



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING March 21, 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

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD

Member Absent: Ron Pavkovich, PT

Staff Absent: Keith Poynter, General Counsel

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Dan Martin, at 9:00 a.m. on Thursday, 03/21/19 at Western Kentucky University. (The PT student body joined the meeting at 10:00 a.m.) 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 01/17/19 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 01/17/19, as amended. The motion was seconded by Mr. Dobrzykowski, which carried.

Board Discussions, Committees and Opinion Requests

Physical Therapy Licensure Compact

Mr. Majors reported on the progress made since the January meeting concerning the steps necessary to fully implement the criminal background check procedure. Specifically, the Board's agency security plan was prepared and submitted to the Kentucky State Police (KSP) for review, which was approved. Mr. Majors advised that all four full-time staff members at the Board's office successfully completed the required security awareness training, and these staff members are now authorized to access criminal history record information from the FBI and KSP. Moreover, Kentucky's licensure data has been sent to the Compact Commission through a test environment for the past several weeks, all without incident. Additionally, all steps that needed to be completed prior to the Compact Commission approving Kentucky to begin issuing compact privileges now have been completed. Consequently, Kentucky was scheduled to begin issuing compact privileges on the day of the meeting, 03/21/2019, bringing to ten (10) the total number of compact states actively issuing and accepting compact privileges.

Action taken: No action taken.

Renewal Update

Policy and Procedure Manual Updates

Mr. Majors circulated an addition to the Criminal Back Check section of the Policy and Procedure Manual to include a draft Security Incident Response Form for the Board to review.

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

KAAA Workshop

Mr. Majors provided a brief report of a Writing Workshop he attended on 02/01/2019 sponsored by the Kentucky Association of Administrative Adjudicators (KAAA) in Frankfort, Kentucky. As Mr. Majors is a member of KAAA, he reported there was no cost to the Board associated with his attendance.

No action taken.

Occupational Licensing Best Practices Workshop

Ms. Weinberg, Mr. Dobrzykowski and Mr. Majors provided a brief report of an Occupational Licensing Best Practices Workshop they attended on 02/08/2019 sponsored by Kentucky Governor Matt Bevin's Office of Boards and Commissions in Frankfort, Kentucky. The speakers at this session addressed topics on the current anti-regulatory environment; legal liability of board members; best practices for handling complaints, investigations, hearings and settlements; approaches adopted in other states to "active supervision" as mandated by the U.S. Supreme Court in the case of *North Carolina Board of Dental Examiners vs FTC*; the feasibility of adopting licensing compact to promote multi-state practice; and the Kentucky Open Records and Open Meetings Acts.

No action taken.

Monitoring Training Program

Mr. Curley reported that on 03/19/19 he provided a monitoring training course to twelve individuals who are currently working as, or are interested in becoming, a Board monitor. Additionally, Mr. Curley reported that the program was well received.

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 Knically 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. Pennington moved that the Board approve the Dry Needling FAQ. The motion was seconded by Ms. Pillow, which carried.

PTA Scope of Practice

Mr. Majors circulated the proposed draft FAQ addressing the Scope of Practice of a PTA specifically related to PTAs offering pro-bono services without PT supervision or documentation, and PTAs completing reassessment components and having a PT co-sign.

Action taken: Following review and discussion, Ms. Pillow moved that the Board approve the PTA Scope of Practice FAQ. The motion was seconded by Ms. Weinberg, which carried.

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) KBPT staff brought a renewal application before the Board for review. The credential holder answered "yes" to question 1a, have you been convicted of, or do you have pending charges for any felony, misdemeanor, or any crime in the courts of this state, other state, territory or country. The credential holder provided information that she/he had accepted a pre-trial diversion for a misdemeanor of harassment communications.

Action taken: Mr. Pennington made a motion for the Board to open a Board Initiated Complaint (BIC). The motion was seconded by Ms. Pillow, which carried.

