



KENTUCKY BOARD OF PHYSICAL THERAPY

Andy Beshear
Governor

312 Whittington Parkway, Suite 102
Louisville, Kentucky 40222
Phone (502) 429-7140
Fax (502) 429-7142
<http://pt.ky.gov>

Scott D. Majors, Esq.
Executive Director

MINUTES OF SPECIAL MEETING July 9, 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: Beth Ennis, PT, attending in the place of Dr. Janice Kuperstein

A special meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Tom Pennington, at 9:04 a.m. on Thursday, 07/09/20, 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 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 interests. Mr. Pennington asked the Board members to recuse themselves from both discussion and voting on any matter in which a conflict of interest exists.

Additionally, Mr. Pennington 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 Attorney to guide and inform the Board on any contemplated or performed actions that fall outside the parameters of the Board's legal authority.

APTA KY Liaison Report

Ms. Beth Ennis reported that APTA KY has submitted a letter to the Board regarding its Continued Competency requirements as established by 201 KAR 22:045. She formally asked that this letter be placed on the Board's agenda for discussion during its September meeting.

Additionally, Ms. Ennis asked how the Board would monitor telehealth in Kentucky by physical therapists and physical therapist assistants after the state of emergency ends. Mr. Majors informed Ms. Ennis 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 informed Ms. Ennis that the letter submitted by APTA KY concerning the Board's Continued Competency requirements will be added to the agenda for the September Board meeting.

Minutes for Previous Special Meeting

The Board reviewed the draft minutes of the 05/21/20 special Board meeting.

Action taken: Following review and discussion of a proposed amendment to the draft minutes, Mr. Dobrzykowski made a motion to approve the minutes of the Board meeting of 05/21/20, as amended. The motion was seconded by Ms. Dick, which carried.

Board Discussions, Committees and Opinion Requests

COVID-19 -- KBPT's Statutes and Regulations

Mr. Pennington reported that the Board received a question on whether a physical therapist can treat more than one patient at a time in light of the restrictions placed on physical therapy practice during the COVID-19 pandemic. Mr. Majors contacted Kentucky's Office of the Inspector General (OIG) requesting guidance on this matter. The OIG informed the Board that a physical therapist could treat more than one patient at a time as long as all CDC guidelines are followed. Mr. Pennington reported that this information has been posted on the Board website.

Additionally, Mr. Majors disseminated a copy of the Memorandum that the Board approved during the May meeting that granted a ninety-day extension of the criminal background check requirements to applicants for initial licensure, endorsement, and reinstatement, pursuant to Governor Beshear's Executive Order 2020-243. Ms. Ramsey reported on the number of applicants who currently need to complete the criminal background check requirements and who either were authorized to take the NPTE or were issued a credential via endorsement or reinstatement.

Finally, in view of the unexpected length of the state of emergency declared by Governor Beshear due to the COVID-19 pandemic, Mr. Majors identified several challenges that our credential holders may face in attempting to complete the Continued Competency requirements for the 2021 renewal period.

Action taken: At its September meeting, the Board agreed to examine the need to make adjustments or issue extensions for the Continued Competency requirements for the next renewal period.

Physical Therapy Licensure Compact

Ms. Ramsey informed the Board that there are currently 69 physical therapists and 25 physical therapist assistants who have purchased a Compact privilege in Kentucky.

Mr. Majors informed the Board that there is a Compact Commission Executive Board Committee meeting scheduled for 7/10/20 to review and discuss several proposed changes to the Rules and Bylaws of the Physical Therapy Compact.

Action taken: No action taken.

KBPT Practice Act Review Committee

Mr. Pennington reported that the Practice Act Review Committee had its third meeting on 07/07/2020 to continue a comprehensive review of Kentucky's 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 the Act during a future legislative session. Additionally, Mr. Pennington informed the Board that the Practice Act Review Committee is on schedule, and a full report will be provided to the Board for review and discussion in the fall.

Action taken: No action taken.

Administrative Hearing Officer Training

Mr. Majors reported that he attended the Administrative Hearing Officer Training held on 06/12/2020 via a webinar. Mr. Majors discussed with the Board the merits of attending these trainings, as it gives the Board an understanding on how to present cases to Hearing Officers who will preside over the Board's administrative hearings.

Action taken: No action taken.

Criminal Background Reports

Ms. Ramsey informed the Board that she continues to receive updates from the Kentucky State Police regarding the new digital criminal background check that will be implemented in October of 2020.

Action taken: No action taken.

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 to implement this initiative has been delayed due to COVID-19.

Action taken: No action taken.

2021-2023 Jurisprudence Exam Item Writers

Mr. Pennington informed the Board that Dr. Kuperstein, Debra Turner, and Troy Grubb have agreed to serve as Item Writers for the Board's 2021-2023 Jurisprudence Examination. Mr. Majors briefly explained the process by which the Board produces and develops the Jurisprudence Exam each biennium.

