



KENTUCKY BOARD OF PHYSICAL THERAPY

Andy Beshear
Governor

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Scott D. Majors, Esq.
Executive Director

MINUTES OF SPECIAL MEETING May 21, 2020

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

A special meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Tom Pennington, at 9:03 a.m. on Thursday, 05/21/20, via Zoom video teleconference according to the guidance issued by Governor Beshear, pursuant to KRS 61.823 and 61.826. A quorum was present.

Mr. Pennington opened the meeting by summarizing the Board's mission statement and regulatory purpose, and by welcoming all guests and stakeholders who had joined the meeting.

Board Appointments

The Board welcomed Peggy Block, PT, who was appointed to the Board by Governor Beshear through Executive Order 2020-321. Keith Poynter, the Board's General Counsel and a notary, administered the oath of office to Ms. Block.

APTA-Kentucky Liaison Report

Dr. Kuperstein reported that APTA-Kentucky has been offering multiple webinars and resources for telepractice and for practicing during COVID-19. Most of the webinars are free and accessible even to nonmembers.

Additionally, Dr. Kuperstein asked how the Board would monitor telepractice after the state of emergency ends. Mr. Majors informed Dr. Kuperstein that the Board has an Emergency Telehealth Registry that includes contact information of anyone who has requested an emergency authorization to practice telehealth in Kentucky. When the state of emergency has ended, Board staff will notify everyone on the Telehealth Registry by email that they have 30 days to conclude treatment or make other arrangements

for continuation of their patients' care. The members of the Registry will be provided information about the licensing application and Compact purchase processes to facilitate their continued lawful practice in Kentucky following the 30-day grace period, if desired. Finally, Mr. Curley advised that a second email will be sent at the end of the 30-day grace period.

Action taken: Mr. Pennington requested that Board staff send out reminder notification emails to the individuals who had authorization to practice telehealth during the state of emergency for three months after the conclusion of the state of emergency. Mr. Pennington also thanked Dr. Kuperstein and APTA-Kentucky for everything that APTA-Kentucky has done for public protection during this time, and he extended the Board's appreciation prompted by the collaborative, respectful relationship created between the two organizations even though KBPT and APTA-Kentucky have different missions. Additionally, Mr. Pennington thanked Board staff for maintaining the Board's high standards of service during the ongoing crisis.

Minutes for Previous Special Meeting

The Board reviewed the draft minutes of the 03/19/20 special Board meeting.

Action taken: Following review and discussion of proposed amendments to the draft minutes, Mr. Dobrzykowski made a motion to approve the minutes of the Board meeting of 03/19/20, as amended. The motion was seconded by Mr. Pyles, which carried.

Board Discussions, Committees and Opinion Requests

COVID-19 – KBPT's Statutes and Regulations

Mr. Majors informed the Board that Executive Order 2020-243 authorizes boards and commissions to make changes to their statutes and regulations in response to COVID-19 during the state of emergency. Mr. Majors and Ms. Ramsey advised that there have been a few instances where exam, endorsement, and reinstatement applicants have experienced difficulties in completing the state and federal criminal background check fingerprinting requirement due to the closure of businesses and facilities during the COVID-19 pandemic.

Action taken: Following discussion, Mr. Dobrzykowski made the following motion:

- (a) during the current state of emergency, and pursuant to the authority granted to the Board by EO 2020-243, applicants for initial licensure, endorsement, and reinstatement who have been unable to complete the state and federal criminal background check requirement, and who otherwise satisfy all application requirements, be issued a credential;
- (b) these applicants be granted ninety (90) days from the date their credential was originally issued by which to complete their criminal background check requirement;
- (c) the Board appoint a committee consisting of Mr. Pennington, Ms. Ramsey, and Mr. Majors to review the cases in which applicants have not completed this requirement within the ninety (90) day time frame; and
- (d) to authorize the committee to offer a second ninety (90) day extension of time to those applicants who, in good faith and through no fault of their own, have been unable to complete this requirement within the original ninety (90) day extension.

This motion was seconded by Ms. Block, which carried.

Criminal Background Reports

Ms. Ramsey reported that the Kentucky State Police will be implementing a new digital criminal background check procedure in October of 2020. This procedure will streamline the entire background check process, and it will enable the Board to receive results via a web-based portal rather than through the mail.

Action taken: No action taken.

Physical Therapy Licensure Compact

Ms. Ramsey informed the Board that there are currently 58 physical therapists and 21 physical therapist assistants who have purchased a Compact privilege in Kentucky. Mr. Majors reviewed the draft 2019 Annual Report from the Compact Commission with the Board. Additionally, Mr. Majors informed the Board that he has agreed to serve as Chairman of an Advisory IT Taskforce with the Compact Commission.

