



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

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Executive Director

MINUTES OF MEETING

July 18, 2019

Board Members: Dan Martin, PT, Chair
Tom Pennington, PT, Chair-Elect
Edward Dobrzykowski, 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

Member Absent: Ron Pavkovich, PT
Talia Weinberg, PT

Board Guest: Erin McNeil, Student, Western Kentucky University
Sara Rendon, Student, Bellarmine University

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Dan Martin, at 9:00 a.m. on Thursday, 07/18/19 at the Board office. A quorum was present.

KPTA Liaison Report

Dr. Kuperstein reported that KPTA has prepared a list of items it would like to have KBPT consider if the decision is made to open the Physical Therapy Practice Act. Additionally, Dr. Kuperstein reported that it is the 50th anniversary of the physical therapist assistant, and KPTA will be honoring physical therapist assistants at the annual conference in September. Also, Dr. Kuperstein reported that APTA has unveiled a new branding initiative and that KPTA in the next three to twelve months will become "APTA Kentucky." Finally, Dr. Kuperstein reported that Anthem has delayed the in-house utilization management (AIM) in Kentucky, and will relaunch the product on August 1st.

Minutes for Previous Regular Meeting

The Board reviewed the draft minutes of the 05/16/19 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 05/16/19, as amended. The motion was seconded by Mr. Dobrzykowski, which carried.

Board Discussions, Committees and Opinion Requests

Physical Therapy Licensure Compact

Ms. Ramsey reported that 23 Compact privileges to practice or work in Kentucky have been issued since 03/21/19. Mr. Majors reported that 14 states are now issuing Compact Privileges, and Louisiana will begin issuing Compact privileges as of 07/22/19.

Additionally, Mr. Majors briefly reviewed the Physical Therapy Licensure Compact Commission's 2018 Annual Report, and he discussed with the Board Kentucky's leadership role on the Rules and Bylaws Committee, Policy Task Force and the Minutes Approval Committee. Mr. Majors informed the Board that there are several rules and bylaws that will be considered for possible adoption at the Annual Conference in October. Finally, Mr. Majors shared with the Board an email he received from FSBPT that explained its reasoning behind the decision to discontinue aPTitude, ProCert and oPTion later this year.

Action taken: No action taken.

KBPT CE Audit Update

Ms. Barton, Mr. Curley, and Mr. Majors gave a brief synopsis to the Board of the 2019 Continued Competency Audit. Ms. Barton will provide a detailed report at the September Board meeting.

Action taken: No action taken.

Temporary Permits

Ms. Pillow discussed with Board members and staff the possibility of adding additional language to the current Temporary Permit document that staff currently issues to first time examination applicants. This additional language would include a sentence clarifying the possibility of alternate physical therapist supervisors.

Action taken: After discussion, Ms. Pillow made the motion for staff to draft additional language for the Temporary Permit, consistent with the discussion, and present it to the Board at the September meeting for informational purposes. The motion was seconded by Mr. Dobrzykowski, which carried.

KPTA Report: Kentucky Telehealth Board

Mr. Dobrzykowski provided a report to the Board concerning the Kentucky Telehealth Board Webinar with Kentucky's Licensing Boards conducted on 06/18/19. He informed the Board that, as of 07/01/19, the Kentucky Telehealth Board has been officially disbanded and replaced with the Kentucky Statewide Telehealth Program under the Cabinet for Health and Family Services. This agency shall provide oversight and direction with telehealth services for affected stakeholders throughout the Commonwealth.

Action taken: No action taken.

Medicaid Administrative Regulation

Mr. Dobrzykowski reported to the Board on an emergency regulation (907 KAR 3:170E) regarding telehealth service coverage and reimbursement. The Board reviewed the language in 201 KAR 22:160 (KBPT's Telehealth and Telephysical Therapy regulation) to ensure KBPT's regulation did not contradict 907 KAR 3:170E.

Action taken: No action taken.

2019 Kentucky Telehealth Summit

Mr. Dobrzykowski provided a detailed report to the Board on the 2019 Kentucky Telehealth Summit he attended on 05/23/19 in Bowling Green, KY. This report summarized conference presentations, including the need for data to evaluate effectiveness of patient services and remote patient monitoring provided via Telehealth, and growth in behavior health, stroke, and school systems.