Action taken: No action taken.

KBPT's PON2 for IPTPC

Ms. Barton reported that the Board received one bid on the RFP that was posted in May from Kentucky Professionals Recovery Network, Inc. She also briefly informed the Board on the process of awarding the bid and creating a PON2 contract in eMARS. Mr. Majors informed the Board that the contract was on the agenda for review by the Government Contract Review Committee on 07/14/20, and he will be prepared to answer any questions from the Committee members if the Board's contract is selected for review.

Action taken: No action taken.

Board Email Accounts

Mr. Curley reported that state issued email accounts for the Board members who have requested them have been set up with COT.

Action taken: No action taken.

Staff Reports and Discussions

The Board reviewed the following staff reports:

- (a) Sarah Sturm, a physical therapist endorsement applicant, has submitted a letter informing the Board that she would like to move forward with obtaining a Kentucky credential. Mr. Majors reported that the Complaint Committee has a recommendation that will be discussed in the closed session.

Action taken: No action taken.

- (b) Mr. Lopez, a foreign educated physical therapist in the state of Indiana, met with the Board to request that the Board waive the supervised clinical practice requirement for licensure. Mr. Lopez informed the Board that he has not completed any supervised clinical practice in the past.

Action taken: Following a review of the information provided by Mr. Lopez, Mr. Pennington informed him that the Board lacks the legal authority under its statutes and administrative regulations to grant the request.

Additionally, Mr. Pennington created a taskforce to review 201 KAR 22:070, the requirements for foreign educated physical therapists. The taskforce will include himself, Mr. Brown, Ms. Block, Mr. Poynter, and Mr. Majors. The taskforce will review the regulation and report to the Practice Act Review Committee.

- (c) Mr. Wickstrom, a physical therapist, requested that the Board provide him a letter declaring that the Department of Transportation (DOT) Physical Exam is within the scope of practice for a licensed physical therapist in Kentucky to administer. In the documentation that Mr. Wickstrom provided, he indicated that the physical therapy boards in Arkansas, Louisiana, and Ohio have determined it is within the scope of practice for a physical therapist to administer the DOT physical exam.

Action taken: After discussion, the Board authorized staff to respond that the DOT Physical Exam is not within the scope of practice of physical therapy in Kentucky; however, the Board will review any additional information that Mr. Wickstrom may wish to provide that is relevant to further discussion of the scope of practice of physical therapy in Kentucky as it relates to his inquiry.

- (d) Ron Cole, a physical therapist, who inquired whether a physical therapist who is licensed in Kentucky is permitted to perform a diagnostic ultrasound and make a diagnosis?

Action taken: After discussion, the Board authorized staff to respond to Mr. Cole stating that it is not within the scope of practice in Kentucky for a physical therapist to make a medical diagnosis.

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. A monitor report was submitted by the Board-appointed monitor and considered by the Board for Ms. Brooks.

REPORTS AND OTHER BUSINESS

Legal Report

Mr. Poynter reported that the Committee on Health, Welfare and Family Services had a meeting scheduled last month to review the Board's proposed amendment to its administrative regulation pertaining to the Physical Therapy Compact Commission, 201 KAR 22:170. However, Mr. Poynter advised that all administrative regulations were removed from the Committee's agenda the day before the meeting was scheduled to be held due to health-related concerns re: COVID-19. Mr. Poynter will report on the status of this amendment at the September meeting.

Mr. Majors discussed with the Board the need to amend the language relative to the TOEFL scoring referenced in the Board's administrative regulation pertaining to foreign-educated applicants, 201 KAR 22:070. Mr. Majors reminded the Board that earlier in the meeting a Taskforce was created to review the Supervised Clinical Practice requirements for foreign-educated applicants. He suggested that the Taskforce review the TOEFL score section at the same time and report back to the Practice Act Review Committee.

Executive Director's Report

Financial Report

Mr. Majors reported that the Board's 2020 Finance Workgroup held a meeting on 07/07/20 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.

VOIP Telephone System

Mr. Majors reported that the Board's new VOIP telephone system, which the Board approved at the May meeting, has been ordered and is scheduled to be installed in the office on 07/10/2020. Mr. Majors identified several features of the new system that, once implemented, are expected to help improve staff members' productivity while respecting Personnel's mandatory HR protocols while working remotely from home during the COVID-19 pandemic. Mr. Majors also thanked the Board for its willingness to help modernize the Board's office operations with this new technology.

Action taken: No action taken.

CBT Comment Survey

Mr. Majors circulated the results of the latest CBT comment survey and satisfaction survey report, effective through 03/31/2020.

Action taken: No action taken.

Personnel Cabinet Memo/Human Resource Administrator

Mr. Majors circulated a copy of a Memorandum issued by the Personnel Cabinet's Commissioner of HR Administration advising that, beginning 01/01/2021, the Cabinet would no longer be in position to provide Human Resource Administrator services to the state's independent professional licensing boards. Mr. Majors identified several options for the Board to consider in deciding how these services should be secured beginning in 2021.

