



KENTUCKY BOARD OF PHYSICAL THERAPY

Steve L. Beshear
Governor

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Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING March 21, 2013

Board Members Present: Charles Clark, PT, Chair
Linda Pillow, PT, Chair-Elect
Peggy Block, PT
Troy Grubb, PT
Virginia Johnson
Karen Craig Ogle, PT
Tina Volz, PT

Board Staff: Scott D. Majors, Executive Director
Donna Sims, Licensure Coordinator
Stephen Curley, Investigator

Board Agents: Mark R. Brengelman, Esq., Board Counsel

Guests: Brian Fingerson, RPh
Jenny Park
Marie Wagner, PT

A meeting of the Kentucky Board of Physical Therapy was called to order by Board Chair, Chuck Clark, at 9:06 a.m., on Thursday, March 21, 2013, at the Board office. A quorum was present.

Chuck Clark noted that the terms of service for Board members Troy Grubb and Virginia Johnson were scheduled to expire on April 30, 2013. Mr. Grubb and Ms. Johnson indicated their desire to be reappointed by the Governor. Their service to the Board over their current terms was duly noted.

Motion was made by Troy Grubb, seconded by Linda Pillow, to approve the minutes of the Board meeting of January 17, 2013. Motion carried.

John Steffen, Executive Director for the Executive Branch Ethics Commission, provided a 45 minute presentation to the Board, its staff and counsel. The presentation addressed the application of the "Ethics Code" (KRS Chapter 11A) to the Board and its staff, as well as Executive Orders 2008-454 and 2009-882.

Board Discussions, Committees and Opinion Requests

KBPT Renewal Application Process

Scott Majors and Donna Sims gave a report to the full Board regarding the renewal application process. This report addressed: (1) problems with staff receiving accurate data from the online renewal application process, including payments through ePay; and (2) concerns with some of the questions included in the renewal application as they relate to the Board's renewal administrative regulation, 201 KAR 22:040. Mr.

Majors proposed that a committee be comprised to study the issue whether improvements and greater efficiencies to the renewal application process should be implemented prior to the 2015 – 2017 renewal period. Peggy Block volunteered to serve on this committee and Mark Brengelman agreed to assist.

FSBPT's Board Member and Administrator Training – June 6-9, 2013

Mr. Majors again reported that FSBPT is offering training for administrators and board members in Alexandria, Virginia, on June 6-9, 2013, at FSBPT's expense. Maribeth Decker, FSBPT's Associate to Senior Staff, advised that slots were still available for up to two Board Members. Mr. Majors and Tina Volz confirmed their intent to attend.

FSBPT's Ethics and Legislation Committee

Mr. Majors offered a report concerning a conference call conducted by FSBPT's Ethics and Legislation Committee on March 19, 2013. The members discussed the issue of licensure portability and, specifically, the concept of a Physical Therapy "Compact" similar to the Nurse Licensure Compact. Following discussion, the Board expressed reservation for a compact model in which a limited number of state member boards would participate. Mr. Majors agreed to share this position with the E & L Committee at its meeting scheduled on April 13 – 14, 2013, in Alexandria, Virginia.

FSBPT ByLaws, Conference Call 03/25/13

Mr. Majors circulated material concerning a conference call scheduled for March 25, 2013, relating to the possible amendment of FSBPT's ByLaws concerning Administrator representation on FSBPT's Board of Directors.

KBPT Spring Newsletter

Mr. Majors reported that a draft of the spring newsletter will be provided to the Board for its review and consideration at the May meeting. Potential topics for the newsletter were identified and discussed, including the recent renewal application process and the Impaired Physical Therapy Practitioners Committee.

Model Settlement Agreement

Mark Brengelman circulated a proposed model settlement agreement which references the various dispositions, sanctions, terms and conditions the Board has typically considered. Following review and discussion, the Board requested minor modifications to this draft by adding: (1) a provision that helps clarify that failure to comply with the terms of the agreement may subject the credential holder to further discipline; and (2) a provision that addresses a specific period of time (i.e., 5 days) by which the affected credential holder is required to notify their employer of the settlement agreement entered into with the Board.