Action taken: No action taken.

2019 FSBPT Leadership Issues Forum

Mr. Majors and Mr. Pennington recently attended the 2019 FSBPT Leadership Issues Forum in Alexandria, Virginia. Mr. Majors reported on topics concerning the Physical Therapy Compact, social media, and issues faced by licensing boards concerning reorganization. Mr. Pennington reported on standard operating procedures, criminal background checks, and occupational reform.

KBPT Practice Act Workgroup

Mr. Majors discussed with the Board the possibility of forming a KBPT Practice Act Workgroup to consider whether any amendments to KRS Chapter 327 should be sought by KBPT during the 2020 legislative session.

Action taken: Ms. Pillow moved to have Mr. Dobrzykowski substitute for Mr. Martin on this Committee, for Mr. Pennington to serve as the Workgroup's Chair, and for KPTA to be invited to select up to two of its designees to serve as members of the Workgroup. The motion was seconded by Mr. Dobrzykowski, which carried.

Online Applications

Mr. Curley gave a brief report on his meeting with Bob Evancho of Kentucky Interactive on 06/11/19. He reported that blueprint for the online application platform has been created.

Action taken: No action taken.

Staff Reports and Discussions

The Board reviewed the following staff reports:

- (a) KBPT staff brought an endorsement application before the Board for review. Staff informed the Board that the applicant is currently under suspension in West Virginia.

Action taken: After discussion, Mr. Pennington made a motion to open a Board Initiated Complaint (BIC), BIC2019-100, and to authorize Board Counsel to draft a proposed Settlement Agreement with specified terms. The motion was seconded by Ms. Pillow, which carried.

- (b) KBPT staff brought before the Board an individual who purchased a Compact privilege through the PT Compact Commission and did not complete the required Kentucky Jurisprudence Exam (JE).

Action taken: After discussion, Mr. Pennington made a motion to issue a private admonishment with a fine in the amount of \$245.00. The motion was seconded by Mr. Dobrzykowski, which carried.

- (c) Staff brought before the Board a question from an individual seeking clarification on whether a physical therapist may complete a re-certification on a resident from a different location if they have access to all of the resident's treatment records without physically seeing the patient?

Action taken: After discussion, the Board authorized staff to respond that 201 KAR 22.053 Section 5 (4)(b)1 requires that the subjective, objective and medical information required for a reassessment must be collected by a physical therapist or physical therapist assistant. Thus, a physical therapist could perform a reassessment from a different location if there is a physical therapist assistant onsite during the reassessment who is collecting the necessary information.

- (d) Chris Sharrock, a physical therapist, who sought clarification from the Board: are physical therapists in Kentucky permitted to perform pre-participation evaluations, specifically sports physicals? This was brought before the Board during the May meeting and was tabled until the July meeting.

Action taken: After discussion, the Board authorized staff to respond that, while a physical therapist cannot independently perform pre-participation evaluations (i.e., sports physicals), a physical therapist may participate in elements of a pre-participation sports physical for athletes that are within the physical therapy scope of practice.

Update on Monitoring Probations

The Board noted the following credential holders who are presently being monitored: Sabrina Pletz, PTA and Andrea Brown, PT. Additionally, Mr. Curley reported that Donald Bruce Taylor has completed all monitoring requirements and will be released from probation on 07/20/19.

Action taken: No action taken.

REPORTS AND OTHER BUSINESS

Legal Report

Mr. Majors updated the Board regarding the status of recent proposed revisions to the Board's administrative regulations:

- (1) 201 KAR 22:020, concerning endorsement applicants and KSP/FBI background checks, effective 05/31/19;
- (2) 201 KAR 22:070, concerning the credentialing of foreign-educated physical therapist assistants, effective 05/03/19; and
- (3) 201 KAR 22:135, concerning the Board's proposed increases in certain fees.

Mr. Poynter discussed with the Board a number of articles related to administrative law in the news, including several from Louisiana that dealt with investigations into sexual assault claims. Additionally, Mr. Poynter discussed an article concerning the Kentucky Board of Optometric Examiners and Ophthalmic Dispensers.

Executive Director's Report

Staff Update

The Board was provided an update concerning Board-related tasks performed by KBPT staff since the May meeting. Mr. Majors also reported that KBPT's proposed salary adjustments for staff members Stephen Curley and Krista Barton have received final approval by the Personnel Cabinet, effective 07/01/19.