Action taken: No action taken.

KBPT Practice Act Review Committee

Mr. Pennington reported that the Practice Act Review Committee had its second meeting on 05/19/2020 to continue a comprehensive review of the Physical Therapy Practice Act. He explained that the Board does not intend to open the Practice Act, but to be prepared with draft language that reflects changes the Board would support if another entity opens our statute during a future legislative session. Additionally, Mr. Pennington informed the Board that a full report will be provided to the Board for review and discussion in the fall.

Action taken: No action taken.

KBPT Alternate FSBPT Voting Delegate

Mr. Pennington reported that KBPT needs an Alternate Voting Delegate for the FSBPT's Annual Conference and Delegate Assembly that is tentatively scheduled for 10/22-24/2020, in Orange County, California. Mr. Pennington asked Ms. Dick if she would serve as KBPT's Alternate Voting Delegate, and she agreed.

Action taken: Mr. Dobrzykowski made the motion that Ms. Dick serve as KBPT's Alternate Voting Delegate for FSBPT's 2020 Annual Conference and Delegate Assembly in Orange County, California. The motion was seconded by Mr. Brown, which carried.

FSBPT Regulatory Training

Mr. Majors reported that, as a result of COVID-19, FSBPT has cancelled the Regulatory Training that was scheduled for 8/13-15/20. However, Mr. Majors informed the Board that the agenda from last year's Regulatory Training and the PowerPoint presentations are available online for review. He encouraged all the new Board members to review the information online, and he advised that per diems will be earned if a member's review of these presentations consists of at least three hours.

FSBPT Artificial Intelligence Taskforce

Mr. Majors reported that FSBPT has created an Artificial Intelligence Taskforce, and he has been asked to serve as a member. He explained that the Taskforce's main objectives are: (a) to review literature regarding the impact of healthcare artificial intelligence technologies on the current and foreseeable future practice of physical therapy and the safe delivery of care; (b) to determine the need to develop additional educational resources for state licensing boards; and (c) to recommend further action to FSBPT's Board of Directors based on the findings.

Action taken: No action taken.

FSBPT Board Assessment Resource and KBPT Executive Summary

Mr. Majors reported that FSBPT has created a Board Assessment Resource ("BAR") for jurisdictions to determine their functionality and to identify areas in which they need to improve. Mr. Pennington, Mr. Dobrzykowski, and Mr. Majors attended a webinar on the BAR, and they shared their opinion that the tool's usefulness may be limited due to the format structure.

Action taken: Mr. Pennington, Mr. Dobrzykowski, and Mr. Majors recommended that the Board not formally adopt the BAR but, instead, create its own assessment tool that incorporates some of the BAR's highlights while also including internal empirical data to facilitate self-evaluation that may lead to operational improvement. Mr. Pennington expressed the goal that the tool be completed by the end of the year for the full Board to review.

KBPT Online Applications

Mr. Curley reported that he has been having weekly meetings with the developers at Kentucky Interactive regarding the Online Application portal. Mr. Curley advised that the schedule at this time is for testing to begin at the end of May, with production possibly pushed into June.

Action taken: No action taken.

KBPT's RFP for IPTPC

Ms. Barton reported on the RFP process for the IPTPC contract. The RFP was approved for posting on Finance's procurement website, and the Board must wait until the 06/02/20 deadline for bids to be received before next steps in the process may be taken. Mr. Majors informed the Board that interviews may need to be conducted prior to awarding a contract if multiple bids are received.

Action taken: Mr. Pennington requested that Mr. Dobrzykowski, Mr. Poynter, Mr. Majors join him in conducting these interviews, if needed, and they each agreed.

2020 Offsite Board Meeting

Dr. Kuperstein reported that she previously sent an email to Mr. Pennington and Mr. Majors concerning additional COVID-19 safety-related procedures which the University of Kentucky ("UK") expects to observe on campus in September. Due to the complexities of implementing health screenings, temperature checks, social distancing, etc., Dr. Kuperstein respectfully suggested that the Board not hold its September meeting at UK. Dr. Kuperstein suggested the possibility of hosting a Board meeting in 2021.

Action taken: The Board agreed that its September meeting this year will not be held on UK's campus and, instead, the Board will work with Dr. Kuperstein in exploring the possibility of conducting a meeting on UK's campus in 2021.

KBPT ADA Committee

Mr. Dobrzykowski requested that another Board member be appointed to the ADA Committee to replace Mr. Pavkovich who resigned from the Board. Mr. Dobrzykowski gave a brief explanation of the requirements to review ADA accommodations for testing.

