



## KENTUCKY BOARD OF PHYSICAL THERAPY

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*Andy Beshear*  
Governor

*Scott D. Majors, Esq.*  
Executive Director

### MINUTES OF MEETING

January 23, 2020

Board Members: Tom Pennington, PT, Chair  
Edward Dobrzykowski, PT, Chair-Elect  
Larry Brown, Public Member  
Dan Martin, PT  
Linda Pillow, PT

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

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD

Members Absent: Ron Pavkovich, PT  
Talia Weinberg, PT

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Tom Pennington, at 9:00 a.m. on Thursday, 01/23/20, at the Board office. A quorum was present.

#### **Board Appointment**

The Board welcomed Larry Brown, who was appointed by Governor Matthew Bevin by Executive Order dated 11/18/2019 to serve as a Board member until 04/30/2021. Krista Barton, the Board's Executive Administrative Secretary and a notary, administered the oath of office to Mr. Brown.

#### **KPTA Liaison Report**

Dr. Kuperstein reported that KPTA is actively monitoring legislative activity concerning a bill that the Athletic Trainers may intend to file that seeks to expand their scope of practice. Additionally, Dr. Kuperstein reported that a separate bill of concern to both APTA and KPTA, SB 90, has been filed with the Legislative Research Committee for the legislature's consideration in the 2020 session. This bill would impact all medical care providers.

Mr. Majors reported that he received information recently from a credential holder who expressed concern with occupational therapists in Kentucky who are performing dry needling. Mr. Majors asked Dr. Kuperstein if she would inquire of KPTA whether occupational therapists in Kentucky are performing dry needling, and report back to the Board at the March meeting, which Dr. Kuperstein agreed to do.

## Minutes for Previous Special Meeting

The Board reviewed the draft minutes of the 12/05/19 Board meeting.

**Action taken:** Following review and discussion of proposed amendments to the draft minutes, Ms. Pillow made a motion to approve the minutes of the Board meeting of 12/05/19, as amended. The motion was seconded by Mr. Martin, which carried.

### Board Discussions, Committees and Opinion Requests

#### Physical Therapy Licensure Compact

Ms. Ramsey reported that Virginia began issuing Compact privileges on 01/02/20, and West Virginia is reportedly soon to follow. This brings the total number of states issuing Compact privileges up to eighteen.

Mr. Majors reported that the Compact Commission was alerted to a situation in Iowa where an individual holding a Compact privilege was denied enrolling as a provider with Medicare after Medicare adopted the position that an individual practicing under a Compact privilege does not meet the regulatory requirement for reimbursement, as does a licensee. Mr. Majors reported that the Compact Commission recently participated in favorable discussions with the Centers for Medicare and Medicaid Services in an attempt to rectify the situation that has occurred in Iowa.

Additionally, Mr. Majors reported that there was a Physical Therapy Compact Commission Rules and Bylaws Committee Meeting on 01/15/20. During the meeting, the Committee's members discussed the need to draft a rule that would require an individual seeking or holding a Compact privilege to self-report a criminal conviction within thirty days of entry of the judgment of conviction.

**Action taken:** No action taken.

#### PTA Outpatient Physical Therapy – CQ Modifier

Mr. Majors reviewed an article provided by the FSBPT regarding the CQ modifier, which will be a required addition to treatment codes when a PTA or OT provides services beginning 01/01/2020.

**Action taken:** After discussion, the Board asked Dr. Kuperstein if KPTA would disseminate this information, as the Board does not have jurisdiction over billing issues unless they rise to the level of fraud.

#### Board Assessment Tool

Mr. Pennington and Mr. Majors discussed with the Board the possibility of creating a Board assessment tool and using the FSBPT tool as a guideline, where appropriate.

**Action taken:** After discussion, the Board agreed to move forward with creating a Board Assessment Tool Taskforce, with the members consisting of Mr. Pennington, Mr. Dobrzykowski, Mr. Poynter, and Mr. Majors. The goal is to have a draft Board Assessment Tool made available for the full Board to review in the fall of 2020.