Monitoring Procedures and Requirements

Mr. Majors, Mr. Brengelman and Stephen Curley discussed the process of proposing standardized monitoring reports to facilitate consistency and uniformity in the reports submitted to the Board. Specifically tailored training for new monitors was also discussed. Following discussion, the Board identified the need for an actual form or checklist of clearly-defined areas of a credential holder's practice is to be monitored, perhaps in spreadsheet format. Mr. Majors and Mr. Brengelman agreed to study the idea of such a checklist and provide a status update to the Board at its next meeting.

2013 Jurisprudence Exam Committee

Ms. Block and Mr. Majors reported that the 2013 JE Committee was scheduled to convene by conference call on March 29, 2013, to examine potential questions for the next Jurisprudence Examination. Proposed questions are expected to be provided to the Board for its consideration at its next meeting.

Opinion and Declaratory Ruling #2013-001

During its January meeting, and following review of the Board's Declaratory Opinion #1999-001, and after noting that KRS 369.107 was enacted after Opinion #1999-001 was adopted, the Board voted that a draft revision to this opinion be submitted in accordance with KRS 369.107. During its March meeting, Mr. Brengelman circulated a draft opinion which was reviewed, discussed and approved without objection. The Board further directed staff to note on the Board's website next to Opinion #1999-001 that it has been superceded by Opinion #2013-001.

Opinion Requests

The Board reviewed the following opinion requests from:

- (1) Brittany Nathanson, PT, inquiring about the rules and regulations regarding a physical therapist's responsibilities when taking verbal orders from a physician's office for services other than physical therapy, and taking medication orders from a physician's office. Following discussion and consideration, the Board instructed staff to respond by advising that, under the facts presented, the physical therapist would merely be conveying information, not carrying out the order, and, as such; (a) it is not within the practice of physical therapy to write the order on behalf of the physician; (b) it is the lab's responsibility to confirm the verbal order, and not within the Physical Therapy Practice Act for the physical therapist to dispense medication; (c) the physical therapist would be required to obtain a written physician order before a test may be completed.
- (2) Barbara Goldfarb, whether a CE course provider for physical therapists is required to complete the new ProCert application from FSBPT or the KYPT approval application through KPTA. Following discussion and consideration, the Board instructed staff to respond by advising that the Board recognizes and accepts either/both forms of approval.
- (3) Samantha Stith, PT, seeking clarification about CEUs for certification/recertification within the scope of PT practice; specifically, whether certification/recertification in neurodevelopmental technique through the NDTA would be eligible for credit under 201 KAR 22:045 Section 2(g), or whether this would be inclusive to only the clinical specializations offered through the APTA. Following discussion and consideration, the Board concluded that further review and possible amendment of this regulatory provision may be needed to offer greater clarity. The Board further requested that Tina Volz confer with KPTA and its continued competency committee and report back at the May meeting.
- (4) Stacey Meade, PTA, whether she may seek continued competency credit under 201 KAR 22:045 from earning 36 completed semester hours toward her Bachelors of Arts Degree in Education through Western Governors University in December 2011? Following discussion and consideration, the Board opined that specialization is always within the scope of physical therapy. However, for a general degree program, it is necessary to examine individual coursework to determine whether it falls within the scope of physical therapy, and this task is best left to KPTA's Continued Competency Committee. The Board instructed staff to so advise Ms. Meade.
- (5) Holly Fennell, PT, and Amy Martin, PT, (1) whether it is appropriate for records which mention frequency of services in physical therapy and specific goals that are not on the IFSP to be maintained separately from the First Steps documentation system?; and (2) if a physical therapist is providing "functional activities" or other justifiable physical therapy intervention to address specific motor concerns and to address stated physical therapy goals, is it problematic that these other topics are discussed at the same time and documented in the record? Following discussion and consideration, the Board instructed