- (b) KBPT staff brought a renewal application before the Board for review. The credential holder answered "yes" to question 1a, have you been convicted of, or do you have pending charges for any felony, misdemeanor, or any crime in the courts of this state, other state, territory or country. The credential holder reported that she/he had a pending charge of simple possession; casual exchange. Board staff reported that the charges had been dismissed.

Action taken: Ms. Weinberg made a motion for the Board to take no action. The motion was seconded by Mr. Pennington, which carried.

- (c) KBPT staff brought a renewal application before the Board for review. The credential holder answered “yes” to question 1I have you had a malpractice settlement or civil judgment entered against you related to your practice of physical therapy. The credential holder reported that she/he is currently involved in a malpractice claim.

Action taken: Ms. Weinberg made a motion for the Board to open a Board Initiated Complaint (BIC). The motion was seconded by Mr. Dobrzykowski, which carried.

- (d) Kevin King

- (e) KBPT staff brought an examination application before the Board for review. The credential holder answered “yes” to question 8 on the exam application, affirming that she/he has been convicted of, or do you have pending charges for any felony, misdemeanor, or any crime in the courts of this state, other state, territory or country. The credential holder was charged with fleeing or evading police, 2nd degree. Mr. Fingerson reviewed the application and letter of explanation and recommended a voluntary IPTPC participation for one year.

Action taken: Ms. Weinberg made a motion for the Board to approve the application with the stipulation the applicant enter into a voluntary IPTPC contract for the duration of one year. The motion was seconded by Mr. Pennington, which carried.

- (f) Cindy Angel

- (g) KBPT staff brought a renewal application before the Board for review. The credential holder answered “yes” to question 1f do you have any unresolved or pending complaints, investigations or disciplinary actions filed against your license from any professional licensing authority. The credential holder provided information that she/he is currently involved in an audit with the Centers for Medicare and Medicaid Services (CMS).

Action taken: Ms. Weinberg made a motion for the Board to take no action. The motion was seconded by Mr. Pennington, which carried.

- (h) Maggie Creech

- (i) Brigid Mahan

- (j) KBPT staff brought a renewal application before the Board for review. The credential holder answered “yes” 1I have you had a malpractice settlement or civil judgment entered against you related to your practice of physical therapy. The credential holder reported that she/he involved in a lawsuit and settled out of court.

Action taken: Following review of the information provided, Mr. Pennington made a motion for the Board to take no action. The motion was seconded by Mr. Dobrzykowski, which carried.

- (k) KBPT staff brought an examination application before the Board for review. The credential holder answered “yes” to question 8 on the exam application, affirming that she/he has been convicted of, or do you have pending charges for any felony, misdemeanor, or any crime in the courts of this state, other state, territory or country. The credential holder had previous multiple convictions and multiple pending charges. Mr. Fingerson reviewed the application and letter of explanation and recommended mandatory IPTPC participation for five years.

Action taken: Following review and discussion, Mr. Pennington made a motion for the Board to withhold any final decision on the application until the applicant has provided information to Board staff that all pending criminal cases have been resolved. The motion was seconded by Mr. Dobrzykowski, which carried.

- (l) B.P., PT, who submitted a requires for a hardship extension for the 2019 Continued Competency audit for the Board's review.

Action taken: Following review, Mr. Pennington made a motion for the Board to grant a one year extension to complete the continued competency requirements. The motion was seconded by Ms. Weinberg, 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 the Board's administrative regulations.

Mr. Majors reported that on 03/11/2019 the Administrative Regulation and Review Subcommittee (ARRS) considered the Board's amendment to 201 KAR 22:070 concerning the Board's proposal to begin credentialing foreign-educated physical therapist assistants. Mr. Majors circulated to the members copies of language adopted by three other jurisdictions that require supervised clinical practice for foreign-educated PTAs. Following discussion, the Board elected not to adopt a similar requirement and, instead, to retain the original language of the proposed amendment to 201 KAR 22:070. Ms. Pillow inquired whether the language of the regulation needed to clarify that the examination to be administered was only for PTAs, and Mr. Majors agreed to examine this issue and provide the Board an update at the May meeting.