#### KBPT Strategic Planning Meeting/Bias Awareness Training

Mr. Pennington discussed with the Board the possibility of participating in a Strategic Planning Meeting with an outside facilitator to examine our mission statement, to create initiatives regarding prevention, and to identify the Board's stakeholders.

**Action taken:** Mr. Pennington and Mr. Majors will work to facilitate a meeting that will tentatively coincide with the July Board meeting.

Additionally, Mr. Pennington and Mr. Majors discussed with the Board various options regarding unconscious bias training. Considering the Board's current budgetary constraints, Mr. Majors and Mr.

Pennington discussed options that would allow the Board members and staff to receive this training in a cost-effective manner. Mr. Majors and Mr. Poynter will be attending the KAAA Winter Practical Administrative Skills training on 02/07/20, and a portion of this training will address unconscious bias in the context of administrative hearings. Mr. Pennington asked Mr. Majors and Mr. Poynter to bring back information from this training and collaborate with Dr. Kuperstein to create an informational presentation that may be shared with the members during the March meeting. Additionally, Mr. Majors will reach out to other Boards to inquire if they would be interested in obtaining unconscious bias training and, if so, to examine the possibility of sharing the cost to secure a presenter.

#### **KBPT Professional Staff Development Plan**

Mr. Pennington discussed the possibility of the Board providing opportunities for professional staff development over the next five years.

**Action taken:** After discussion, the Board authorized Mr. Majors to work with staff to create an individualized plan that would enhance the professional development of each staff member.

#### **Marijuana Legalization – Regulation of Physical Therapy**

Mr. Fingerson discussed with the Board an article on marijuana legalization and the potential impact it would have on the Physical Therapy profession and regulatory boards. Mr. Fingerson reviewed with the Board the differences and similarities between CBD and THC, and he discussed the lack of scientific and medical research with both CBD and THC.

**Action taken:** No action taken.

#### **KBPT Practice Act Review Committee**

Mr. Pennington reported to the Board that the first meeting of the KBPT Practice Act Review Committee was held on 01/22/2020. The members include Mr. Pennington, Mr. Dobrzykowski, Mr. Poynter, Mr. Majors, and two KPTA representatives: Karen Ogle, PT and Dr. Kuperstein. This Committee plans to meet approximately five times this year, and the goal is to complete a comprehensive review of the Practice Act in a collaborative manner to determine whether revisions are needed, and to present a final product for the Board to consider later this year.

**Action taken:** No action taken.

#### **KBPT Online Applications**

Mr. Curley reported that everything should be completed and fully implemented by the spring of 2020.

**Action taken:** No action taken.

#### **FSBPT Workshop – Trauma’s Impact on Boundary Violation Investigations**

Mr. Majors reported that the FSBPT is offering a workshop on Trauma’s Impact on Boundary Violation Investigations on 03/26-27/20 in Arlington, VA. He reported that the FSBPT is offering to pay hotel, travel, and a large portion of the registration fee for one individual from each jurisdiction. Mr. Majors requested that the Board authorize Mr. Curley, the Board Investigator, to attend the workshop, and to reimburse Mr. Curley for associated travel costs.

Additionally, Mr. Majors reported that Mr. Pennington has been appointed to the FSBPT Boundary Violations Taskforce, and will be attending the workshop. Mr. Pennington offered to waive reimbursement for any out-of-pocket costs he may incur related to his attendance.

**Action taken:** Mr. Dobrzykowski made a motion for the Board to reimburse Mr. Curley for the nominal registration fee and associated travel costs to attend the Trauma Impact on Boundary Violation presentation. The motion was seconded by Ms. Pillow, which carried.