Action taken: No action taken.

Financial Report

The Board reviewed monthly, quarterly and end of FY 2019 FAS3 financial reports addressing the Board's revenues and expenditures. Mr. Majors also distributed a financial worksheet highlighting in greater detail the Board's revenue, personnel and operating expenses, quarterly allotments and annual appropriations.

Action taken: No action taken.

KBPT Approval Request: Bar Dues

Mr. Majors requested that the Board consider reimbursing those staff members who have paid their annual dues for membership to the Kentucky Bar Association (KBA).

Action taken: Mr. Pennington made the motion for the Board to approve reimbursement for KBA dues for Mr. Majors, Mr. Poynter, and Ms. Ramsey, to be determined annually. The motion was seconded by Ms. Pillow, which carried.

KBPT School Presentations

Ms. Ramsey briefly reported that a school visit was conducted at the University of Kentucky on 05/20/19, and a visit is scheduled to be conducted at West Kentucky Community and Technical College on 09/12/19.

Conferences and Meetings Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. FSBPT's Regulatory Training for Members & Board Staff
(08/17-18/19 – Alexandria, VA)
(Ms. Ramsey is to serve as KBPT's representative.)
- b. KPTA Annual Conference
(09/27-28/19 – Lexington, KY)
- c. FSBPT's 2019 Annual Meeting and Delegate Assembly
(10/24-26/19 – Oklahoma City, OK)
Mr. Pennington to serve as KBPT's Voting Delegate; Mr. Dobrzykowski to serve as KBPT's Alternate Delegate; and Ms. Ramsey to serve as KBPT's Administrator fully-funded by FSBPT.
- d. FSBPT's 2020 Annual Meeting and Delegate Assembly
(10/22-24/20 – TBD)

New Licensee/Reinstatement/Renewal Applications

Action taken: Ms. Pillow 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. Dobrzykowski, which carried. The lists are attached to these minutes.

New Business

Department of Insurance

Mr. Majors circulated copies of the quarterly malpractice report submitted by the Department of Insurance, Public Protection Cabinet, concerning health care providers with settlement and/or judgments, dated 07/11/19 covering the period from 04/01/19 through 06/30/19.

Action taken: No action taken

KBPT staff brought an endorsement application before the Board for review. Staff reported that the applicant did not indicate that she/he had a traffic violation in 2010 related to drugs or alcohol on her/his application. Mr. Fingerson reviewed the applicant's file and reported to the Board that no IPTPC participation was necessary.

Action taken: After discussion, and after noting the recommendation of Mr. Fingerson, Mr. Dobrzykowski made a motion to authorize staff to issue a Private Admonishment, and to issue a credential with no practice restrictions. The motion was seconded by Mr. Pennington, which carried.

David McCaulley, PT, who sought clarification from the Board whether a physical therapist may provide Battlefield Acupuncture?

Action taken: After discussion, the Board authorized staff to respond that acupuncture is not permitted in the Practice Act.

Denise Logsdon, Chair of the Kentucky Board of Licensure for Massage Therapy, submitted a request that KBPT review draft language regarding a possible change to a provision of the Massage Therapy Practice Act, KRS 309.351 Prohibited Acts. The proposed change would enable Licensed Massage Therapists to use Bemer and any electromagnetic field therapy or microcurrent device that is sold to the general public for in home use for stimulation of local circulation and soft tissue release.

Action taken: After discussion, the Board authorized Mr. Martin as Chair to contact Ms. Logsdon to obtain further information and to report back to the Board at the September meeting.

Policy and Procedure Manual Update

The Board discussed updating the Policy and Procedure Manual to include language addressing the Board's policy when a Compact privilege applicant obtains the privilege without completing the Kentucky JE, as required.

Action taken: Mr. Pennington made a motion to include language in the Policy and Procedure Manual to establish a base fine of \$245.00 for individuals who fail to take the required Kentucky JE prior to purchasing a Compact privilege to practice. The motion was seconded by Ms. Pillow, which carried.

Additionally, Mr. Majors circulated a handout from FSBPT's Leadership Issues Forum with a list of acronyms and abbreviations. He requested that the Board authorize staff to include this list in the section of the Policy and Procedure Manual that has a list of acronyms and abbreviations the Board commonly uses.