Mr. Majors reported that the request for the Compiler with the Legislative Research Commission to approve a technical amendment to 201 KAR 22:020 was still pending; however, a formal amendment to this regulation was filed to cover the contingency the technical amendment request is not granted. This proposed amendment was scheduled to be considered by ARRS at its April meeting.

Mr. Majors also appeared before the Standing Committee on Health and Family Services on 03/13/2019 to testify on behalf of the Board's proposed amendment to its administrative regulation relating to the Physical Therapy Compact Commission, 201 KAR 22:170. This proposed amendment became effective at the close of that committee meeting.

Mr. Majors also circulated copies of articles concerning eliminating anti-competitive effects of occupational licensing and the National Telehealth Policy Resource Center's analysis of Occupational Therapy and Physical Therapy policy regarding telehealth.

Executive Director's Report

Financial Report

The Board reviewed monthly, quarterly and FY 2019 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.

Similar to his report in January, 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. As a direct result of the effects this contribution level is expected to have upon the Board's operations in the next several budget cycles, Mr. Majors circulated four (4) different proposals for raising the Board's revenue through various fee increases. Mr. Martin also reported that the Finance Workgroup carefully considered the four (4) proposals, and the members of this Workgroup were recommending that the Board approve the second least aggressive of these proposed fee increases by seeking an amendment to the Board's fee regulation – 201 KAR 22:135.

Action taken: Mr. Martin made the motion for the Board to authorize the following fee increases:

- Applications (for initial license, reinstatement, endorsement) to be increased by \$25, from \$200 to \$225;
- Applications for renewal of a PT license/PTA certificate to be increased by \$40 every two-year renewal cycle, from \$130 to \$170;
- Verification of a credential (to be sent to another state for credentialing purposes) to be increased by \$20, from \$20 to \$40; and
- Licensure mailing lists on a CD, DVD or email to be increased by \$50, from \$100 to \$150.

Ms. Pillow seconded this motion, which carried. During its discussion of this motion, the members deemed this fee increase necessary in order for KBPT to meet its operating budget and expenses, without requesting General Fund monies. This is largely due to the fact that the Board's required pension contribution for personnel has increased from 5.9% in 2006, to 39% in 2016, to 49% in 2017, to our current 83% in 2019. Depending on whether HB 358 passes during the 2019 legislative session, recent news articles have suggested that the required pension contribution is expected to increase in 2020 from its current 83% to 96%. The members of the Board noted that KBPT's last fee increase was nine (9) years ago, and the Board cannot continue to absorb these additional financial obligations without an increase in revenue.

KBPT Staffing

As Mr. Majors reported at the January meeting, 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. This adjustment called for a 7.5% increase in salaries on 01/01/2019 and a second 7.5% increase in salaries on 07/01/2019, for a total 15% increase. At the March meeting, Mr. Majors noted that Mr. Curley and Ms. Barton were each scheduled to also receive a 5% automatic increase after 6 months in their respective new positions pursuant to Title 101 KAR Chapter 3.

Action taken: Following discussion, Ms. Weinberg made the motion for the Board to modify its decision made at its meeting held 09/20/2018 concerning the upward adjustments in salaries for Mr. Curley and Ms. Barton; specifically, for the Board to approve a modified salary increase of 2.5% in salary for Mr. Curley and Ms. Barton, effective 07/01/2019, instead of 7.5% as previously voted. Ms. Weinberg noted that this modification would net the same intended 15% increase after factoring the 5% automatic increase for Mr. Curley and Ms. Barton following 6 months of service in their new positions. Ms. Pillow seconded the motion, which carried.

KBPT School Presentations

Ms. Barton briefly reported that a school visits were conducted at Madison Community College, Hazard Community & Technical College, Somerset Community College and Jefferson Community & Technical College. Additionally, school visits are scheduled the University of Kentucky and West Kentucky Community and Technical College.