### **Continued Competency Audit**

The Board examined the efficacy of determining in January of every odd-numbered year those credential holders who would be subject to the Continuing Education Audit, and to notify those individuals that they had been selected for the Audit to permit them a period of at least two months in which to complete the Continuing Competence requirements prior to the deadline.

**Action taken:** Following discussion, the Board elected to take no action at this time, but to revisit this option when examining the 2021 Audit process during a Board meeting conducted later this year.

### **Investigative and Legal Costs**

The Board examined the efficacy of amending KRS Chapter 327 and/or Title 201 KAR Chapter 22 to expressly authorize the recovery of the Board's investigative and legal costs upon a determination made after investigation that a violation had been committed.

**Action taken:** Following discussion, the Board elected to refer this issue to the Physical Therapy Practice Act Review Committee for its consideration and possible recommendation.

### **NATA Den Digest New Definition of Athletic Trainers in Michigan**

Mr. Dobrzykowski reported to the Board that the National Athletic Trainers Association (NATA) has a Den Digest that is essentially a list serve where individuals can post questions and comments. He reported that an inquiry was posted recently about the new definition for "Athletic Trainers" in Michigan. Mr. Dobrzykowski brought this before the Board for informational purposes only, considering that Athletic Trainers in Kentucky are intending to file a bill that will revise their Practice Act.

**Action taken:** No action taken.

### **2020 Offsite Board Meeting**

Dr. Kuperstein confirmed that the University of Kentucky is able to host the September Board meeting on 09/17/20.

**Action taken:** No action taken.

### **Staff Reports and Discussions**

The Board reviewed the following staff reports:

- (a) Rick Roe, who appeared before the Board with his attorney, Chad Elder, Esq., to discuss a possible pathway for reinstatement of Mr. Roe's credential.

Mr. Brown made the motion for the Board to retire into Executive Session pursuant to KRS 61.810(1)(j) to discuss deliberations of judicial or quasi-judicial bodies regarding individual adjudications that may lead to the discipline of credential holders. The motion was seconded by Mr. Martin, which carried.

Subsequently, Mr. Brown made the motion for the Board 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 case:

**Action taken:** Following lengthy discussion, Mr. Dobrzykowski made a motion for the Board to: (1) issue a Conditional Reinstatement Agreement ("Agreement") with specified terms; (2) expressly include in the Agreement a term authorizing the Board to revoke Mr. Roe's credential, for a minimum period of fifteen years, for any violation of the terms of the Agreement, as jointly determined by the Board's Chair and Executive Director, following consultation with the IPTPC Chair; and (3) authorize Board Counsel to draft and present same to Mr. Roe.

The motion was seconded by Mr. Brown, which carried.

Additionally, after further discussion, Mr. Dobrzykowski, made a motion for the Board to include an additional term in the Agreement regarding the assessment of a fine. The motion was seconded by Mr. Brown, which carried.

- (b) KBPT staff brought a reinstatement application before the Board for review. Staff informed the Board the applicant failed to report an arrest for disorderly conduct. The applicant provided an explanation that she/he entered into and completed a diversion program.

**Action taken:** Following discussion, Mr. Dobrzykowski, made a motion to approve the reinstatement application. The motion was seconded by Mr. Brown, which carried.

- (c) John Mysogland, who sought clarification whether a physical therapist is permitted to administer treatment using a specific neuromuscular electric stimulation device.

**Action taken:** Following discussion, the Board authorized staff to respond to Mr. Mysogland that, as long as the therapist has the requisite training, expertise, and experience, using such a device is not prohibited.

### **Update on Monitoring Probations**

The Board noted the following credential holders who are presently being monitored: Sabrina Pletz, PTA; Andrea Brown, PT; Nathan Yates, PTA; and Karen Brooks, PT.

Additionally, Mr. Curley asked the Board to approve a monitor for Alexander Love, PT. He provided the names of three physical therapists who are located in the Bowling Green area.

