



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

- MINUTES OF MEETING - January 17, 2019

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

Board Staff: Scott D. Majors, Executive Director
Krista Barton, Executive Secretary
Stephen Curley, Investigator
Keith Poynter, Esq., Board Counsel
Kelly Ramsey, Licensure Coordinator

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD

Board Guest: Beth Ennis, PT

Member Absent: Ron Pavkovich, PT

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Dan Martin, at 9:02 a.m. on Thursday, 01/17/19 at the Board office. A quorum was present.

KPTA Liaison Report

Dr. Kuperstein reported that on 01/07/19 KPTA sent a letter to both chambers of the Kentucky state legislature expressing concerns relating to the reorganization bill. She also reported that on 01/09/19 KPTA provided a free webinar on Continued Competency entitled, "Continued Competency Conundrum: Answers to Commonly Asked Questions". Unfortunately, only five people participated with the webinar, and that included Mr. Dobrzykowski, who is KBPT's Continued Competency Liaison. The webinar was recorded, it is available online, and KPTA intends to issue weekly updates that reference this webinar. Additionally, she reported that KPTA has several initiatives in its strategic plan including development of a Telehealth toolkit, investigating the feasibility of physical therapists' privileges to order imaging, and guidelines for physical therapists involved in the process of handicap placards. Finally, Dr. Kuperstein reported that KPTA's Therapy Alliance Legislative Day will be held on 02/07/19.

Minutes for Previous Regular Meeting

The Board reviewed the draft minutes of the 11/15/18 Board meeting.

Action taken: Following review and discussion of proposed amendments to the draft minutes, Ms. Weinberg made a motion to approve the minutes of the Board meeting of 11/15/18, as amended. The motion was seconded by Ms. Pillow, which carried.

Board Discussions, Committees and Opinion Requests

Board Reorganization

Mr. Majors reported that Joseph Fawns with the Public Protection Cabinet, who was scheduled to appear at the meeting to discuss the Cabinet's proposed reorganization of licensing boards, notified Board staff the day preceding the meeting that he would not be able to attend the meeting due to a sudden scheduling conflict.

Action taken: Following discussion, the Board asked Mr. Majors to provide the members a copy of the reorganization bill, once filed, so the members may formulate their respective concerns with the language of the bill, if any.

Physical Therapy Licensure Compact

Mr. Majors reported on the progress made since the November meeting concerning the steps necessary to fully implement the criminal background check procedure. Mr. Curley reported that he has been working with Kentucky Interactive to facilitate the mandatory weekly data transfer with the Compact Commission. Ms. Ramsey discussed with the Board various business models KBPT staff members have examined to determine the most efficient manner by which the criminal background check may be administered. Mr. Majors reported that he submitted KBPT's policy for the criminal background check to the Kentucky State Police, which granted formal approval. Additionally, he informed the Board that staff intends to disseminate information regarding the criminal background check to all Program Directors of Kentucky physical therapy programs. Finally, Mr. Majors reported that the Compact Commission Executive Board has a meeting scheduled on 02/05/19, and he will provide a summary report to the members at the Board's March meeting.

Action taken: No action taken.

Policy and Procedure Manual Updates

Mr. Majors briefly discussed the need for the Board to formally approval the Policy and Procedure Manual regarding the Criminal Background Check, the Continued Competency Audit, and the job descriptions for Ms. Barton and Mr. Curley.

Action taken: After brief discussion, Mr. Pennington made a motion that the Board accept and approve the updates to the Policy and Procedure manual, as proposed. The motion was seconded by Ms. Pillow, which carried.

CSG 2018 National Annual Conference

Mr. Majors reported that on 12/07/18 he presented on Interstate Licensure Compacts at the Council of State Government's 2018 Annual Conference in Covington, Kentucky, as part of a three-person panel.

Action taken: No action taken.

Monitoring Training Program

Mr. Curley presented an abridged version of the Monitoring Training Program for the Board's review. Additionally, Mr. Curley informed the Board that the initial training for this Program is scheduled for 03/19/19, and several former Board members have indicated they plan to attend via video conference.

