



## KENTUCKY BOARD OF PHYSICAL THERAPY

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*Andy Beshear*  
Governor

*Scott D. Majors, Esq.*  
Executive Director

### MINUTES OF SPECIAL MEETING May 20, 2021

Board Members: Edward Dobrzykowski, PT, Chair  
Karen Thompson, PT, Chair-Elect  
Peggy Block, PT  
Larry Brown, Public Member  
Sonya Dick, PT  
Tom Pennington, PT  
Christopher Pyles, PT

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

Board Agent: Brian Fingerson, RPh, IPTPC Director

APTA KY Liaison: Janice Kuperstein, PT, PhD

Board Guest: Andrea O'Leary, Agentis

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Ed Dobrzykowski, at 9:00 a.m. on Thursday, 05/20/21, via video teleconference according to the guidance issued by Governor Beshear, pursuant to KRS 61.823 and 61.826. A quorum was present.

Mr. Dobrzykowski began the meeting by reading into the record that the Board's mission is public protection as it pertains to the delivery of physical therapy services throughout the Commonwealth of Kentucky. Each decision and action taken by the Board shall be in the best interest of public protection without bias and personal conflicts of interest. Mr. Dobrzykowski asked the Board members to recuse themselves from both discussion and voting on any matter in which a conflict of interest exists.

Additionally, Mr. Dobrzykowski stated the Board would operate within the defined scope of authority set forth in the Kentucky Revised Statutes and Administrative Regulations. He requested the Board's General Counsel to guide and inform the Board on any contemplated or performed actions that fall outside the parameters of the Board's legal authority.

### Minutes for Previous Special Meeting

The Board reviewed the draft minutes of the 03/18/2021 Board meeting.

**Action taken:** Following review and discussion, Mr. Pennington made a motion to approve the minutes of the Board meeting of 03/18/21, as amended. The motion was seconded by Ms. Dick, which carried.

### **Civil Matters and Investigations**

Mr. Pennington made the motion for the Board to retire into Executive Session pursuant to KRS 61.810(1)(c), (f), and (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. Pyles, which carried.

Subsequently, Mr. Brown made the motion for the Board to come out of Executive Session. The motion was seconded by Ms. Block, 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.

**BIC2019-109:** The Complaint Committee reported that the case is ongoing with an administrative hearing scheduled for 06/22/2021.

**Action taken:** No action taken.

**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.

## 2020 Complaint Committee

**C2020-15:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**C2020-17:** The Complaint Committee reported that the individual who was the subject of this term protection complaint is no longer employed with the business in question, and the advertisement that is the subject of the investigation has been taken down by the business after its representatives discussed the matter with the Board's General Counsel.

**Action taken:** The Complaint Committee recommended and moved to close the case at this time. This motion was seconded by Ms. Block, which carried.

**C2020-18:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-22:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-23:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-24:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-25:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-26:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-27:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-28:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-29:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-30:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2020-31:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

## 2021 Complaint Committee

**BIC2021-01:** The Complaint Committee reported that the credential holder in this case has accepted a private admonition and paid the associated fine.

**Action taken:** The Complaint Committee recommended and moved to close the case. The motion was seconded by Mr. Pyles, which carried.

**C2021-02:** The Complaint Committee reported that the credential holder who is the subject of this case was granted diversion, the terms for which are to be completed by 04/2022.

**Action taken:** The Complaint Committee recommended and moved to close the case for now and to have staff monitor the underlying action to ensure all of the required terms for diversion are timely completed. The motion was seconded by Ms. Dick, which carried.

**C2021-03:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**C2021-04:** The Complaint Committee reported that the credential holder who is the subject of this case was granted diversion, the terms for which are to be completed by 05/2023.

**Action taken:** The Complaint Committee recommended and moved to close the case for now and to have staff monitor the underlying action to ensure all of the required terms for diversion are timely completed. The motion was seconded by Mr. Pennington, which carried.

**C2021-05:** The Complaint Committee reported that the credential holder who is the subject of this action has satisfied all terms of the underlying criminal action, including restitution.

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

**BIC2021-06:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2021-07:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2021-08:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2021-09:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**BIC2021-10:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**C2021-11:** The Complaint Committee reported that this case involves allegations of substandard care.

