



## KENTUCKY BOARD OF PHYSICAL THERAPY

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*Matthew G. Bevin*  
Governor

*Scott D. Majors, Esq.*  
Executive Director

### MINUTES OF MEETING

September 19, 2019

Board Members: Dan Martin, PT, Chair  
Tom Pennington, PT, Chair-Elect  
Edward Dobrzykowski, PT  
Linda Pillow, PT  
Talia Weinberg, 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

Board Guest: Denise Logsdon, MS, LMT

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, 09/19/19 at the Board office. A quorum was present.

#### KPTA Liaison Report

Dr. Kuperstein reported that the KPTA Annual Conference begins on 09/27/19 in Lexington. Additionally, she reported that a bill would be coming forward concerning the Athletic Trainers Practice Act. A preliminary meeting has been conducted with the associations from the Athletic Trainers, Physical Therapy and Occupational Therapy.

The Board congratulated Dr. Kuperstein on receiving KPTA's Lifetime Achievement Award.

#### Minutes for Previous Regular Meeting

The Board reviewed the draft minutes of the 07/18/19 Board meeting.

**Action taken:** Following review and discussion of proposed amendments to the draft minutes, Mr. Pennington made a motion to approve the minutes of the Board meeting of 07/18/19, as amended. The motion was seconded by Ms. Weinberg, which carried.

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

### **Physical Therapy Licensure Compact**

Ms. Ramsey reported that 40 Compact privileges to practice or work in Kentucky have been issued since 03/21/19. Mr. Majors reported that 26 states are now members of the Physical Therapy Compact.

Additionally, Mr. Majors reported that the Compact Commission is currently working towards developing an improved framework to help jurisdictions that require the completion of the Jurisprudence Exam prior to purchasing a Compact privilege. Finally, Mr. Majors reported that the Commission's Rules and Bylaws Committee has met multiple times over the summer and has adopted recommendations to present to the Executive Board. This information will be posted on KBPT's website on 09/25/19.

**Action taken:** No action taken.

### **Regulatory Training for Members & Board Staff**

Ms. Ramsey gave a report to the Board concerning her attendance at FSBPT's Regulatory Training for Members & Board Staff in August. She discussed presentations relative to board mission statements, how board staff members handle scope of practice inquiries from credential holders, how action guidelines promote consistency and transparency for disciplinary action, and the proposed benefits of FSBPT's Alternative Approval Pathway.

**Action taken:** After discussion, the Board authorized staff to review the current mission statement of the Board and present any changes at the December Board meeting. Moreover, Mr. Majors offered to distribute information to the Board at its next meeting concerning the "Just Culture" approach to diminutive disciplinary actions taken by a licensing board.

### **FSBPT – aPTitude, oPTion and ProCert**

Mr. Majors reported that FSBPT would be discontinuing aPTitude, oPTion, and ProCert as of 12/31/19.

**Action taken:** After discussion, the Board authorized staff to send out a series of emails notifying all credential holders of the discontinuation of aPTitude, oPTion, and ProCert.

### **KBPT CE Audit Update**

Ms. Barton gave a brief presentation on the conclusion of the 2019 Continued Competency Audit. She discussed the total number deficiencies and compliance percentages.

**Action taken:** No action taken.

### **Policy Change to Military Fees**

Mr. Majors reported that the Department of Defense ("DoD") recently updated its Defense Health Agency-Procedures Manual, which now requires providers who are active duty members to possess at least one active and "unrestricted" license to practice at a military facility. The DoD defines "unrestricted license" as one in which the state does not waive the standard license fee solely on the basis the members is in the military, and where all continuing competence requirements have been fulfilled, even if waived by the state for military members. Mr. Majors reminded the Board that its fees for renewal of a license or certificate, and its continuing competence requirements at every renewal period, are waived pursuant to KRS 12.355.

Mr. Majors further reported that all other occupational licensing boards in Kentucky are attempting to resolve this same issue, and discussion currently is taking place to determine whether a resolution can be reached without the need to amend KRS 12.355 in the 2020 legislative session.