Action taken: No action taken.

2019-2021 Jurisprudence Exam

Mr. Curley reported that he discovered a technical issue with the 2019 Jurisprudence Exam that surfaced at the beginning of the 2019 renewal. He informed the Board that he has been in contact with Kentucky

Interactive to attempt to achieve a permanent solution to the issue. Mr. Curley further indicated that, despite the presence of this issue, Board staff is still reliably able to discern when a credential holder has completed the Jurisprudence Exam, and the integrity of this determination is not in question.

Action taken: No action taken.

Kentucky Telehealth Board

Mr. Dobrzykowski and Mr. Majors reported that they participated in a teleconference on 01/16/19 conducted by the Kentucky Telehealth Board. There was discussion regarding the expansion of Medicaid covered telehealth services which was addressed in the 2018 legislative session through SB 112. Mr. Majors also reported that, out of sixteen participants in the webinar, five were from the physical therapy profession. The Board was also apprised of a Telehealth Summit, tentatively scheduled for 05/23/19 at the Knicely Conference Center in Bowling Green, Kentucky.

Action taken: No action taken.

Dry Needling FAQ

Mr. Majors circulated the proposed Dry Needling FAQ for review, consistent with the Board's discussion held at the last meeting.

Action taken: Following review and discussion, Ms. Weinberg moved that the Dry Needling FAQ be modified consistent with the Board's current discussion. The motion was seconded by Ms. Pillow, which carried. Mr. Pennington dissented.

Mr. Majors agreed to draft a revised Dry Needling FAQ consistent with the motion and schedule this for the Board's consideration and possible final approval at the March Board meeting.

PTA Scope of Practice

Ms. Weinberg discussed with the Board the possible need for an FAQ addressing the Scope of Practice of a PTA. She informed the Board of two issues that recently have been brought to her attention regarding PTAs offering pro-bono services without PT supervision, and PTAs completing reassessment components and having a PT co-sign.

Action taken: After discussion, the Board authorized staff to draft an FAQ to address each issue separately, and to bring back before the Board at the March meeting.

Offsite Board Meeting

Mr. Curley informed the Board that recently he has been in contact with representatives of Western Kentucky University's ("WKU") Physical Therapy program to help facilitate WKU's plan to host the Board's regularly scheduled meeting on 03/21/19.

Action taken: No action taken.

Staff Reports and Discussions

The Board reviewed the following staff reports:

(a) R2018-21 Rick Roe

Mr. Majors informed the Board that the Conditional Reinstatement Agreement signed by Mr. Roe at the November Board meeting had an error regarding the IPTPC requirement for reinstatement. Thus, prior to his resignation from KBPT employment, Mr. Kelly drafted an Addendum to the Conditional Reinstatement Agreement which Mr. Roe signed.

Action taken: Mr. Pennington made a motion for the Board to issue an Order adopting the Addendum to the Conditional Reinstatement Agreement. The motion was seconded by Ms. Pillow, which carried.

- (b) KBPT staff brought a request before the Board from a prospective applicant who would like to sit for the PTA exam without completing the requisite education from a CAPTE-accredited school. The individual has obtained a degree in Kinesiology and has devoted over 134 documented hours toward shadowing multiple physical therapists.

Action taken: After review, the Board instructed staff to inform the individual that all exam applicants are required to comply with the Board's administrative regulation for license applicants, 201 KAR 22:020, in addition to those statutory requirements set out in KRS 327.050, and, therefore to notify this individual that the request is denied.

- (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?" The applicant sent in a letter of explanation with supporting documents.

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

- (d) 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. Weinberg made the motion to issue a credential with no restrictions once the application process is completed. The motion was seconded by Ms. Pillow, which carried.