**Action taken:** After discussion, Mr. Martin made a motion to approve all three physical therapists as potential Board monitors, depending on availability. The motion was seconded by Mr. Brown, which carried.

## **REPORTS AND OTHER BUSINESS**

### **Legal Report**

#### **Administrative Regulation -- 201 KAR 22:170**

Mr. Majors reported to the Board that there is a public comment period currently open relating to the proposed amendment to 201 KAR 22:170, and that Mr. Poynter will attend an ARRS meeting for legislative review of the regulation. Mr. Majors will update the Board at the March meeting.

Mr. Poynter provided a brief description of the Executive Branch Ethics Commission's "Duties and Responsibilities of Lobbyists" training that took place earlier this month. Mr. Poynter outlined the most salient topics as they relate to Boards and Commissions. He advised that Board members should be mindful of others who may attempt to influence their decisions on pending Board matters, and he further encouraged members to notify Board staff in the event that they perceive any impropriety has taken place.

Finally, Mr. Poynter reviewed an article concerning legislation in Arizona. The Arizona Governor is actively seeking to restructure boards to contain mostly public at-large members rather than market participants.

### **Executive Director's Report**

#### **Financial Report**

The Board reviewed monthly, quarterly FAS3 financial reports addressing the Board's revenues and expenditures. Mr. Majors also distributed a financial worksheet highlighting in detail the Board's revenue, personnel and operating expenses, quarterly allotments and annual appropriations.

Mr. Majors also circulated correspondence generated by the Kentucky Retirement Systems which referenced an increase in state employer retirement contributions from 89% to 93% that will be proposed to the state legislature for adoption as part of the Commonwealth's next biennium budget.

Mr. Majors also reported that the Board's computer server, on which the Board's electronic file library and documents are stored, recently experienced technical issues which prevented access to those documents. This server is more than 10 years old, and realistically it likely has reached its useful life. During the process of restoring access to this server, representatives with the Commonwealth Office of Technology ("COT") recommended that the Board examine an off-site server option that would be fully maintained and supported by COT.

**Action taken:** Following discussion, Mr. Dobrzykowski made a motion for the Board to delegate to Mr. Majors the authority to negotiate with COT and to select an option concerning the office's server in the most cost-effective manner that continues to best satisfy the needs of the office. The motion was seconded by Mr. Martin, which carried.

#### **CBT Comment Survey**

Mr. Majors reported the results of the latest CBT comment survey and satisfaction survey report, effective through 12/31/19. Mr. Majors emphasized that KBPT received a score approximately ten points higher than the national average for the subject reporting period.

**Action taken:** No action taken.

#### **KBPT AT&T Circuit Upgrade**

Mr. Majors reported that the new circuit that provides internet connectivity to the Board office was installed as scheduled on 12/12/19, resulting in an approximate 250% increase in data transfer speed. As a result of this new circuit, Board members and staff should realize improved internet access while working in the office. This new circuit will also support the Board's potential upgrade to a VoIP telephone system in the future.

**Action taken:** No action taken.

#### **KBPT Staff Evaluations**

Mr. Majors reported that his annual performance evaluations of Mr. Poynter, Mr. Curley, Ms. Barton and Ms. Ramsey were due by the end of January, and he solicited Board member feedback concerning staff performance.

**Action taken:** No action taken.

#### **KBPT School Presentations**

Ms. Ramsey briefly reported that she is scheduled to conduct a remote school visit with Madisonville Community College on 01/28/20. Additionally, she is scheduled to conduct in-person school visits at Jefferson Community and Technical College on 01/31/20; Somerset Community College on 02/18/20; and the University of Kentucky 05/26/20. Mr. Pennington participated in the most recent visit to Western Kentucky University, and he offered to attend future school visits in tandem with Ms. Ramsey if his schedule permits.