Action taken: Mr. Pennington made a motion to update the Policy and Procedure Manual to include the acronyms and abbreviations handout from the Leadership Issues Forum. The motion was seconded by Ms. Pillow, which carried.

CBT Comment Summary and Candidate Satisfaction Survey Report

Mr. Majors reported the results of the latest CBT comment survey and satisfaction survey report, dated 07/11/19. Mr. Majors emphasized that KBPT received a perfect 100% score for each of the two quarters in 2019 to date.

Action taken: No action taken.

Mr. Majors informed the Board that the Board of Dentistry (KBD) is examining the feasibility of purchasing a new VOIP telephone system. If the decision is made to purchase this new telephone system, KBD would need to upgrade the current internet connection. KBD has inquired whether KBPT is willing to share costs with KBD and with the Board of Barbering to upgrade the internet connection through the Commonwealth Office of Technology.

Action taken: Mr. Pennington made a motion to authorize Mr. Majors to negotiate with KBD for a reasonable shared cost arrangement. The motion was seconded by Mr. Dobrzykowski, which carried.

Civil Matters and Investigations

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

Subsequently, Mr. Dobrzykowski made the motion to come out of Executive Session. The motion was seconded by Ms. Pillow, which carried. The Board returned to open session and voted on the following cases:

2017 Complaint Committee

BIC2017-05: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

2018 Complaint Committee

BIC2018-19: The Complaint Committee reported that this case involves a credential holder who allegedly had supervision violations and possibly provided Board staff misrepresentations of fact during the investigative process. During the May Board meeting, the Board voted to authorize Board Counsel to offer a Settlement Agreement with specified terms. Mr. Poynter reported that the credential holder's attorney made a counter offer.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to amend the proposed Settlement Agreement with specified terms and, if the credential holder fails to enter into the proposed Settlement Agreement within twenty days, for the Board to authorize Counsel to file a Notice of Hearing and Formal Charges. The motion was seconded by Mr. Dobrzykowski, which carried.

BIC2018-22: The Complaint Committee gave a brief history that this case involves allegations of fraud and material deception.

Action taken: After reviewing the facts and circumstance of this case, the Complaint Committee recommended and moved to close this cause due to insufficient evidence. The motion was seconded by Ms. Pillow, which carried.

C2018-24: The Complaint Committee gave a brief history that this case involves allegations of fraud and material deception.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to draft a proposed Settlement Agreement with specified terms and, if the credential holder fails to enter into the proposed Settlement Agreement within twenty days, for the Board to authorize Counsel to file a Notice of Hearing and Formal Charges. The motion was seconded by Mr. Dobrzykowski, which carried.

2019 Complaint Committee

C2019-01: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

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

Action taken: No action taken.

C2019-05: The Complaint Committee reported 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.

C2019-08: The Complaint Committee reported that this case involves a credential holder who allegedly failed to respect the rights and dignity of a patient and provided services outside the plan of care without documenting any changes to plan of care.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to draft a proposed Settlement Agreement with specified terms and, if the credential holder fails to enter into the proposed Settlement Agreement within twenty days, for the Board to authorize Counsel to file a Notice of Hearing and Formal Charges. The motion was seconded by Mr. Dobrzykowski, which carried.

Mr. Pennington recused himself and left the room during the discussion of C2019-08.

BIC2019-09: The Complaint Committee reported that this case involves a credential holder who had an Emergency Protective Order (EPO) filed against her/him for domestic violence against a child.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to close this case due to insufficient evidence. The motion was seconded by Ms. Pillow, which carried.

C2019-10: The Complaint Committee reported that his case involves a credential holder who was disciplined in Ohio for fraud and material deception. The credential holder failed to report this information on her/his renewal application with KBPT.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to draft a proposed Settlement Agreement with specified terms and, if the credential holder fails to enter into the proposed Settlement Agreement within twenty days, for the Board to authorize Counsel to file a Notice of Hearing and Formal Charges. The motion was seconded by Ms. Pillow, which carried.

BIC2019-11: The Complaint Committee gave a brief history that this case involves a credential holder with a DUI charge.