**Action taken:** Until a resolution is reached, the Board members instructed staff to respond to any of its credential holders who are also active duty members who seek to pay for their renewal application that Kentucky state law does not currently permit the Board to charge and collect a fee for

renewal of a credential by an active duty member. Mr. Majors will provide the Board an update concerning this issue at its next meeting.

### **Board and Commissions Appointments**

The Board discussed the three current vacancies on the Board.

**Action taken:** No action taken.

### **Online Applications**

Mr. Curley briefly reported that KBPT is awaiting the statement of work from Kentucky Interactive for the online application portal that is expected to be completed and fully implemented by the spring of 2020.

**Action taken:** No action taken.

### **Massage Therapy**

Denise Logsdon, MS. LMT, the Chair of the Kentucky Board of Licensure for Massage Therapy, met with the Board to discuss changes that the Kentucky Board of Licensure for Massage Therapy would like to make to its Practice Act, specifically to KRS 309.351 re: Prohibited Acts. The changes would allow licensed massage therapists to use any electromagnetic field therapy or micro current device that is sold to the general public for in home use for stimulation of local circulation and soft tissue release. Ms. Logsdon explained that the Kentucky Board of Licensure for Massage Therapy would require manufacturer certification of training completion and demonstrated competence.

**Action taken:** After discussion, the Board informed Ms. Logsdon that the Kentucky Board of Physical Therapy does not take a position on this topic, and she was advised to contact the KPTA.

### **Administrative Hearings Training**

Mr. Majors informed the Board that the Office of the Attorney General is sponsoring training for hearing officers and participants in Kentucky administrative hearings. Mr. Majors requested the Board reimburse the registration fee and associated travel costs for Mr. Poynter to attend the training.

**Action taken:** Mr. Pennington made a motion for the Board to pay for the registration fee and associated travel costs for Mr. Poynter to attend the Administrative Hearings Training in Frankfort. The motion was seconded by Mr. Dobrzykowski, which carried.

### **Staff Reports and Discussions**

The Board reviewed the following staff reports:

- (a) Christian Robertozzi, a physical therapist, who sought clarification from the Board regarding the use of roentgen rays and radioactive materials for diagnosis or therapeutic purposes.

**Action taken:** After discussion, Ms. Pillow made a motion for the Board to authorize staff to respond to Dr. Robertozzi that there is nothing specifically referenced in Kentucky's Physical Therapy Practice Act (KRS Chapter 327) or its corresponding administrative regulations that expressly prohibit the use of roentgen rays and radioactive materials for diagnosis and therapeutic purposes as long as the provider is practicing within the scope of the credential holder's training, expertise and experience. The motion was seconded by Ms. Weinberg, which carried.

- (b) Stephanie Pfeil, a physical therapist assistant, who sought clarification from the Board regarding the use of a Diowave Laser system.

**Action taken:** After discussion, Mr. Pennington made a motion for the Board to authorize staff to respond to Ms. Pfeil that there is nothing that prohibits a physical therapist or a physical therapist assistant from performing physical therapy related modalities as long as they have the proper training, expertise, and education. The motion was seconded by Ms. Pillow, which carried.

- (c) Michael Glindmeyer, a physical therapist, who sought clarification from the Board by submitting a list of questions pertaining to telehealth.

**Action taken:** After discussion, the Board authorized Mr. Poynter to send Mr. Glindmeyer a letter directing him to a list of resources, including those published by the APTA and FSBPT.

- (d) KBPT staff brought before the Board an exam application that was previously reviewed by the Board in March and May. This exam applicant previously failed the physical therapist exam and has now applied to take the physical therapist assistant exam in October. Board staff provided a brief history concerning this exam candidate, noting that the applicant has pending criminal charges that have not yet been resolved.

**Action taken:** After discussion, Ms. Weinberg made a motion that the Board pass consideration of this matter until presented with a final disposition issued in the underlying criminal case. This motion was seconded by Mr. Dobrzykowski, which carried.

