 19
 November 21

Offsite Board Meeting

Mr. Pennington reported to the Board that the Physical Therapy program at Western Kentucky University has agreed to host the March 2019 Board meeting.

Action taken: Mr. Pennington agreed to assist in coordinating the scheduling of this meeting.

KBPT Credentialing FAQ

Mr. Kelly reported that during a previous Board meeting, Dr. Kuperstein, acting in her role as KPTA Liaison to the Board, requested a document that would provide guidance to schools on how to counsel students concerning character and fitness issues.

Action taken: The Board authorized staff to post the KBPT Credentialing FAQ on the Board's website and informed Dr. Kuperstein that she may disseminate to the PT and PTA programs in Kentucky.

Staff Reports and Discussions

The Board reviewed the following staff reports:

- (a) Robert Pruden, PT, who sought clarification on whether a physical therapist can insert a needle into a compartment to measure the internal compartment pressure.

Action taken: After discussion, the consensus of the Board was there is nothing in the Practice Act that would prohibit a physical therapist from performing this procedure, and to refer the

credential holder to 201 KAR 22:053 Section 1(1)(b) which provides that a physical therapist shall practice within the scope of the credential holder's training, expertise and experience.

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

Mr. Roe appeared before the Board to address questions he had regarding his proposed Conditional Reinstatement Agreement. Mr. Roe asked the Board if he would ever be able to request relief from participating in lifetime IPTPC requirement. Ms. Weinberg informed Mr. Roe that there is nothing in the proposed Conditional Reinstatement Agreement that would preclude him from requesting relief from the lifetime IPTPC requirement. Additionally, Mr. Roe requested that the Conditional Reinstatement Agreement not be considered a public document. Ms. Weinberg informed Mr. Roe that his Conditional Reinstatement Agreement is considered a public document, consistent with the Kentucky Open Meetings Act and the Kentucky Open Records Act.

Action taken: After discussion, Mr. Roe signed the proposed Conditional Reinstatement Agreement and Mr. Pennington made the motion to approve the Conditional Reinstatement Agreement. The motion was seconded by Mr. Pavkovich, which carried.

Civil Matters and Investigations

While in open session the Board met with credential holders in case numbers C2018-13 and C2017-15.

C2018-13: The credential holder in this case, Keith Dwyer, appeared before the Board, without counsel, to review the terms of his Settlement Agreement.

Ms. Weinberg reviewed each term of the Settlement Agreement with Mr. Dwyer who acknowledged his understanding, assent and agreement to all terms of the agreement.

Action taken: After providing Mr. Dwyer the opportunity to have his questions addressed by the Board, and following discussion, the Complaint Committee recommended and moved to accept the signed Settlement Agreement, as proposed. The motion was seconded by Ms. Pillow, which carried. Mr. Pennington recused.

C2017-15: The credential holder in this case, Michael Dugger, appeared before the Board, without counsel, to review the terms of his Settlement Agreement.

Ms. Weinberg reviewed the terms of the Settlement Agreement with Mr. Dugger who acknowledged his understanding, assent and agreement to all the terms of the agreement.

Action taken: After providing Mr. Dugger the opportunity to have any questions addressed by the Board, and following discussion, the Complaint Committee recommended and moved to accept the signed Settlement Agreement, as proposed. The motion was seconded by Mr. Pennington, which carried.

Ms. Pillow 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. Pavkovich, which carried.

Subsequently, Mr. Dobrzykowski made the motion to come out of Executive Session. The motion was seconded by Mr. Martin, 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 Mr. Kelly has not received the Hearing Officer's Recommended Order of Default, and this case is ongoing.

Action taken: No action taken.

2018 Complaint Committee

BIC2018-03 & BIC2018-20: The Complaint Committee reported that Mr. Campbell has signed his proposed Settlement Agreement. Mr. Kelly informed the Board that Mr. Campbell provided a signed affidavit stating he has served his required suspension.

Action taken: The Complaint Committee recommended and moved to accept the signed Settlement Agreement. The motion was seconded by Mr. Pennington, 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.

BIC2018-11: 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.

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

Action taken – No action taken.

BIC2018-19: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

BIC2018-21: The Complaint Committee reported that the credential holder in this case allegedly delegated services to supportive personnel outside her/his training.