**Action taken:** The Complaint Committee recommended and moved to open an investigation. This motion was seconded by Mr. Brown, which carried. Ms. Thompson recused herself from any discussion and consideration of this case.

**C2021-12:** The Complaint Committee reported that this case involves a DUI.

**Action taken:** The Complaint Committee recommended and moved to take no action. This motion was seconded by Mr. Pyles, which carried.

**C2021-13:** The Complaint Committee reported that this case involves reported criminal charges.

**Action taken:** The Complaint Committee recommended and moved to open an investigation. This motion was seconded by Mr. Brown, which carried.

**C2021-14:** The Complaint Committee reported that this case involves substandard care and supervision issues.

**Action taken:** The Complaint Committee recommended and moved to open an investigation. This motion was seconded by Mr. Brown, which carried.

**C2021-21:** The Complaint Committee reported that this case involves allegations of a boundary line violation.

**Action taken:** The Complaint Committee recommended and moved to open an investigation. This motion was seconded by Mr. Brown. Mr. Pennington recused himself from any discussion or consideration of this case.

**C2021-22:** The Complaint Committee reported that this case involves allegations of substandard care and documentation issues.

**Action taken:** The Complaint Committee recommended and moved to open an investigation. This motion was seconded by Mr. Pennington, which carried.

**C2021-23:** The Complaint Committee reported that this case involves allegations of substandard care.

**Action taken:** The Complaint Committee recommended and moved to open an investigation. This motion was seconded by Mr. Brown, which carried.

**C2021-37:** The Complaint Committee reported that this case involves allegations of billing for services not performed and/or performing activities not properly billed.

**Action taken:** The Complaint Committee recommended and moved to open an investigation. This motion was seconded by Mr. Pyles, which carried.

**C2021-15R:**

**C2021-16R:**

**C2021-17R:**

**C2021-18R:**

**C2021-19R:**

**C2021-20R:**

**C2021-24R:**

**C2021-25R:**

**C2021-26R:**

**C2021-27R:**

**C2021-28R:**

**C2021-29R:**

**C2021-30R:**

**C2021-31R:**  
**C2021-32R:**  
**C2021-33R:**  
**C2021-34R:**  
**C2021-35R:**  
**C2021-36R:**

The Complaint Committee reported that, per the Board's vote taken during the March meeting, staff have issued private admonitions and administrative fines in these nineteen (19) cases, all of which involved practicing on a lapsed credential.

**Action taken:** No action taken.

### **IPTPC Report**

Mr. Fingerson presented his written IPTPC report dated 05/13/21. IPTPC cases that previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

### **APTA KY Liaison Report**

Dr. Kuperstein reported to the Board that APTA- KY intends to submit general comments to the Athletic Trainer regulations by mid-June by expressing several remaining concerns with lack of safeguards. Dr. Kuperstein also reported that 2022 is the "long" legislative session in Kentucky, and APTA KY currently is developing an action plan to determine its legislative priorities.

**Action taken:** No action taken.

## **Board Discussions, Committees and Opinion Requests**

### **2021 KBPT Goals**

Mr. Dobrzykowski briefly reviewed the 2021 KBPT Goals list with the Board members.

**Action taken:** No action taken.

### **2021 Board Meetings**

Mr. Dobrzykowski reported that, pursuant to Finance Memorandum 21-102, he anticipates that all future meetings of the Board this year will be conducted in-person at the Board office following Governor Beshear's lifting of the capacity restrictions for state offices. Further information will be provided to the members and staff closer in time to the July meeting.

### **2021 KBPT Membership**

Mr. Dobrzykowski shared information from APTA KY President Charlie Workman who announced that APTA KY supports the premise of eligible and qualified physical therapist assistants serving as members of KBPT, and APTA KY will seek such nominees for KBPT membership. In addition, APTA-KY is introducing a new PTA Special Interest Group that will report to APTA-KY leadership and inform and contribute to the reports KBPT receives from the APTA-KY liaison.