- (e) Angus Williams, PT, a foreign-educated endorsement applicant, appeared before the Board to discuss his application. Following discussion, the Board determined that Mr. Williams has met the requirements set forth in 201 KAR 22:070 Section 1 (2)(a). Additionally, the Board discussed with Mr. Williams the requirement of supervised clinical practice, pursuant to 201 KAR 22:070 Section 1 (2)(f), and Mr. Williams indicated he was willing to comply with the requirement.

Action taken: After discussion, Mr. Pennington made a motion that the Board conditionally approve Mr. Williams' application once he satisfactorily completes the required supervised clinical practice. The motion was seconded by Ms. Pillow, 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. Majors updated the Board regarding the status of recent proposed revisions to 201 KAR 22:070 and 22 KAR 22:170. Mr. Majors explained that these latest amendments would become effective following hearings before the Administrative Regulation Review Subcommittee and the Joint Health & Welfare Committee, likely in mid-March of this year. Additionally, Mr. Majors reviewed with the Board a proposed revision to 201 KAR 22:160, drafted by Louis Kelly prior to his resignation from KBPT employment for the Board's consideration.

Action taken: Following discussion, the Board elected to take no action at this time concerning 201 KAR 22:160.

Mr. Majors also reported that the most recent published version of 201 KAR 22:020 Section 7 may have inadvertently resulted in endorsement applications being exempted from the criminal background requirement.

Action taken: Following discussion, Mr. Pennington moved that the Board authorize Mr. Majors to attempt to rectify the issue with the Legislative Research Commission through a technical amendment and, alternatively, if that process was not available, to authorize Mr. Majors to file a proposed amendment to 201 KAR 22:020 to clarify that the criminal background procedure, once fully implemented, applies to applications by endorsement. The motion was seconded by Mr. Dobrzykowski, which carried.

Finally, Mr. Poynter and Mr. Majors apprised the Board of recent articles relating to professional licensing activities in the states of Tennessee, Connecticut, Alaska, Ohio, Oregon and Michigan.

KBPT Executive Director's Report

Financial Report

The Board reviewed monthly, quarterly and FY 2018 FAS3 financial reports addressing the Board's revenues and expenditures. Mr. Majors also distributed a financial worksheet highlighting in greater detail the Board's revenue, personnel and operating expenses, quarterly allotments and annual appropriations. Mr. Majors also summarized the increase in the state's employer contributions to the state pension plan, now at an annual rate of 83%, as mandated by the state legislature, and the effects this contribution level is expected to have upon the Board's operations.

Action taken: Following discussion, the Board instructed Mr. Majors to draft a proposed amendment to 201 KAR 22:135 reflecting increases in the Board's current fee structure for initial licensure, renewals, IPTPC contributions, licensure verifications, and applications by reinstatement. The Board also instructed Mr. Majors to project the amount of savings that would inure from the elimination or reduction of some of the Board's services. Mr. Majors agreed to provide this information for final Board review and possible approval at the Board's next meeting.

KBPT Staffing

Mr. Majors reported that, effective 01/01/2019, the Personnel Cabinet formally approved the Board's request that the employment positions for KBPT staff members Stephen Curley and Krista Barton be reclassified to ungraded, non-merit positions, and that the Board's corresponding request for an upward adjustment to their respective salaries was also approved.

KBPT School Presentations

Ms. Barton and Ms. Ramsey briefly reported that a school visit was conducted at Western Kentucky University on 11/28/18. Additionally, school visits are scheduled for Madisonville Community College, Hazard Community and Technical College, Somerset Community College and the University of Kentucky.

Conferences and Meetings Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. CAPTASA 2019 Conference
(01/25-26/19 – Lexington, KY)
- b. KAAA – Kentucky Association of Administrative Adjudicators
Writing Workshop
(02/01/19 – Frankfort, KY)
(Mr. Majors shall serve as KBPT's representative)

- c. MATRC – 2019 Mid Atlantic Telehealth Resource Center
(03/31-04/2/19 – Williamsburg, VA)
- d. FSBPT's Leadership Issues Forum
(07/13-14/19 – Alexandria, VA)
- e. FSBPT's Regulatory Training for Members & Board Staff
(08/16-18/19 – 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 – TBD)

New Business

Mr. Majors reported the results of the latest CBT comment survey and satisfaction survey report, dated 1/9/19.

