



KENTUCKY BOARD OF PHYSICAL THERAPY

Andy Beshear
Governor

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Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING December 5, 2019

Board Members: Dan Martin, PT, Chair
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

Members Absent: Tom Pennington, PT, Chair-Elect
Larry Brown, Public Member
Ron Pavkovich, PT

Board Guest: Ronnie Nappi, Student, University of Kentucky
Michael Taylor, Student, University of Kentucky

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, 12/05/19, at the Board office. A quorum was present.

Minutes for Previous Regular Meeting

The Board reviewed the draft minutes of the 09/19/19 Board meeting.

Action taken: Following review and discussion of proposed amendments to the draft minutes, Ms. Weinberg made a motion to approve the minutes of the Board meeting of 09/19/19, as amended. The motion was seconded by Mr. Dobrzykowski, which carried.

Board Discussions, Committees and Opinion Requests

FSBPT – aPTitude, oPTion and ProCert

Mr. Majors reported that staff sent out the first of a series of three emails to all credential holders regarding the discontinuation of aPTitude, oPTion, and ProCert. The second email is scheduled to be sent on 12/06/19.

Action taken: After discussion, the Board authorized staff to send out the final email on 12/16/19.

KBPT Interface with Cabinet of Health and Family Service (CHFS)

Mr. Majors reported that he received a request from Mr. David Gray with the Cabinet for Health and Family Services to create an interface between the Board and the Department for Medicaid Services for the electronic submission of licenses. This would alleviate the need for physical therapists to submit a copy of her/his license.

Action taken: After discussion, Ms. Pillow made a motion that Board staff work with the Cabinet for Health and Family Services to facilitate a process to submit information on a monthly basis directly to the Department of Medicaid Services. The motion was seconded by Mr. Dobrzykowski, which carried.

2020 Board Meeting Schedule

Following consideration of various educational conferences scheduled to be held in 2020, and in an effort to avoid conflicts with the scheduling of these conferences, the Board established the following schedule for Board meetings in 2020:

Board Meetings: 9:00 a.m. to approximately 4:00 p.m.

January 23
March 19
May 21
July 9
September 17
November 19

Action taken: Ms. Weinberg made a motion to approve the aforementioned Board meeting dates for 2020. The motion was seconded by Mr. Dobrzykowski, which carried.

2020 Offsite Board Meeting

Mr. Majors discussed with the Board the possibility of scheduling an offsite Board meeting in 2020 at the University of Kentucky in Lexington.

Action taken: Following discussion, Dr. Kuperstein offered to help coordinate the scheduling of a Board meeting on the University of Kentucky/Lexington campus for 09/17/20.

2020 Board Appointments

- (1) 2020 Board Chair: Pursuant to the vote taken by the Board in November 2018, Mr. Pennington shall assume the position of Chair, effective 01/01/20;
- (2) 2020 Chair-Elect: Ms. Weinberg moved that Mr. Dobrzykowski assume the position of Chair-Elect, effective 01/01/20. The motion was seconded by Ms. Pillow, which carried;
- (3) 2021 Chair-Elect: This item was tabled until a future Board meeting;
- (4) 2019 Complaint Committee Members: Ms. Weinberg moved that Mr. Dobrzykowski be appointed to the 2019 Complaint Committee to replace Mr. Martin. The motion was seconded by Ms. Pillow, which carried;
- (5) 2020 Complaint Committee Members: Ms. Weinberg moved that Mr. Dobrzykowski be appointed to the 2020 Complaint Committee to serve with Mr. Pennington. The motion was seconded by Ms. Pillow, which carried;
- (6) 2020 ADA Accommodations Committee/Liaison Members: Ms. Weinberg moved that Mr. Dobrzykowski and Mr. Pavkovich continue to serve as the ADA Accommodations Liaison Members. The motion was seconded by Ms. Pillow, which carried;

- (7) 2020 KBPT Board Member Liaison to KPTA: This item was tabled until a future Board meeting;
- (8) 2020 KBPT Continued Competency Liaison to KPTA: Ms. Weinberg moved that Mr. Dobrzykowski continue to serve as the KBPT Board Member Liaison to the KPTA. The motion was seconded by Ms. Pillow, which carried;
- (9) 2020 Finance Workforce Members: Ms. Weinberg moved that Mr. Pennington and Mr. Dobrzykowski serve as the 2020 Finance Workforce Members, effective 01/01/20. The motion was seconded by Ms. Pillow, which carried; and
- (10) 2020 PET Review Committee: Ms. Weinberg moved that Mr. Pennington and Ms. Pillow serve as the 2020 PET Review Committee Members, effective 01/01/20. The motion was seconded by Ms. Pillow, which carried.

Staff Reports and Discussions

The Board reviewed the following staff reports:

- (a) Stephanie Pfeil, a physical therapist assistant, who sought clarification whether listening to lung and bowel sounds was within the scope of practice for therapists.

Action taken: Following discussion, the Board authorized staff to respond to Ms. Pfeil that there is nothing in the Physical Therapy Practice Act that prohibits a therapist from listening to lung and bowel sounds as long as the therapist has the requisite training, expertise, and experience. Therapists are required to refer the patient to her/his physician if any irregularities are noted.