**Action taken:** No action taken.

### **Physical Therapy Licensure Compact**

Mr. Majors reported that Indiana and Kansas recently enacted Compact legislation and are expected to begin issuing Compact privileges after they receive FBI approval to conduct criminal background checks. Mr. Majors also reported that The Compact Commission's Executive Board is scheduled to meet later this month to review recommendations from the Commission's Rules and Bylaws Committee and the State Compliance Committee. Mr. Majors will provide the members an update at the July meeting.

### **KBPT Open Records and Email**

Mr. Dobrzykowski and Mr. Majors circulated a copy of Mr. Majors' written response to an open records request for email addresses of KBPT's credential holders. In this response, Mr. Majors cited to several OAG and published Kentucky appellate court decisions concluding that licensees of professional boards enjoy a reasonable expectation of privacy in their personal email addresses, and thus are exempt from disclosure.

**Action taken:** Following discussion, Mr. Pennington made a motion for Board staff to determine from the Office of the Attorney General whether that policy, as reflected in several of its prior Open Records decisions, remains valid in 2021 in light of possible changing perspectives relating to email as an effective, paperless means of communication. This motion was seconded by Ms. Thompson, which carried.

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

Mr. Majors reviewed with the Board members a proposed change to KRS 327.070 that addresses patient abandonment. The Board also discussed whether various provisions of its Practice Act should be assigned priority status by the Board for possible update during the next legislative session.

**Action taken:** Following discussion, the Board requested that Dr. Kuperstein confer with APTA KY leadership to determine whether that organization is willing to support a bill introduced during the 2022 legislative session to update certain high-priority sections of KRS Chapter 327.

### **NIC Update**

Mr. Curley provided a brief update concerning KPBT's online application and complaint form initiatives.

**Action taken:** No action taken.

### **Administrative Regulation – APTA-KY Continued Competency Proposal**

Mr. Majors and Dr. Kuperstein reviewed with the Board the requested changes to 201 KAR 22:045 referenced in APTA KY's Continued Competency Proposal, as discussed during the March meeting.

**Action taken:** Following discussion, Mr. Pennington made the motion for the Board to approve the proposed changes to 201 KAR 22:045, as amended and requested by APTA KY. Ms. Dick seconded this motion, which carried.

### **Scope of Practice Committee**

Mr. Dobrzykowski reported that, over a relatively brief period of time following the March meeting, COVID-19 vaccinations became widely available in Kentucky to nearly every demographic and age group interested in receiving one. Thus, the issue whether physical therapists should be included in the group of health care providers authorized to administer the vaccine due to limited vaccinators, which KBPT's Scope of Practice Committee initially was tasked to examine, has essentially become a moot issue. Thus, Mr. Dobrzykowski advised the members that the need for this Committee to continue to examine whether the scope of practice for physical therapy should be expanded to include vaccinations is now a non-urgent matter the Board may review at a later date, preferably every other meeting.

**Action taken:** No action taken.

Mr. Curley also reported that an individual inquired of the members during the March meeting whether trigger point injections are within the scope of physical therapy in Kentucky, and the members were not able to address this inquiry during the March meeting.

**Action taken:** Following discussion, Mr. Pennington made the motion for the Board to authorize staff to notify the individual that it is not currently within Kentucky's Physical Therapy Practice Act, or its corresponding administrative regulations, for a physical therapist to perform trigger point injections at this time. This motion was seconded by Ms. Block, which carried.

**FSBPT Webinar – Promoting Prevention Through Practice Advice: A Proactive Approach to Regulation**

Mr. Pennington offered a report concerning his panel presentation on 04/07/21 with Kathy Arney, ED for the North Carolina Board of Physical Therapy; and Harvey Aikman, Chair of the Texas Board of Physical Therapy.

**Action taken:** No action taken.

**MATRC Virtual Conference – 2021 Mid-Atlantic Telehealth Resource Center  
Post-MATRC Virtual Summit – 2021 Kentucky Telehealth Conference**

Mr. Dobrzykowski provided the members with highlights and multiple telehealth webinar updates from his participation in both the MATRC Virtual Conference held on 03/28-31/21 and the Post-MATRC Virtual Summit as part of the 2021 Kentucky Telehealth Conference on 04/08/21. Mr. Dobrzykowski also thanked the Board for allowing him to participate as the Board’s authorized representative during these virtual conferences.