Action taken: No action taken.

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 01/02/19, covering the periods from 10/01/18 through 12/31/18. He informed the Board that there was a settlement included in the report.

Action taken: Following discussion, Ms. Weinberg made a motion to authorize Mr. Poynter to inquire about what facility is named in the settlement agreement and to provide a report to the 2019 Complaint Committee. The motion was seconded by Ms. Pillow, which carried.

Mr. Majors brought before the Board a question from Truman Taylor a Laboratory Surveyor for the Office of Inspector General who is inquiring if a doctor of physical therapy has the ability to write an order for lab work specifically a drug screen?

Action taken: After discussion, the Board instructed staff to inform Mr. Taylor that the Physical Therapy Practice Act does not address this matter.

Mr. Martin reported that, as Mr. Majors was rehired as KBPT's Executive Director in April of 2018, his next annual evaluation to be conducted by the Board is due in April of 2019. Mr. Martin advised that he would provide the evaluation template to each of the Board members, and he requested that they timely complete this evaluation of Mr. Majors.

Action taken: No additional action taken at this time.

Public Comment

Dr. Kuperstein inquired whether an unexpected vacancy on the Board would be filled by the usual means of the KPTA submitting names to the Governor's office. Mr. Majors informed Dr. Kuperstein that he anticipated this would be the case, and he would timely notify KPTA if a vacancy is created.

Dr. Kuperstein informed the Board that the University of Kentucky has Telehealth experts who would be willing to give a Zoom presentation to the Board. She also informed the Board that the University of Kentucky has approved a graduate certificate program in Telehealth.

New Licensee/Reinstatement/Renewal Applications

Action taken: Ms. Weinberg 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. Pennington, which carried. The lists are attached to these minutes.

Civil Matters and Investigations

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 Ms. Weinberg, which carried.

Subsequently, Ms. Weinberg made the motion to come out of Executive Session. The motion was seconded by Mr. Dobrzykowski, 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 Board received a Hearing Officer's Recommended Order of Default concerning certificate-holder Amber Rigsby, and the Board was thus required to consider the entire hearing record and deliberate whether to accept the Recommended Order issuing the Board's Final Order, pursuant to KRS 13B.120.

Action taken: Following review of the entire hearing record, including the Recommended Order of Default, Mr. Martin made a motion to accept the Hearing Officer's Recommended Order and revoke Ms. Rigsby's physical therapist assistant credential, certificate number A02496. The motion was seconded by Ms. Weinberg, which carried.

2018 Complaint Committee

BIC2018-09: The Complaint Committee reported that the credential holder in this case previously accepted the Private Admonishment and paid the associated fine.

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

BIC2018-11: The Complaint Committee reported that the credential holder in this case previously accepted the Private Admonishment and paid the associated fine.

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

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.

BIC2018-22: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2018-24: The Complaint Committee reported that his case involves possible fraud and material deception.

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

2019 Complaint Committee

C2019-01: The Complaint Committee reported that this case involves a credential holder with a possible malpractice suit.

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

C2019-02: The Complaint Committee reported that this case concerns an adverse action from West Virginia in which the credential holder has possibly committed fraud and material deception.

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

IPTPC Report

Mr. Fingerson presented his written IPTPC report dated 01/09/19. IPTPC cases which previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

Additionally, Mr. Fingerson informed the Board that a credential holder who is currently under voluntary participation had tested positive for alcohol. Mr. Fingerson reported that inquiries were made and additional testing has been ordered to make sure there are no subsequent violations. Mr. Fingerson recommended no action be taken at this time unless there are further violations.

Action taken: No action taken.

Mr. Pennington made the motion to adjourn the meeting at 2:19 p.m., seconded by Ms. Weinberg, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director