#### **Update on Monitoring Probations**

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

**Action taken:** No action taken.

### **REPORTS AND OTHER BUSINESS**

#### **Legal Report**

Mr. Poynter reported to the Board that the proposed amendments to 201 KAR 22:135, the Board's administrative regulation concerning fees, was reviewed at the Health & Family Services Committee Meeting and there were no challenges. The changes to the fees were immediately implemented following the completion of the Committee meeting.

Additionally, Mr. Poynter reviewed an article concerning the PRONE score, a method for predicting future encounters with licensees based upon routinely collecting data to determine which licensees may be at a higher risk for offending or violating statutes and regulations. Mr. Poynter indicated that this article, while interesting, would require a tremendous amount of subjective vetting by staff in order to be useful for Board purposes.

Finally, Mr. Poynter reviewed an article concerning the Tennessee Online Auctioneer Licensing Law.

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

##### **Financial Report**

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

**Action taken:** No action taken.

##### **KBPT 2021-2022 Budget**

Mr. Majors reported that he and Ms. Barton will be preparing the Board's proposed 2021-2022 biennial budget over the next several weeks, which is due to be filed with the Legislative Research Commission and the Office of the State Budget Director by 11/1/19. Mr. Majors also reported that he had arranged for the Board's Budget Analyst to meet in Louisville on 09/30/19 with the staffs of the Boards of Physical

Therapy, Nursing, Dentistry, and Barbering to discuss the 2021-2022 budget forms. As the budget preparation will be a very time-intensive process covering several weeks, Mr. Majors requested additional time for KBPT staff to complete and distribute the minutes for the current Board meeting, which was granted by Mr. Martin as Board Chair.

### **KBPT School Presentations**

Ms. Ramsey briefly reported that, via Skype, she conducted a school visit with West Kentucky Community & Technical College on 09/12/19. Additionally, she is scheduled to conduct a school visit in-person at Western Kentucky University on 11/20/19.

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

The Board reviewed the following schedule of upcoming conferences:

- a. KPTA Annual Conference  
(09/27-28/19 – Lexington, KY)  
Mr. Dobrzykowski and Ms. Weinberg to serve as speakers on telehealth.
- b. CSG's Occupational Licensing Policy Learning Seminar  
(10/03/19 – Lexington, KY)  
Mr. Majors to serve as a panelist fully-funded by CSG as KBPT's representative.
- 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; Ms. Ramsey to serve as KBPT's Administrator fully-funded by FSBPT; and Mr. Majors to serve as CBA Vice-Chair fully-funded by FSBPT.  
  
**Action taken:** Following discussion, Mr. Dobrzykowski made the motion for the Board to authorize Mr. Pennington, as the Board's voting delegate, to exercise his discretion with his vote following the presentation of additional information from FSBPT representatives concerning elections of officers and the motions included in the delegate assembly. The motion was seconded by Ms. Pillow, which carried.
- d. Compact Commission's 2019 Annual Meeting  
(10/27/19 – Oklahoma City, OK)  
Mr. Majors to serve as a Kentucky's state delegate.
- e. National Practitioner Data Bank – Webcast  
Reporting Clinical Privileges Actions  
(10/29/19)  
Mr. Majors and Mr. Poynter to serve as KBPT's representatives.
- f. FSBPT's 2020 Annual Meeting and Delegate Assembly  
(10/22-24/20 – Orange County, CA)

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

**Action taken:** Mr. Pennington 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**

KBPT staff brought before the Board for informational purposes an inquiry on examination approval by an educational program. Ms. Ramsey informed the Board that an exam applicant who submitted all the required documentation to take the October NPTE has not been approved by her/his educational program to take the examination.

**Action taken:** Following careful consideration, the Board elected to take no action.

KBPT staff brought a reinstatement application before the Board for review. Staff reported that the applicant is not licensed currently in any jurisdiction, but she/he has been licensed in the past three years in another jurisdiction. The applicant has submitted all required documentation except the criminal background check.

**Action taken:** After reviewing the provided documentation, Ms. Weinberg made a motion to authorize staff to reinstate the license of the individual pending receipt of a satisfactory criminal background check. The motion was seconded by Mr. Dobrzykowski, which carried.