- (b) Eric Smith, a physical therapist, who sought clarification regarding physical therapists and physical therapist assistants performing finger stick PT/INR tests in the home or in clinics.

Action taken: Following discussion, the Board authorized staff to respond to Mr. Smith that there is nothing in the Physical Therapy Practice Act that prohibits a physical therapist or a physical therapist assistant from performing finger stick PT/INR tests, as long as the physical therapist or the physical therapist assistant has the requisite training, expertise and experience. However, a physical therapist assistant cannot interpret the results of the test unless they are following established guidelines.

- (c) An applicant whose application was previously reviewed by the Board. During the September meeting, the Board voted to pass consideration of this matter until presented with a final disposition issued in the underlying criminal case. Staff provided the Board with both a disposition of the applicant's criminal case and a proposed draft of a Conditional Grant of Credential, with specified terms.

Action taken: After discussion, Ms. Weinberg made a motion that the Board offer the Conditional Grant of Credential to the applicant. The motion was seconded by Mr. Dobrzykowski, which carried.

- (d) A reinstatement applicant who was complying with the terms of a Settlement Agreement before her/his credential lapsed.

Action taken: After discussion, Ms. Weinberg made a motion that the Board deny reinstating the applicant because she/he failed to comply with a prior Board order and, additionally, for the Board to permit the applicant to reapply for reinstatement on or after 04/04/22. The motion was seconded by Ms. Pillow, which carried.

- (e) An individual appeared before the Board who voluntarily surrendered her/his credential in 07/19. The individual reported to the Board that she/he has complied with all the requirements to reinstate her/his credential except for submitting a reinstatement application.

Action taken: No action was taken to prohibit this individual from reinstating her/his credential upon satisfactory completion of the reinstatement requirements set forth in 201 KAR 22:040.

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; and Karen Brooks, PT. Monitor reports were submitted by the Board-appointed monitors and considered by the Board for Mr. Yates and Ms. Brooks.

Additionally, Mr. Curley brought before the Board information regarding Mr. Yates' monitoring visit concerning supervision and billing.

Action taken: After discussion, Ms. Pillow made a motion for the Board to open a Board Initiated Complaint (BIC) against the physical therapists and physical therapist assistants working at the facility listed in the monitoring report. The motion was seconded by Ms. Weinberg, which carried.

REPORTS AND OTHER BUSINESS

Legal Report

Administrative Regulation -- 201 KAR 22:170

Mr. Majors reported that the Compact Commission recently made changes to the Commission's rules, and the Board is required to file those changes with the LRC through an amendment to 201 KAR 22:170.

Action taken: Ms. Weinberg made a motion that the Board authorize Mr. Majors to file the changes to 201 KAR 22:170 to reflect the Compact Commission's rule changes. The motion was seconded by Mr. Dobrzykowski, which carried.

Mr. Poynter discussed an article that detailed the Nevada Board of Dentistry and the circumstances by which that Board's Executive Director and General Counsel were recently terminated. Discussion centered on appropriate conduct of Board staff and counsel and the importance of fostering a good working relationship with Board members.

Additionally, Mr. Poynter discussed articles on Licensing Overload and the Evolving State of Occupational Licensing. Mr. Poynter gave a brief overview that detailed how states are handling occupational and professional licensing across the country.

Finally, Mr. Poynter discussed an article that was broadcast on WHAS television concerning recent decisions taken by the Kentucky Board of Massage Therapy with respect to complaints about inappropriate sexual touching by a licensee. Mr. Poynter reminded the Board members of the importance of public protection when dealing with allegations of this nature.

Conferences and Meetings Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences:

- a. CAPTASA – 2020 Annual Conference
(01/24-25/20 – Lexington, KY)

Action taken: Following discussion, Ms. Pillow made the motion for the Board to pay for the registration fees and associated travel costs for Ms. Ramsey to attend the CAPTASA workshop.

- b. FSBPT's Leadership Issues Forum
(07/18-19/20 – Alexandria, VA)
Mr. Majors discussed the need to select the Board's 2020 Primary Voting Delegate and its Administrator for purpose of attending this educational training session.

Action taken: After discussion, the Board decided to table this discussion until the January or March meeting.

- c. 2020 FSBPT Annual Meeting and Delegate Assembly
(10/22-24/20 – Orange County, CA)
- d. 2020 Annual Meeting – Physical Therapy Licensure Compact Commission
(10/25/20 – Orange County, CA)

New Licensee/Reinstatement/Renewal Applications

Action taken: Ms. Weinberg 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.

Civil Matters and Investigations

Ms. Weinberg 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 that may lead to the discipline of credential holders. The motion was seconded by Mr. Dobrzykowski, which carried.

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

2019 Complaint Committee

C2019-01: The Complaint Committee reported that this case involved a civil malpractice suit against a credential holder. Mr. Poynter reported that the civil suit has been dismissed.

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. Weinberg, which carried.

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 involved a civil malpractice suit against a credential holder. Mr. Poynter reported that the civil suit has been dismissed.