**Action taken:** No action taken.

**HB 140**

Mr. Dobrzykowski provided a report regarding HB 140 which passed into law on 03/22/21. Among several amendments, this legislation created a new section of KRS Chapter 211 to define terminology related to telehealth; authorized health practitioner licensure boards to promulgate administrative regulations related to telehealth; and amended KRS 205.5591 to require telehealth coverage and reimbursement rates to be equivalent to coverage requirements and reimbursement rates for the same service provided in person.

**Action taken:** No action taken.

**FSBPT Virtual Training – New Board Members and Administrators**

Ms. Thompson and Mr. Poynter provided reports regarding their participation in the virtual training provided by FSBPT on 05/06-08/21 for new board members and administrators.

**Action taken:** No action taken.

**Staff Reports and Discussions**

The Board reviewed the following staff reports:

**(a) KBPT Data Fact Sheet**

Mr. Majors provided an updated report to the Board on the items referenced in the Data Fact Sheet.

**Action taken:** No action taken.

**(b) 2021 CE Audit**

Ms. Barton provided the members an updated report of KBPT’s 2021 CE audit, emphasizing that 739 credential holders were included in this year’s audit, and the audits for 464 of those credential holders have been completed. Ms. Barton further noted that several of the credential holders who staff determined were deficient in satisfying their CE requirements for the biennium have requested a waiver of their fines. Finally, Ms. Barton reported that a few credential holders who timely requested and were granted hardship extensions for meeting their CE requirements also failed to complete the 2019-2021 jurisprudence examination, and these credential holders have asked for clarification whether their hardship extensions also encompass their jurisprudence examination. Mr. Curley shared with the Board that all of the credential holders who were granted hardship extensions also completed the 2019-2021 jurisprudence examination requirement prior to the current Board meeting.

**Action taken:** Following discussion, the Board took the following actions:



- (1) Ms. Block made the motion for the Board to instruct staff to notify those individuals who timely obtained hardship extensions that the Board has concluded these extensions shall encompass the 2019-2021 jurisprudence examination, and no fines associated with the belated completion of the examination will be imposed. This motion was seconded by Mr. Brown, which carried.
- (2) Mr. Pennington made the motion to authorize staff to extend to those credential holders who have had fines imposed against them relating to the 2021 CE audit, including those who practiced/worked on a lapsed credential, an additional period of time up to six (6) months from their determination of noncompliance/unauthorized practice in which to pay their respective fines. This motion was seconded by Ms. Thompson, which carried.

### **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; Karen Brooks, PT; and Tara Caldwell, PT. Monitor reports were submitted by the Board-appointed monitors and considered by the Board for Ms. Brooks and Ms. Caldwell.

Additionally, Ms. Brooks submitted a request for early release of monitoring.

**Action taken:** Following discussion, Mr. Brown made a motion that the Board approve Ms. Brooks' request for early release, subject to Board staff receiving written confirmation from the Board-assigned monitor in support of the request. The motion was seconded by Ms. Block, which carried.

The members also examined issues identified by the Board-assigned monitor in the monitoring report for Ms. Caldwell.

**Action taken:** Following discussion, and after determining that additional monitoring is warranted at this time, the Board requested that Mr. Poynter attempt to negotiate with Ms. Caldwell for a short-term extension of her monitoring to provide the Board additional information whether she is prepared to be released from her monitoring agreement with the Board. Mr. Poynter agreed to provide the Board an update at the July meeting.

## **Reports and Other Business**

### **Legal Report**

#### **Administrative Regulations**

##### **201 KAR 22:170**

Mr. Poynter reported that Board staff did not receive notice that the Health, Welfare and Family Services Committee held a hearing in April. Mr. Poynter will provide the Board an update at the July meeting whether the amendments have been approved for the Board's Physical Therapy Compact Commission administrative regulation, 201 KAR 22:170.

**Action taken:** No action taken.

#### **Telehealth and Term Protection Issues**

Mr. Poynter provided the members summary reports pertaining to lawsuits filed against two professional licensing boards: a lawsuit was filed against the California Board of Veterinary Examiners concerning the use of telemedicine in the practice of veterinary medicine; and a second lawsuit was filed in New Hampshire involving term protection and the education, training and experience of individuals who represented themselves as "nurse anesthetologists".