Mr. Majors reported that KBPT has negotiated with the Kentucky Board of Dentistry and with the Board of Barbering on costs associated with an upgrade to our current internet connection. KBPT has agreed to pay \$110 per month to upgrade the internet connection through the Commonwealth Office of Technology, which is less than the amount previously authorized by the Board at its July meeting.

## **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. Due to lack of response from the respondent, the Complaint Committee has put this case on hold until the respondent applies for reinstatement.

**Action taken:** No action taken.

### **2018 Complaint Committee**

**BIC2018-19:** The credential holder in this case, Karen Brooks, appeared before the Board with her attorney, Chad Elder, Esq., to review the terms of an amended proposed written Settlement Agreement.

Mr. Martin reviewed each term of the proposed Settlement Agreement with Ms. Brooks who acknowledged her understanding, assent and agreement to all terms of the agreement.

**Action taken:** After providing Ms. Brooks the opportunity to have her questions addressed by the Board, and following discussion, the Complaint Committee recommended and moved to accept the signed Settlement Agreement, as proposed. The motion was seconded by Ms. Weinberg, which carried. Additionally, the Board appointed Katelyn Stroub to serve as Ms. Brooks' monitor.

**C2018-24:** The Complaint Committee gave a brief history that this case involves allegations of fraud and material deception. The Complaint Committee reported that the credential holder in this case has signed the proposed Settlement Agreement.

**Action taken:** The Complaint Committee recommended and moved to accept the signed Settlement Agreement, as proposed. The motion was seconded by Ms. Weinberg, which carried. Additionally, the Board appointed Chris Kaczmarek to serve as the credential holder's monitor.

### **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 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.

**C2019-08:** 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 the plan of care. The credential holder appeared before the Board to discuss the proposed Settlement Agreement, including a requested reduction in the proposed fine. The Complaint Committee informed the Board of additional information that the credential holder failed to disclose previously.

**Action taken:** After discussion, the Complaint Committee recommended and moved to reject the proposed Settlement Agreement, and it authorized Board Counsel to draft a new proposed Settlement Agreement with additional terms. The motion was seconded by Ms. Weinberg, which carried.

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

**C2019-10:** The Complaint Committee gave a brief history that this case involves a credential holder who was disciplined in Ohio for fraud and material deception. The credential holder failed to report that she/he was currently under investigation relating to her/his renewal application with KBPT. The Complaint Committee reported the credential holder made a counter offer to the proposed Settlement Agreement.

**Action taken:** The Complaint Committee recommended and moved: (a) to reject the credential holder's counter offer and authorized Mr. Poynter to clarify specific terms of the proposed Settlement Agreement; and (b) for the Board to authorize Counsel to file a Notice of Hearing and Formal Charges if the credential holder fails to enter into the proposed Settlement Agreement within twenty days. The motion was seconded by Ms. Weinberg, which carried.

**C2019-15:** 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 gave a brief history that the credential holder in this case has been under an Immediate Temporary Suspension since 06/17/19 for failing to submit proof of completing an intensive outpatient substance abuse disorder program or sign an IPTPC agreement. Additionally, Board staff reported the individual failed to respond to the 2019 Continued Competency Audit.

**Action taken:** The Complaint Committee recommended and moved to authorize Mr. Poynter to file a Notice of Hearing and Formal Charges. The motion was seconded by Ms. Pillow, which carried.

**C2019-20:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**CE2019 21-94:** The Complaint Committee reported that all of these cases involve credential holders who were deficient with the Continued Competency requirements and at the July Board meeting were issued Private Admonishments with associated fines.

**Action taken:** The Complaint Committee recommended and moved to close the cases in which the credential holder has accepted and paid her/his associated fines. The motion was seconded by Ms. Weinberg, which carried.

Additionally, the cases in which the credential holder has not paid her/his associated fine will remain open.

**CE2019-95:** The Complaint Committee reported that, while the credential holder has signed the proposed Settlement Agreement, she/he has failed to submit the required continued competency to come into compliance.