Action taken: The Complaint Committee reported that the credential holder has signed a Voluntary Surrender of License and has entered into an intensive inpatient treatment program. After reviewing the proposed Voluntary Surrender of License, Mr. Pennington made a motion for the Board to approve the proposed Voluntary Surrender of License. The motion was seconded by Mr. Dobrzykowski, which carried.

2019-12 R: The Complaint Committee gave a brief history that this credential holder failed to renew her/his credential before the 03/31/19 renewal deadline and continued to practice on a lapsed credential. The credential holder has accepted the Private Admonishment that was offered after the May Board meeting, and has paid her/his respective fine.

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

2019-13 R: The Complaint Committee gave a brief history that this credential holder failed to renew her/his credential before the 03/31/19 renewal deadline and continued to practice on a lapsed credential. The credential holder has accepted the Private Admonishment that was offered after the May Board meeting, and has paid her/his respective fine.

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

2019-14 R: The Complaint Committee gave a brief history that this credential holder failed to renew her/his credential before the 03/31/19 renewal deadline and continued to practice on a lapsed credential, and who misrepresented the number of days that she/he practiced on a lapsed credential.

Action taken: The Complaint Committee reported that the credential holder has signed the proposed Settlement Agreement. After reviewing the proposed Settlement Agreement, Mr. Pennington made a motion for the Board to approve the proposed Settlement Agreement. The motion was seconded by Mr. Dobrzykowski, which carried.

C2019-15: The Complaint Committee reported this case is ongoing.

Action taken: No action taken.

BIC2019-16: The Complaint Committee reported that this case involved a credential holder who answered "yes" to question 11: have you had a malpractice settlement or civil judgment entered against you related to your practice of physical therapy? The credential holder reported that she/he is currently involved in a malpractice claim.

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. Pillow, which carried.

C2019-17: The Complaint Committee reported that this case involves possible fraud and material deception.

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

C2019-18: The Complaint Committee reported that, during the May Board meeting, the Board voted to issue an Immediate Temporary Suspension (ITS) if the credential holder did not submit proof of completing an intensive outpatient substance abuse disorder program and sign a five-year IPTPC agreement with Mr. Fingerson. Board staff reported that the credential holder did not submit proof of completing an intensive outpatient substance abuse disorder program or sign an IPTPC agreement, and an ITS was issued administratively on 06/17/19.

Action taken: No action taken.

C2019-19: The Complaint Committee reported that this case involves a credential holder who possibly practiced without a license in a previous biennium.

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. Pillow, which carried.

C2019-20: The Complaint Committee reported that this case involves possible fraud and material deception.

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

CE2019 21-94: The Complaint Committee reported that all of these cases involve credential holders who were deficient with the Continued Competency requirements.

Action taken: The Complaint Committee recommended and moved to authorize Board staff to draft Private Admonishments consistent with the Board's procedure as established in the 2013-2015 CE

Audit process, and as affirmed by the Board for the 2017-2019 CE Audit process. The motion was seconded by Mr. Dobrzykowski, which carried.

CE2019 95-98: The Complaint Committee reported that all of these cases involve credential holders who were deficient with their Continued Competency requirements.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to draft Settlement Agreements consistent with the Board's procedure as established in the 2013-2015 CE Audit process, and as affirmed by the Board for the 2017-2019 CE Audit process. The motion was seconded by Mr. Dobrzykowski, which carried.

C2019-99: The Complaint Committee reported that 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 Ms. Pillow, which carried.

IPTPC Report

Mr. Fingerson presented his written IPTPC report dated 07/09/19. IPTPC cases which previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

Additionally, Mr. Fingerson informed the Board that an individual under a voluntary IPTPC agreement has test results indicating a dilute urine sample, and a follow-up test has been completed. Mr. Fingerson reported that he has not received the results of the most recent test, and explained that the credential holder has on two separate occasions tested positive for alcohol consumption. During the May meeting, the Board requested that Mr. Fingerson contact the credential holder and convey that any further noncompliance may result in disciplinary action being taken against their credential.

Action taken: After discussion, Mr. Pennington made a motion to authorize Board staff to administratively issue an Immediate Temporary Suspension (ITS) if the credential holder's test was positive. The motion was seconded by Ms. Pillow, which carried.

Mr. Dobrzykowski made the motion to adjourn the meeting at 3:29 p.m., seconded by Ms. Pillow, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director