**Action taken:** No action taken.

#### **Conferences and Meetings Relating to Physical Therapy**

The Board reviewed the following schedule of upcoming conferences:

- a. CAPTASA – 2020 Annual Conference  
(01/24-25/20 – Lexington, KY)  
Ms. Ramsey shall serve as KBPT's representative.

- b. KAAA – Winter Practical Administrative Skills  
(02/07/20 – Frankfort, KY)  
Mr. Poynter and Mr. Majors shall serve as KBPT’s representatives.
- c. FSBPT’s Leadership Issues Forum  
(07/18-19/20 – Alexandria, VA)  
The Board discussed who would serve as KBPT’s 2020 Primary Voting Delegate at the Leadership Issues Forum.

**Action taken:** Following discussion, Mr. Martin made a motion to authorize Mr. Pennington to serve as the Board’s 2020 Primary Voting Delegate for the Leadership Issues Forum and Annual Meeting and Delegate Assembly. The motion was seconded by Ms. Pillow, which carried.

Additionally, the Board agreed to defer until the March meeting who it intends to have serve as the Board’s 2020 Alternate Voting Delegate for this Annual Meeting and Delegate Assembly.

- d. FSBPT’s Regulatory Training for Board Members and Administrators  
(Tentative: 08/13-15/20 – Alexandria, VA)  
Mr. Majors informed the Board that FSBPT allows up to two individuals from each jurisdiction to attend the Regulatory Training for Board Members and Administrators.

**Action taken:** After discussion, the Board authorized Mr. Brown to attend as one of the representatives for KBPT. The Board will discuss who will fill the second position at the March meeting.

- e. 2020 FSBPT Annual Meeting and Delegate Assembly  
(10/22-24/20 – Orange County, CA)  
Mr. Majors reminded Board members and staff that presentation ideas and proposals for the 2020 FSBPT Annual Meeting need to be submitted by 03/03/2020. Additionally, Mr. Majors would inquire of FSBPT if an extension for submitting presentation proposals can be granted.
- f. 2020 Annual Meeting – Physical Therapy Licensure Compact Commission  
(10/25/20 – Orange County, CA)

### **New Licensee/Reinstatement/Renewal Applications**

**Action taken:** Mr. Dobrzykowski made the motion to review, approve and ratify the list of persons issued licenses and certificates since the last meeting, as well as a list of examination and reinstatement applicants. This motion was seconded by Mr. Martin, which carried. The lists are attached to these minutes.

### **New Business**

Board staff brought an endorsement application before the Board to seek clarification on whether an individual can begin orientation without being issued a credential.

**Action taken:** Following discussion, the Board instructed staff to advise this applicant that: (1) an individual may not hold herself/himself out as a PT/PTA unless she/he has a credential; (2) orientation or observation at a work site may unintentionally involve the practice of physical therapy, which would constitute the practice of physical therapy without a credential, thus subjecting the individual to discipline by the Board; and, consequently (3) an individual may not begin employment as a PT/PTA prior to being issued a credential.

### **Public Comment**

Mr. Dobrzykowski reminded Board members that Therapy Alliance Legislative Day is scheduled for 02/04/2020 to be held in Frankfort, Kentucky.

### **Civil Matters and Investigations**

Mr. Dobrzykowski made the motion for the Board to retire into Executive Session pursuant to KRS 61.810(1)(j) to discuss deliberations of judicial or quasi-judicial bodies regarding individual adjudications that may lead to the discipline of credential holders. The motion was seconded by Mr. Martin, which carried.

Subsequently, Mr. Martin made the motion for the Board 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:

### **2019 Complaint Committee**

**C2019-04:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2019-07:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**C2019-17:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**C2019-18:** The Complaint Committee reported this case is ongoing.

**Action taken:** No action taken.

**C2019-20:** The Complaint Committee reported that the credential holder in this case has accepted the Private Admonishment and paid the respective fine.

**Action taken:** After discussion, Ms. Pillow made a motion for the Board to close this case. The motion was seconded by Mr. Dobrzykowski, which carried.