**Action taken:** The Complaint Committee recommended and moved to authorize Board Counsel to file a Notice of Hearing and Formal Charges. The motion was seconded by Ms. Weinberg, which carried.

**CE2019-96:** The Complaint Committee reported that this case involves a credential holder who was deficient with the Continued Competency requirements and issued a proposed Settlement Agreement. The Complaint Committee informed the Board that the credential holder has accepted and signed the Settlement Agreement.

**Action taken:** The Complaint Committee recommended and moved to accept the signed Settlement Agreement, as proposed. The motion was seconded by Mr. Dobrzykowski, which carried.

**CE2019-97:** The Complaint Committee reported that this case involves a credential holder who was deficient with the Continued Competency requirements and issued a proposed Settlement Agreement. The Complaint Committee informed the Board that the credential holder has accepted and signed the Settlement Agreement.

**Action taken:** The Complaint Committee recommended and moved to accept the signed Settlement Agreement, as proposed. The motion was seconded by Mr. Dobrzykowski, which carried.

**CE2019-98:** The Complaint Committee reported that this case involves a credential holder who was deficient with the Continued Competency requirements and issued a proposed Settlement Agreement. The Complaint Committee informed the Board that the credential holder has accepted and signed the Settlement Agreement.



**Action taken:** The Complaint Committee recommended and moved to accept the signed Settlement Agreement, as proposed. The motion was seconded by Mr. Dobrzykowski, which carried.

**BIC2019-100:** The Complaint Committee reported that this case is ongoing.

**Action taken:** No action taken.

**C2019-101:** The Complaint Committee reported that this credential holder has been under an Immediate Temporary Suspension since 07/29/19 for testing positive for alcohol consumption on multiple occasions while under an IPTPC contract. The credential holder appeared before the Board to inquire what she/he would need to do to reinstate her/his credential to practice.

**Action taken:** After discussion, the Complaint Committee recommended and moved to authorize Board Counsel to draft a letter to the credential holder informing her/him that she/he will need to complete a comprehensive drug and/or alcohol evaluation by 11/30/19 in order to determine if the credential holder has a substance abuse disorder. The motion was seconded by Ms. Weinberg, which carried.

**BIC2019-102:** The Complaint Committee reported that this case involves an individual who failed to take the required Jurisprudence Exam prior to purchasing a Kentucky Compact privilege through the Compact Commission. During the July meeting, the Board voted to issue the individual a Private Admonishment with a \$245 fine. The Complaint Committee informed the Board that the individual has accepted the Private Admonishment and has paid her/his associated fine.

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

**BIC2019-103:** The Complaint Committee reported that this case involves an individual who did not report that she/he had a traffic violation in 2010 related to drugs or alcohol on her/his application. During the July meeting, the Board voted to issue the individual a Private Admonishment. The Complaint Committee informed the Board 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. Weinberg, which carried.

**C2019-104:** The Complaint Committee reported that this case involves a possible advertising 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. Weinberg, which carried.

### **IPTPC Report**

Mr. Fingerson presented his written IPTPC report dated 09/12/19. 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 the credential holder in C2014-12 has tested positive for alcohol, and a follow-up test has been completed. Mr. Fingerson reported that he has not received the results of the most recent test.

**Action taken:** After discussion, the Complaint Committee recommended and moved to authorize Board staff to administratively issue an Immediate Temporary Suspension (ITS) if staff is presented evidence to reasonably conclude that the credential holder's test was positive, and to further authorize Board Counsel to file a Notice of Hearing and Formal Charges. The motion was seconded by Ms. Weinberg, which carried.

Finally, Mr. Fingerson informed the Board that a voluntary participant with a history of alcohol problems requested that the IPTPC monitoring be stayed and interrupted for four days due to exigent circumstances. Mr. Fingerson will report any further information at the December meeting.

Ms. Weinberg made the motion to adjourn the meeting at 4:01 p.m., seconded by Mr. Dobrzykowski, which carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott D. Majors". The signature is stylized with a large initial "S" and a long horizontal stroke extending to the right.

Scott D. Majors  
Executive Director