staff to advise that: (1) yes, it is appropriate to keep 2 separate records. The required elements for First Steps should be included in the TOTS record. In addition, the provider should keep a complete set of records with all the board required elements at their place of employment, which is usually dictated by an internal provider policy; and (2) a physical therapist must only provide services within their "scope of practice" and document accordingly. They should not be asked to oversee progress toward outcomes that are not within their scope of practice as a PT (i.e. language development or feeding recommendations/interventions, etc). It would however, be appropriate for the PT to consult another discipline into the care of the client when they feel they are being asked to do things beyond their scope.

(6) CEU Question from KPTA ED Lisa Volz, whether a PTA taking classes at the University of Louisville towards an undergraduate degree in Psychology may have her semester hours count toward CEU credit under 201 KAR 22:045? Following discussion and consideration, the Board opined that specialization is always within the scope of physical therapy. However, for a general degree program, it is necessary to examine individual coursework to determine whether it falls within the scope of physical therapy, and this task is best left to KPTA's Continued Competency Committee. The Board instructed staff to so advise Ms. Volz on behalf of the PTA who was the subject of the inquiry.

(7) Michael Spalding, PT, whether as a practicing PT in a school system he is permitted to bill for another PT's services if those services are provided while he is out-of-town? Following discussion and consideration, the Board instructed staff to respond by advising that the issue whether he may bill for services as the providing PT for treatment provided by another is a payor issue and should be resolved by reviewing the approval criteria for provider credentialing.

(8) John Doughty, PTA, inquiring about the scope of practice under 201 KAR 22:053 Section 4. While several scenarios and factors were presented in the request, the primary inquiries were as follows: (1) whether ATCs are allowed to utilize their full practice acts in what they can do in a physical therapy clinic, physician owned or otherwise; (2) whether an ATC may advance a patient or complete that treatment without a supervising but physically present physical therapist; and (3) while noting that 201 KAR 22:053 Section 4 requires the physical therapist to provide direct supervision while supervising supportive personnel beginning on September 1, 2013, inquiring that "there is no apparent requirement for direct supervision of 'support personnel' that is stated to be physically present (given) that the PTA's are not required direct line of site access and 'support personnel' appears to be identical to that of PTA's as long as it is documented that the ATC has been 'documented and verified.'" Following considerable discussion and consideration, the Board identified that the most recent amendment to 201 KAR 22:053 Section 4(5)(f) had the inadvertent and unintended effect until September 1, 2013, of eliminating the requirement that a physical therapist of record provide on-site supervision of supportive personnel who provide direct patient care. To correct this serious deficiency, Peggy Block made a motion for an emergency regulation to be filed which reinserts the on-site supervision requirement until the direct supervision requirement becomes effective on September 1, 2013. The motion was seconded by Linda Pillow, which carried. Following additional discussion, the Board instructed staff to respond to the inquiry by advising that the Board intends to address the supervision issue through a newsletter article, and that an ATC is considered supportive personnel under 201 KAR 22:001 Section 1(20) and thus subject to the requirement of direct supervision, as defined by 201 KAR 22:001 Section 1(6), effective September 1, 2013.

(9) Joni Durfey, PTA, whether it was acceptable for her supervision to be conducted by a physical therapist licensed in Kentucky but physically located in Ohio if the initial physical therapy evaluations would be conducted on-site by her former supervisor. Following discussion and consideration, the Board determined that this arrangement fails to satisfy the requirements set out in 201 KAR 22:053 Section 4(5). In the Board's judgment, the proposed arrangement is effectively delegating part of the supervision function to a physical therapist who has already reached the supervisory ratio. In short, the Board views this proposed arrangement as an attempt to create an arrangement whereby the supervising physical therapist is not actually supervising, and would thus not comply with the regulation. Accordingly, the Board instructed staff to advise Ms. Durfey that, pursuant to 201 KAR 22:053 Section 4(1)(b), she will not be deemed to be in violation of this standard as long as her unsupervised practice does not exceed a maximum of seven (7) work days in a sixty (60) consecutive day period, and that any practice on her part

beyond this time frame will be deemed to be contrary to the standards of practice for a physical therapist assistant as established in 201 KAR 22:053 Section 3.