Conferences and Meetings Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. MATRC – 2019 Mid Atlantic Telehealth Resource Center
(03/31-04/19 – Williamsburg, VA)
- b. KAAA – Kentucky Association of Administrative Adjudicators
Writing Workshop
(05/10/19 – Frankfort, KY)
Mr. Pennington made a motion for the Board to pay for registration for Mr. Majors and Mr. Poynter to attend the Kentucky Association of Administrative Adjudicators Writing Workshop in May. The motion was seconded by Ms. Weinberg, which carried.
- c. 2019 Kentucky Telehealth Summit
(05/23/19 – Bowling Green, KY)
- d. FSBPT's Leadership Issues Forum
(07/13-14/19 – Alexandria, VA)
Ms. Weinberg made a motion to designate Mr. Pennington as the Primary Voting Delegate. The motion was seconded by Ms. Pillow, which carried.
- e. FSBPT's Regulatory Training for Members & Board Staff
(08/16-18/19 – Alexandria, VA)
Mr. Pennington made a motion to authorize Mr. Pavkovich to attend the Regulatory Training for Members & Staff. The motion was seconded by Ms. Weinberg, which carried.
- f. KPTA Annual Conference
(09/27-28/19 – Lexington, KY)
- g. FSBPT's 2019 Annual Meeting and Delegate Assembly
(10/24-26/19 – Oklahoma City, OK)
Ms. Weinberg made a motion to designate Mr. Dobrzykowski as the Alternate Voting Delegate for FSBPT's 2019 Annual Meeting and Delegate Assembly. Ms. Pillow made a motion to designate Ms. Ramsey as the Administrator of the Board for purposes of attending the 2019 Annual Meeting and Delegate Assembly. The motion was seconded by Ms. Weinberg, which carried.
- h. FSBPT's 2020 Annual Meeting and Delegate Assembly
(10/22-24/20 – TBD)

New Business

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.

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. 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 Ms. Pillow, which carried.

Subsequently, Ms. Pillow 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.

2018 Complaint Committee

C2018-15: The Complaint Committee reported that this case involved a possible term protection violation. The Complaint Committee informed the Board that staff had received a Letter of Agreement.

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

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 this case is ongoing.

Action taken: No action taken.

2019 Complaint Committee

C2019-01: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

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 issue a Private Admonishment and a fine of \$250. The motion was seconded by Ms. Weinberg, which carried.

BIC2019-03: The Complaint Committee reported this case involved a malpractice suit that was reported on the Department of Insurance report reviewed at the January Board meeting. The report provided the name of the insurance company, but not the name of the credential holder involved. The Board voted at the January meeting to open a Board Initiated Complaint (BIC), and have Mr. Poynter research and provide additional information at the next meeting. The Complaint Committee reported that another malpractice suit was filed with the Board office. After further investigation, these two malpractice suits relate to the same issue.

Action taken: Following discussion, the Complaint Committee recommended and moved motion to close **BIC2019-03**. The motion was seconded by Ms. Pillow, which carried.

Additionally, the Complaint Committee recommended and moved to open an investigation **C2019-04**. The motion was seconded by Ms. Weinberg, which carried.

C2019-05: The Complaint Committee reported this case involves a malpractice suit.

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

IPTPC Report

Mr. Fingerson presented his written IPTPC report dated 03/12/19. 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 Thomas McGinnis, who signed an Agreed Order of Voluntary Temporary Suspension on June 25, 2018, contacted Board staff to inquire about reinstating his certificate. Mr. Fingerson reviewed with the Board, the criteria for reinstatement that was included in the Agreed Order of Voluntary Temporary Suspension.

Action taken: The Board authorized staff to contact Mr. McGinnis and review the terms of his Agreed Order of Voluntary Temporary Suspension to reinstate his certificate.

Ms. Pillow made the motion to adjourn the meeting at 3:22 p.m., seconded by Ms. Weinberg, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director