**CE2019-39:** The Complaint Committee reported that the credential holder has completed her/his authorized payment plan after being found deficient with the Continued Competency requirements and being issued a Private Admonishment with an associated fine.

**Action taken:** After discussion, Mr. Martin made a motion for the Board to close this case. The motion was seconded by Mr. Brown, which carried.

**CE2019-95:** The Complaint Committee reported that the credential holder in this case has violated the terms of her/his Settlement Agreement by failing to pay the fine associated with her/his continued competency hour deficiency.

**Action taken:** Following discussion, Mr. Dobrzykowski made a motion for the Board to authorize Board Counsel to draft a Settlement Agreement with specified terms, and further to authorize Counsel to negotiate within certain parameters concerning an additional fine. The motion was seconded by Ms. Pillow, which carried.



**C2019-101:** The Complaint Committee reported that the credential holder accepted and signed the Conditional Reinstatement and Settlement Agreement, offered to her/him after the December Board meeting, and was reinstated on 12/11/2019.

**Action taken:** Following discussion, Ms. Pillow made a motion for the Board to close this case. The motion was seconded by Mr. Brown, which carried.

**C2019-107:** The Complaint Committee provided a brief history that this case involves a credential holder who allegedly failed to respect the rights and dignity of patients.

**Action taken:** After reviewing the facts and circumstances of this case, and following a report from the Complaint Committee, Ms. Pillow made a motion for the Board to take no action. The motion was seconded by Mr. Dobrzykowski, which carried.

**BIC2019-109:** The Complaint Committee provided a brief history that this case involves an applicant who was offered a Conditional Grant of Credential and Settlement Agreement during the December Board meeting. Additionally, the Complaint Committee reported that the applicant signed the Conditional Grant of Credential and Settlement Agreement and was issued a credential on 12/20/19.

**Action taken:** Following discussion, Mr. Brown made a motion for the Board to close this case. The motion was seconded by Mr. Dobrzykowski, which carried.

**BIC2019-110:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2019-111:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2019-112:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2019-113:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2019-114:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2019-115:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2019-116:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2019-117:** The Complaint Committee reported that this case involves a credential holder who allegedly committed fraud and material deception.

**Action taken:** Following discussion, Mr. Dobrzykowski made a motion for the Board to open an investigation. The motion was seconded by Mr. Brown, which carried.

**BIC2019-118:** The Complaint Committee reported that this case involves a possible term protection violation.

**Action taken:** Following discussion, Mr. Dobrzykowski made a motion for the Board to open an investigation and authorize Board Counsel to attempt to informally resolve this case without litigation. The motion was seconded by Ms. Pillow, which carried.

**BIC2019-119:** The Complaint Committee reported that this case involves a credential holder who allegedly committed substandard care.

**Action taken:** Following discussion, Mr. Dobrzykowski made a motion for the Board to open an investigation. The motion was seconded by Mr. Brown, which carried.

### **2020 Complaint Committee**

**C2020-01:** The Complaint Committee reported that this case involves billing discrepancies that allegedly took place in an outpatient clinic.

**Action taken:** After reviewing the facts and circumstances of this case, and following a report from the Complaint Committee, Mr. Dobrzykowski made a motion to take no action. The motion was seconded by Mr. Brown, which carried.

**BIC2020-02:** The Complaint Committee reported that this case involves a credential holder who allegedly committed fraud and material deception.

**Action taken:** Following discussion, Mr. Dobrzykowski made a motion for the Board to open an investigation. The motion was seconded by Ms. Pillow, which carried.

### **IPTPC Report**

Mr. Fingerson presented his written IPTPC report dated 01/15/20. IPTPC cases that previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

Mr. Dobrzykowski made the motion to adjourn the meeting at 2:32 p.m., seconded by Mr. Martin, which carried.

Respectfully submitted,



Scott D. Majors  
Executive Director