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 Mr. Pavkovich, which carried.

BIC2018-22: The Complaint Committee reported that this case involves possible fraud and material deception.

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

C2018-23: The Complaint Committee reported that this case is an adverse action from West Virginia. The credential holder did not report her/his Settlement Agreement from Kentucky.

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 11/05/18. 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.

Action taken: No action taken.

REPORTS AND OTHER BUSINESS

Legal Report

Mr. Kelly updated the Board regarding the status of recent revisions to 201 KAR 22:020; KAR 22:040; and KAR 22:170, indicating that all changes had gone into effect. Additionally, Mr. Majors again reminded the Board that 201 KAR 22:170 required amendment to include the recent changes to the Rules and Bylaws of the Physical Therapy Compact Commission.

Action taken: Mr. Pennington made a motion for Mr. Kelly to draft the required changes to 201 KAR 22:170. The motion was seconded by Ms. Pillow, which carried.

Mr. Kelly updated the Board on the status of proposed legislation involving reorganization of professional licensing boards that was pre-filed earlier in the month. Mr. Kelly also provided brief updates on several articles dealing with professional licensing boards across the country and how they could apply in 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 10/11/18, covering the periods from 07/01/18 through 09/30/18.

Action taken: No action taken.

CBT Comment Summary and Candidate Satisfaction Survey Report

Mr. Majors reported the results of the latest CBT comment survey and satisfaction survey report, dated 10/19/18.

Action taken: No action taken.

Staff Email

Mr. Majors shared with the Board two emails which KBPT received complimenting staff on the manner by which questions about the licensing application process were handled.

KBPT Staffing

Mr. Pavkovich 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 Mr. Martin, which carried.

Mr. Pavkovich made a motion for the Board to come out of Executive Session. The motion was seconded by, Mr. Dobrzykowski, which carried.

Action taken: Ms. Weinberg made the motion that, on behalf of KBPT, she and Mr. Majors extend an offer of employment as KBPT's General Counsel to Keith Poynter, Esq., with the ability to negotiate an hourly rate not to exceed \$115 per hour. The motion was seconded by Ms. Pillow, which carried.

KBPT School Presentations

Ms. Barton briefly reported that school visit was conducted at Western Kentucky University on 09/28/18, and a school visit is scheduled to be conducted at the University of Kentucky on 05/20/19.

Conferences and Meetings Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. CSG 2018 National Conference
Northern Kentucky Greater Cincinnati
(12/6-8/18 – Covington, KY)
(Mr. Majors shall serve as a KBPT presenter.)
- b. CAPTASA 2019 Conference
(01/25-26/19 – Lexington, KY)
- c. MATRC – 2019 Mid Atlantic Telehealth Resource Center
(03/31-04/2/19 – Williamsburg, VA)
- d. Regulatory Training for Members & Board Staff
(projected 06/07-09/19 – Alexandria, VA)
- e. FSBPT's Leadership Issues Forum
(07/13-14/19 – Alexandria, VA)
- f. FSBPT's 2019 Annual Meeting and Delegate Assembly
(10/24-26/19 – Oklahoma City, OK)
- g. FSBPT's 2020 Annual Meeting and Delegate Assembly
(10/22-24/20 – Oklahoma City, OK)

New Business

Ms. Pillow brought before the Board a question from a physical therapist inquiring whether a physical therapist could assess a person for mental health conditions such as depression.

Action taken: The Board authorized Counsel to respond to the physical therapist that there is nothing within KRS Chapter 327 or its associated regulations that prevents a physical therapist from assessing a patient for other conditions and then referring that patient to an appropriate professional for further diagnosis and treatment. Additionally the Board advised that, if a physical therapist is asked to do something for which they cannot perform competently, they should refuse to perform the service.

New Licensee/Reinstatement/Renewal Applications

Action taken: Mr. Martin 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 Ms. Pillow, which carried. The lists are attached to these minutes.

Mr. Pavkovich made the motion to adjourn the meeting at 4:56 p.m., seconded by Mr. Pennington, which carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott D. Majors". The signature is fluid and cursive, with a long horizontal stroke at the end.

Scott D. Majors
Executive Director