Action taken: Mr. Dobrzykowski made a motion for the Board to authorize Mr. Majors to delegate tasks of the Human Resource Administrator to existing staff, following the required training, and to further authorize Mr. Majors to enter into a Memorandum of Agreement (MOA) with the Public Protection Cabinet if the delegation of these responsibilities to existing staff later becomes impractical. The motion was seconded by Mr. Pyles, which carried.

Executive Director Evaluation

Mr. Pennington and Mr. Dobrzykowski provided a comprehensive report to the Board concerning Mr. Majors' annual performance evaluation as the Board's Executive Director. Earlier in the year a copy of this evaluation was circulated to the Board members for their input and comment.

Action taken: Following discussion, Mr. Dobrzykowski made a motion for the Board to approve a 3% raise for Mr. Majors' annual salary and, due to anticipated challenges the Board may face in safely meeting its budgetary obligations in the first two quarters of FY 2021, for the implementation of this raise to be deferred until 01/01/2021. The motion was seconded by Ms. Thompson, which carried.

KBPT School Presentations

Ms. Ramsey reported that she conducted a school presentation via Zoom with the students at the University of Kentucky on 5/26/2020. She also informed the Board that she has a school presentation scheduled with West Kentucky Community and Technical College on 09/14/20.

Action taken: No action taken.

Conferences and Meetings Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. FSBPT's Leadership Issues Forum
(07/22/20 – Virtual Meeting)
- b. 2020 FSBPT Annual Meeting and Delegate Assembly
(10/22/20 – Virtual Meeting)
(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)
- c. 2020 Annual Meeting – Physical Therapy Licensure Compact Commission
(10/24/20 – Virtual Meeting)
(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 Ms. Thompson, which carried. The lists are attached to these minutes.

Civil Matters and Investigations

Mr. Dobrzykowski 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. Brown, which carried.

Subsequently, Mr. Brown 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 the credential holder and their attorney met with the Complaint Committee during its meeting on 7/7/20, and made a counter-offer to the proposed Settlement Agreement.

Action taken: Following discussion, the Complaint Committee recommended and moved to reject the counter-offer and authorize Board Counsel to draft a new proposed Settlement Agreement with specified terms. The motion was seconded by Mr. Thompson, which carried.

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 gave a brief history that this endorsement applicant failed to sign the proposed Settlement Agreement that was offered after the March Board meeting. Subsequently, the Board voted at the May meeting to rescind the proposed Settlement Agreement. The endorsement applicant submitted a letter to the Board indicating that she/he would like to move forward in obtaining a credential in the state of Kentucky.

Action taken: Following discussion, the Complaint Committee recommended and moved to issue a Board order denying a license for the period of one year and specifying terms in which the applicant may reapply without paying another application fee. The motion was seconded by Mr. Brown, 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.

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 involves a credential holder who allegedly performed substandard care.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to close this case. The motion was seconded by Mr. Brown, which carried.

C2020-07: The Complaint Committee reported that this case involves a reinstatement applicant who did not report several arrests on previous and current applications submitted to the Board. The Complaint Committee reported that the Board voted to issue a Settlement Agreement at the March Board meeting and the reinstatement applicant has signed the proposed Settlement Agreement.

Action taken: The Complaint Committee recommended and moved to accept the proposed Settlement Agreement. The motion was seconded by Ms. Block, which carried.

C2020-08: The Complaint Committee reported this case involves a possible term protection violation.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to take no action. The motion was seconded by Mr. Brown, which carried.

C2020-09: The Complaint Committee reported that this case involves a credential holder who allegedly committed a boundary violation.

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

Mr. Pennington recused himself from any discussion or voting pertaining to C2020-09 by excusing himself from the meeting.

BIC2020-10: The Complaint Committee reported that this case involves a credential holder with an adverse action in Michigan pertaining to a continued competency violation.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to take no action. The motion was seconded by Ms. Thompson, which carried.

C2020-11: The Complaint Committee reported that this case involves a credential holder who may be impaired due to mental health condition.

Action taken: The Complaint Committee recommended and moved to open an investigation and issue a Board order requiring the credential holder to contact Mr. Fingerson within 10 days, and provide documentation from a treating health professional. Additionally the Board authorized staff to issue an Immediate Temporary Suspension if the credential holder does not timely comply with the specific terms of the Board's Order. The motion was seconded by Mr. Pyles, which carried.

IPTPC Report

Mr. Fingerson presented his written IPTPC report dated 07/02/20. 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 Board is awaiting the results of 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 the issuance of an order of Immediate Temporary Suspension.

Mr. Dobrzykowski made the motion to adjourn the meeting at 1:43 p.m., seconded by Ms. Block, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director