## **Executive Director's Report**

### **CAPTE Report**

Mr. Majors reported on the accreditation decisions made by CAPTE at its 04/23-27/21 meeting.

**Action taken:** No action taken.

### **Financial Report**

Mr. Majors offered a report that addressed the Board's finances at length, including the Board's annual, monthly, and quarterly FAS3 financial reports for the Board's revenues and expenditures. Mr. Majors also shared information concerning the status of Kentucky's budget and the Kentucky Retirement System's most recently published mandatory employer retirement contribution rates.

**Action taken:** No action taken.

### **HR Memorandum of Agreement**

Mr. Majors reported that he has reached an agreement in principle for the Public Protection Cabinet (PPC) to provide HR support to KBPT through a Memorandum of Agreement (MOA) at a rate of \$4,000.00 per year, which is a reduced rate from that PPC originally quoted. Mr. Majors anticipates that the MOA will be completed and submitted to the Government Contract Review Committee for consideration and approval at its July meeting.

**Action taken:** No action taken.

### **KBPT Staffing Update**

Mr. Majors reported that Kelly Ramsey resigned from her position as KBPT's Administrative Specialist III (internally referred to as "Licensure Coordinator"), effective 05/18/21. Mr. Majors informed the members that, per the direction of the Personnel Cabinet, all Administrative Specialist III positions with the boards and commissions in Kentucky are being delimited through attrition and re-established as non-chapter, non-merit "Administrative Assistant – Board and Commission" positions. This transition from merit position to non-merit position provides KBPT some flexibility in setting compensation and establishing responsibilities for the position.

Mr. Majors also offered a report on the current salary structure for all three Administrative Assistant support staff positions, noting various discrepancies and inequities in the respective compensation offered by KBPT to each staff member for identical job titles while performing responsibilities that are essentially equally critical to the success of KBPT's operations.

**Action taken:** Following discussion, Mr. Pennington made the motion for the Board to: (a) approve a 3% annual increase in Mr. Curley's compensation, effective 07/01/21, to bring his salary in line to approximately the same rate of compensation currently assigned to the Administrative Assistant position held by Ms. Barton; and to (b) authorize Mr. Majors, during the process of hiring Ms. Ramsey's successor to offer the successful applicant a maximum annual salary of \$45,050.00, with a 5% increment after six (6) months of successful performance, depending on the applicant's qualifications, education, training and experience. This motion was seconded by Ms. Block, which carried.

Mr. Majors also announced his intent to resign his position as KBPT Executive Director due to retirement, effective at the close of business on 07/31/21. Mr. Majors expressed his sincere appreciation to the members and staff for the opportunity to serve in this position for the past nine (9) years, and he pledged his willingness to assist the members and staff in hiring a new Executive Director so the process would be as seamless as reasonably possible.

**Action taken:** Mr. Dobrzykowski advised the Board that he intends to work with Mr. Majors in the near term so this vacancy is posted properly on the Personnel Cabinet's website, and he will create a screening committee to examine and define an appropriate process for receiving applications for the position.

### **KBPT School Presentations**

Mr. Majors reported that, following KBPT's March meeting, KBPT staff conducted virtual school visits with the PTA program at Somerset Community College on 03/26/21 and with the PT program at the University of Kentucky on 05/17/21.

**Action taken:** No action taken.

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

The Board reviewed the following schedule of upcoming conferences:

- a. 2021 FSBPT Leadership Issues Forum  
(07/17-18/21 – Virtual Meeting)
- b. 2021 FSBPT Annual Meeting and Delegate Assembly  
(10/22-23/21 – Virtual Meeting)
- c. 2021 Annual Meeting – Physical Therapy Licensure Compact Commission  
(10/24/21 – Virtual Meeting)

**Action taken:** No action taken.

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

**Action taken:** Mr. Brown 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.

### **Public Comment**

Dr. Kuperstein reported that Ron Meade received the 2021 F.A. Davis Award for Outstanding Physical Therapist Assistant Educator. This is the highest award given by the APTA to PTA educators.

### **Adjournment**

Mr. Pennington made the motion to adjourn the meeting at 2:11 p.m., seconded by Mr. Brown, which carried.

Respectfully submitted,



Scott D. Majors  
Executive Director