Action taken: Mr. Pyles made a motion to appoint Ms. Block to the ADA Committee. The motion was seconded by Mr. Dobrzykowski, which carried.

Staff Reports and Discussions

The Board reviewed the following staff reports:

- (a) KBPT staff brought a foreign educated endorsement application before the Board for review. The applicant requested that the Board waive the supervised clinical practice requirement for licensure.

Action taken: Following a review of the information provided by the applicant, Ms. Dick made a motion to deny the request because the Board lacks the legal authority under its statutes and administrative regulations to grant the request. The motion was seconded by Mr. Dobrzykowski, which carried.

- (b) Jason Larimore, who sought clarification whether the Physical Therapy Practice Act allows a physical therapist assistant, under the direction and supervision of a physical therapist via telehealth, to gather information for an evaluation.

Action taken: Following discussion, the Board authorized staff to respond to Mr. Larimore that, while a PTA is trained in the components of an evaluation, a PTA is not trained or qualified to make any determination on the data collected. The Board has no issue with a PTA completing the components as long as the telehealth encounter is synchronous with the patient.

- (c) KBPT staff brought a reinstatement application before the Board for review. The applicant requested a Hardship Extension for the continued competency requirement for reinstatement because she/he has lost their job in New York due to COVID-19.

Action taken: After discussion, Ms. Dick made a motion to grant a three (3) month extension to complete the continued competency requirements. The motion was seconded by Ms. Thompson, which carried.

- (d) James Rick Roe, PT. Reinstatement application update. Mr. Curley informed the Board that Mr. Roe signed and submitted the Conditional Reinstatement Agreement, and he completed all the terms required of reinstatement. Accordingly, Mr. Roe's license was reinstated on 5/11/20. Additionally, Mr. Curley informed the Board that there is a Notice of Hearing that will need to be dismissed.

Action taken: Mr. Dobrzykowski made a motion for the Board to dismiss the Notice of Hearing. The motion was seconded by Mr. Brown, which carried.

- (e) Alexander Love, PT, who requested an extension to complete one of the terms of his settlement agreement pertaining to the Ethics and Boundary course requirement. The Board voted at the March meeting to grant a 30-day extension. Mr. Love informed Board staff that he has been unable to complete the course because Prometric testing sites have been closed due to COVID-19.

Action taken: Following discussion, Ms. Block made a motion for the Board to grant an extension until 07/02/20 to complete his requirement for the testing portion of the Ethics and Boundary course. The motion was seconded by Mr. Pyles, 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 Alexander Love, PT. Currently, the Board has no new monitoring reports to review.

Mr. Curley reported that he has not been able to contact Mr. Winquist who has been assigned as a monitor for Alexander Love. Mr. Pennington offered to contact Mr. Winquist and report back to the Board in July.

Additionally, Mr. Curley reported that the Board's monitoring in general has been on hold because of COVID-19. The Board discussed the merits of conducting tele-monitoring.

Action taken: Following discussion, the Board authorized Mr. Curley to move forward with a tele-monitoring option.

REPORTS AND OTHER BUSINESS

Legal Report

Mr. Majors reported that LRC's website has not been updated to reflect the Board's proposed amendment to 201 KAR 22:170. Mr. Majors shall confer with LRC staff and report back at the July meeting.

Executive Director's Report

Financial Report

Mr. Majors reported that the Board's 2020 Finance Workgroup held a meeting on 05/19/20 to discuss the Board's finances at length, including the Board's annual, monthly, and quarterly FAS3 financial reports for the Board's revenues and expenditures. The Workgroup also reviewed a financial worksheet highlighting

in detail the Board's revenue, personnel and operating expenses, quarterly allotments and annual appropriations.

Action taken: No action taken.

KBPT Office Lease

Mr. Majors reported to the Board that the lease for the Board office has been extended through June of 2028 at the current lease rate.

VOIP Telephone System and KBPT Staff Computers

Mr. Majors offered a report of the Board's current office telephone system and computer assignments for the support staff, and he highlighted how the hardware's limitations are restricting the staff's productivity while respecting Personnel's mandatory HR protocols as they work remotely from home during the COVID-19 pandemic.

Action taken: Mr. Brown made a motion for the Board to authorize Mr. Majors to move forward with securing a new VOIP phone system for the Board office that will enable incoming phone calls to be forwarded to staff working remotely, and to negotiate with COT for three new laptop computers for staff, to replace their desktop computers, that will enable staff to work remotely on state-owned and maintained equipment. The motion was seconded by Mr. Dobrzykowski, which carried.