(10) Karen Gorlewski, PTA, whether in a high school setting “they can bill for services as an extension of her clinic if they treat patients (students) in a remote part of the state one or two days a week after the patients are evaluated at a clinic? Following discussion and consideration, the Board determined that more information was necessary to answer the question, such as who was treating the patients, who was billing for the services performed, where were supportive personnel located in relation to the supervising physical therapist, etc.

Civil Matters and Investigations

Complaint Committee #1 (2012)

C2012-12: Following the Board’s vote at the January meeting to notify Mr. Montgomery that he must comply, or substantially comply, with the signed Cease and Desist affidavit, and that his failure to do so will result in the Board pursuing legal action to enforce compliance, and following a report from Mr. Brengelman that no response has been received, the Complaint Committee recommended and moved that Counsel be authorized to file suit seeking injunctive relief against Mr. Montgomery. This motion was seconded by Chuck Clark, which carried.

C2012-23: Following a report that the Board received a signed Cease and Desist affidavit in this case, the Complaint Committee recommended and moved that the case be closed, subject to proof of compliance within thirty (30) days. This motion was seconded by Tina Volz, which carried.

C2012-24: Following a report that the Board received a letter from counsel ensuring that his client will comply with the protected term provisions of KRS 327.020(3), the Complaint Committee recommended and moved that the case be closed, subject to proof of compliance within thirty (30) days. This motion was seconded by Virginia Johnson, which carried.

C2012-25: The Complaint Committee reported that this case is ongoing.

C2012-26: The Complaint Committee reported that this case is ongoing.

C2012-27: The Complaint Committee reported that this case is ongoing.

C2012-32: Following a report that the Board received a signed Cease and Desist affidavit in this case, the Complaint Committee recommended and moved that the case be closed, subject to proof of compliance within thirty (30) days. This motion was seconded by Tina Volz, which carried.

Complaint Committee #2 (2010)

BIC2012-16: The Complaint Committee reported that, following an extensive investigation, which consisted of reviewing over 100 patient charts subpoenaed by the Board and an in-person interview of the credential holder, a proposed amended agreement settling all outstanding issues had been drafted and signed by the credential holder. The Committee recommended and moved that the Board accept and enter into the proposed amended settlement agreement as final action in the case and invite the credential holder to appear before the Board at its May meeting to review the terms of the amended agreement. This motion was seconded by Karen Ogle, which carried.

BIC2012-17: The Complaint Committee reported that, following an extensive investigation, which consisted of reviewing over 100 patient charts subpoenaed by the Board and an in-person interview of the credential holder, a proposed agreement settling all outstanding issues had been drafted and signed by the credential holder. The Committee recommended and moved that the Board accept and enter into the proposed settlement agreement as final action in the case and invite the credential holder to appear

before the Board at its May meeting to review the terms of the agreement. This motion was seconded by Linda Pillow, which carried.

BIC2012-18: The Complaint Committee reported that, following an extensive investigation, which consisted of reviewing over 100 patient charts subpoenaed by the Board and an in-person interview of the credential holder, a proposed agreement settling all outstanding issues had been drafted and signed by the credential holder. The Committee recommended and moved that the Board accept and enter into the proposed settlement agreement as final action in the case and invite the credential holder to appear before the Board at its May meeting to review the terms of the agreement. This motion was seconded by Virginia Johnson, which carried.