KBPT School Presentations

Ms. Ramsey reported that she has a Zoom meeting scheduled with UK on 5/26/2020. Additionally, she informed the Board that she has been able to have several follow-up online conferences with schools to answer any questions from students.

Action taken: No action taken.

Conferences and Meetings Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. Administrative Hearing Officer Training
(03/20/20 – Frankfort, KY)
(Rescheduled to 06/12/20 as a Webinar due to COVID-19)
(Scott Majors to serve as KBPT's representative.)
- b. FSBPT's Leadership Issues Forum
(Previously scheduled for 07/18-19/20 – Alexandria, VA – Postponed Indefinitely)
- c. FSBPT's Regulatory Training for Board Members and Administrators
(Previously scheduled for 08/13-15/20 – Alexandria, VA -- Cancelled)
- d. 2020 FSBPT Annual Meeting and Delegate Assembly
(10/22-24/20 – Orange County, CA)
(KBPT Chair Tom Pennington to serve as KBPT's Primary Voting Delegate; Sonya Dick to serve as KBPT's Alternate Voting Delegate; and Scott Majors to serve as KBPT's Administrator)
- e. 2020 Annual Meeting – Physical Therapy Licensure Compact Commission
(10/25/20 – Orange County, CA)
(Scott Majors to serve as KBPT's Delegate and Compact Commission Executive Board member)

New Licensee/Reinstatement/Renewal Applications

Action taken: Ms. Block 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. Brown, which carried. The lists are attached to these minutes.

Public Comment

Dr. Kuperstein informed the Board that the digital fingerprinting with IdentoGo is more expensive and will be an additional cost for students.

Dr. Kuperstein informed the Board that the Federation of State Medical Boards has overhauled its 30-page list of guidelines on how to discipline physicians who sexually exploit patients. Dr. Kuperstein suggested that FSBPT look closely at the document because this is quickly becoming an issue with public protection.

Action taken: Mr. Pennington asked Dr. Kuperstein to forward the document to the Board and staff members.

Dr. Kuperstein informed the Board that a former UK student recently sat for the NPTE and, during the test administration, had an issue arise concerning the reader provided to her based on her ADA accommodations. If UK has any future issues with this type of situation, Dr. Kuperstein asked if it would be appropriate to additionally include the Board's ADA Committee members in any correspondence. Additionally, she requested that the Board hold the FSBPT accountable for the situation that has occurred.

The Board discussed its protocol of determining and approving ADA accommodations, and it emphasized that its role with respect to the applicant's ADA request is completed once the information is keyed into FSBPT's examination program by Board staff. Moreover, the Board opined that it does not serve as an applicant's advocate in this setting.

Action taken: Mr. Pennington offered to explore this matter further, and he shall determine if this topic should be placed on the Board's agenda for further discussion at a future meeting.

Civil Matters and Investigations

Mr. Pyles 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. Dobrzykowski, which carried.

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

CE2019-95: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2019-100: The Complaint Committee reported that this individual was issued a Settlement Agreement after the March Board meeting and had not signed the Settlement Agreement. Additionally, Mr. Majors informed the Board that the individual was requesting an extension on her/his endorsement application. The Complaint Committee brought this before the full Board without recommendation for discussion.

Action taken: Following discussion, Mr. Brown made a motion for the Board to rescind the proposed Settlement Agreement because, as of 5/21/2020, the document had not been executed, thus the Settlement Agreement is null and void. The motion was seconded by Mr. Dobrzykowski, which carried.

BIC2019-105: The Complaint Committee reported that this case was handled during the Staff Inquiry section.

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: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to close this case due to no violation. The motion was seconded by Mr. Brown, which carried.

BIC2019-118: The Complaint Committee reported that this case involves a term protection violation. Mr. Poynter informed the Board that a Letter of Agreement has been signed and filed with the Board. The Complaint Committee recommended and moved to close this case. The motion was seconded by Mr. Brown, which carried.

2020 Complaint Committee

BIC2020-02: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2020-03: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2020-04: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2020-05: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2020-06: The Complaint Committee reported that the individual has accepted the Private Admonishment.

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

C2020-07: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

IPTPC Report

Mr. Fingerson presented his written IPTPC report dated 05/12/20. IPTPC cases that previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

Additionally, Mr. Fingerson reported on C2019-101: the credential holder had a dilute test result on 4/28/20, and the individual has completed a follow-up PEth test. Mr. Curley reminded the Board that the credential holder has a term in her/his Settlement Agreement that any positive test, once confirmed by the Board Chair, IPTPC Chair, and the Executive Director, would result in an Immediate Temporary Suspension.

Mr. Pyles made the motion to adjourn the meeting at 1:45 p.m., seconded by Ms. Thompson, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director