BIC2012-19: The Complaint Committee reported that, following an extensive investigation, which consisted of reviewing over 100 patient charts subpoenaed by the Board and an in-person interview of the credential holder, a proposed amended agreement settling all outstanding issues had been drafted and signed by the credential holder. The Committee recommended and moved that the Board accept and enter into the proposed amended settlement agreement as final action in the case and invite the credential holder to appear before the Board at its May meeting to review the terms of the amended agreement. This motion was seconded by Tina Volz, which carried.

Complaint Committee #3 (2013)

C2013-02: The Complaint Committee reported that this case is ongoing.

C2013-03: The Complaint Committee reported that this case is ongoing.

C2013-04: The Complaint Committee reported that this case is ongoing.

C2013-05: The Complaint Committee reported that this case is ongoing.

IPTPC Report

The Board reviewed the IPTPC report submitted and personally presented by Brian Fingerson, R.Ph. Cases that are involved in the IPTPC previously have come to the attention of the Board.

CEU Hardship Extension

Mr. Majors and Mr. Curley reported that, consistent with the Board's direction provided at the January meeting, Teri Aiello, PTA #A02273, was notified that she had twenty days in which to submit evidence of completion of her continued competency requirements for the 2009 – 2011 biennium, and that her failure to comply would result in a private admonition and a fine calculated on the number of credits for which she was deficient. Consequently, on March 14, 2013 Ms. Aiello submitted to the Board various CE certificates, many of which Board staff were unable to determine whether Ms. Aiello actually attended or would qualify for credit under 201 KAR 22:045. Following discussion, Peggy Block moved that Board staff attempt to determine from the program sponsor whether evidence of Ms. Aiello's attendance could be confirmed and, if not, to proceed to impose the action approved by the Board at its January meeting. Troy Grubb seconded this motion, which carried.

Update on Monitoring Probations

Updates were given concerning probation monitoring for the following: Malton Schexneider, PT (written report); James Rick Roe, PT (written report); Ron Cole, PT; Lawrence Tatem, PT; Tiffney Bentley, PT; Amanda Mattingly, PTA (written report); Jon-Mark French, PTA; Jeremy Kruger, PT; Barack Jonkers, PTA (written report); Art Nitz, PT (written report); and Michael Harris, PTA (written report).

Within the monitoring report for Mr. Schexneider, the Board considered the monitor's opinion that Mr. Schexneider's practice does not require continued monitoring. On motion of Linda Pillow, seconded by

Virginia Johnson, the Board concluded there was no provision in the subject settlement agreement to authorize early termination of the required monitoring and, thus, any effort to discontinue quarterly monitoring prior to the completion of the probationary period should be denied. This motion carried.

Within the monitoring report for Mr. Jonkers, the Board considered the monitor's opinion that Mr. Jonkers' practice does not require continued monitoring; specifically, that this practice has improved to the point that the monitor supported his request to be excused from the second year of monitoring. On motion of Linda Pillow, seconded by Karen Ogle, the Board concluded that Mr. Jonkers' practice does not now warrant a second year of quarterly monitoring, and should be excused once Mr. Jonkers files a written request to be relieved of further monitoring, a condition referenced in paragraph 6) on page 5 of his settlement agreement entered January 19, 2012. This motion carried.

Director's Report

Financial Report

The Board reviewed monthly, 1st quarter and 2013 YTD annual FAS3 financial report addressing the Board's revenues and expenditures.

Amendments to Administrative Regulations

The Board reviewed the status of amendments to 201 KAR 22:020, 201 KAR 22:035 and 201 KAR 22:045. Mr. Majors advised that no written intent to attend the public hearing scheduled for March 27, 2013 on these regulations was received, and thus the public hearing could be cancelled. Mr. Majors further reported that these regulations were scheduled to be considered by the Administrative Regulation Review Subcommittee on April 9, 2013, unless written comments were received by April 2, 2013.

Mr. Brengelman and Mr. Majors were prepared to address a draft administrative regulation to implement telehealth in the provision of physical therapy and in the provision of continuing education, consistent with KRS 327.200 and 201 KAR 22:160. Following brief discussion, however, the Board elected to defer this discussion until the May meeting.

Department of Revenue

At the January meeting, the Board voted to defer the Department's request for information re: credential holders regulated by the Board until the March meeting to obtain a legal opinion whether: (1) a written agreement should be utilized by the Board in developing the process with the Department and, if so, what terms and conditions should be included in the agreement; and (2) by either policy or legal duty, the Board's credential holders should be notified that the information requested by the Department will be/has been provided.. Mr. Brengelman opined that a written agreement was not necessary and the credential holders need not be notified that the requested information would be/has been provided to the Department. Following review and discussion, the Board directed staff to comply with the Department's request without entering into the Exchange of Information Agreement, as the Department had proposed.

KBPT Telephone System

Mr. Majors reported that COT has performed an assessment of KBPT's ten-year-old telephone system and has proposed a conversion from the present analog system to a VoIP system. Recurring monthly data costs would be reduced from \$90 (based on the number of voice lines) to \$50 (based on the number of handsets), with long distance charges remaining constant at \$03.3 per minute, and a break-even point of approximately fourteen months after one-time hardware start-up costs. Following discussion, the Board authorized staff to finalize contract negotiations with COT to implement this project.

KBPT Office Space

Mr. Majors reported that the Board of Physical Therapy (KBPT) currently shares with the Board of Dentistry (KBD) the cost of leasing the Board conference room, hallway and associated utilities, and that KBD is considering relocating to different office space. The effect of KBD's relocation would result in the need for KBPT to absorb KBD's share of the lease space and utilities, at an approximate increased cost of \$7,700.00 per annum. In an effort to help reduce operating costs, Mr. Majors advised that he has discussed with KBD's Executive Director and a representative with Finance Facilities in Frankfort the concept of KBPT continuing a shared office space arrangement with KBD, if possible, if a decision is made to relocate. Mr. Majors agreed to provide KBPT a status update at the next meeting.

KBPT's Website

As a follow-up to the last meeting, Stephen Curley, Board Investigator, demonstrated changes made to the Board's current website, and he requested Board members to provide an updated CV and passport-sized photograph which may be uploaded to the new website next month.

KBPT Presentations

Mr. Majors reported that he and Donna Sims are scheduled to present educational programs and the jurisprudence examination to PTA students attending Jefferson Community and Technical College on April 5, 2013; PT students attending the University of Kentucky on May 7, 2013; and PTA students attending KCTCS/Somerset Community College on May 10, 2013.

In-Service Training

Mr. Majors reported that Board member and staff in-service training is tentatively scheduled as follows:

- Jim Herrick, Assistant Attorney General, regarding open meetings/open records, on May 16, 2013.

The Board reviewed the schedule of upcoming conferences, as follows:

- a. KPTA Spring Conference
(March 22–23, 2013 – Lexington, KY)
- b. FSBPT's Ethics and Legislation Committee
(April 13-14, 2013 -- Alexandria, VA)
- c. FSBPT's Board Member and Administrator Training
(June 6-9, 2013 – Alexandria, VA)
- d. APTA PT2013
(June 26–29, 2013)
- e. FARB – Attorney Certification Conference
(October 4-6, 2013 – Coeur d'Alene, ID)
- f. FSBPT Annual Conference
(October 10-12, 2013 – San Antonio, TX)
- g. APTA National Student Conclave
(October 24-27, 2013 – Louisville, KY)

The Board reviewed and approved the lists of persons issued licenses and certificates since the last meeting, as well as a list of examinees and reinstatements. The lists are attached to these minutes.

A motion was made by Chuck Clark to adjourn the meeting at 5:34 p.m. The motion was seconded by Tina Volz and carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott D. Majors". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping underline.

Scott D. Majors
Executive Director