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. Weinberg, which carried.

BIC2019-07: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

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

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

C2019-10: The Complaint Committee provided 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 on her/his renewal application with the Board that she/he was under investigation in Ohio. The Complaint Committee reported that the credential holder has signed a proposed Settlement Agreement.

Action taken: After discussion, the Complaint Committee recommended and moved for the Board to accept and adopt the signed Settlement Agreement, as proposed. The motion was seconded by Ms. Weinberg, which carried.

C2019-15: The Complaint Committee reported that this case involves a credential holder who has been under an Immediate Temporary Suspension since 05/21/19 due to a violation of KRS 327.070 (2)(m). The Complaint Committee reported that the credential holder complied with the terms of her/his suspension and was administratively reinstated.

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

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.

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

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved for the Board to issue a Private Admonishment with a \$250 fine, and for the Board to require the credential holder to complete a Board approved continued competence course. The motion was seconded by Ms. Weinberg, 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 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 holders have accepted and paid her/his associated fines. The motion was seconded by Ms. Weinberg, which carried.

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

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

Action taken: No action taken.

BIC2019-100: The Complaint Committee reported that this case involves an endorsement applicant with an adverse action in West Virginia.

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

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. During the September 2019 meeting, the Board voted to have the credential holder complete a comprehensive drug and/or alcohol evaluation. The Complaint Committee reported that the individual has completed the required assessment and is currently undergoing an Intensive Outpatient Treatment program (IOP). The individual has submitted a request to have her/his credential reinstated prior to completing the IOP.

Action taken: After discussion, the Complaint Committee recommended and moved to authorize Board Counsel to draft a Conditional Reinstatement and Settlement Agreement with specified terms, and for Counsel to propose this to the credential holder to resolve all pending issues. The motion was seconded by Ms. Weinberg, which carried.

BIC2019-105: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2019-106: The Complaint Committee reported that this case involves a credential holder who allegedly failed to follow the plan of care while being employed by the federal government and practicing outside the Commonwealth of Kentucky.

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

C2019-107: The Complaint Committee reported that this case involves a credential holder who allegedly failed to respect the rights and dignity of patients.

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

BIC2019-108: 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.

IPTPC Report

Mr. Fingerson presented his written IPTPC report dated 11/26/19. IPTPC cases that previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

Ms. Pillow left the meeting at 12:05 p.m.

KPTA Liaison Report

Dr. Kuperstein reported that the Athletic Trainers are moving forward in their attempt to amend portions of the Athletic Trainers Practice Act to include the term "patients."

Additionally, Dr. Kuperstein reported that KPTA has telehealth resources available on the KPTA website. Member login is required.

Finally, Dr. Kuperstein reported that Therapy Alliance Legislative Day is scheduled for 02/04/20 to be held in Frankfort, Kentucky.

Board Reports, Discussions, Appointments, and Committees

Board Appointments:

Mr. Majors reported that, other than Mr. Larry Brown who was recently appointed to serve as the Public Member of the Board, there have been no appointments made to the Board. Additionally, Mr. Majors contacted Ms. Lisa Volz with KPTA to suggest that KPTA attempt to contact the Governor's Office about Board appointments and, if no appointments are made by 12/09/19, for KPTA to consider resubmitting its list of nominees to the new administration.

Action taken: No action taken.

KPTA Annual Conference Telehealth Presentations

Mr. Dobrzykowski reported on the KPTA Annual Conference Telehealth Presentations in which he served as a panel introducer and moderator. Mr. Dobrzykowski informed the Board that the presentation included sections on the national view of telehealth, the clinical applications of telehealth, and technological requirements of telehealth. Additionally, Ms. Weinberg presented on the regulatory aspects of telehealth.

Dr. Kuperstein reported that there were discussions at the Annual Conference regarding reassessments being completed via telehealth.

FSBPT 2019 Annual Conference and Delegate Assembly

Mr. Pennington, Mr. Dobrzykowski, Ms. Weinberg, Ms. Ramsey, and Mr. Majors recently attended the 2019 FSBPT Annual Meeting and Delegate Assembly in Oklahoma City, OK. Those who attended found the Meeting to be informative and enlightening, as it included a plethora of topics relating to the regulation of physical therapy. Additionally, the Board and staff congratulated Mr. Majors on receiving an Outstanding Service Award from FSBPT.

CBA Licensure Verification Task Force

Mr. Majors reported that during the 2019 Council of Board Administrators (CBA) Forum in Oklahoma City, OK, held on 10/24/19, the Licensure Verification Task Force presented its final report to the CBA membership. The Task Force distributed a "best practices" document to the CBA in which the recommendation was made for license verification reports to be transmitted electronically to other jurisdictions, rather than through the U.S. mail.

Action taken: Following discussion, the Board instructed staff to explore the feasibility of having Kentucky Interactive develop an online platform before 01/01/21 that will enable Board staff to transmit license verifications electronically to other jurisdictions.

2019 Annual Meeting – Physical Therapy Licensure Compact Commission

Mr. Majors provided a report of the 2019 Annual Meeting of the Physical Therapy Licensure Compact Commission held in Oklahoma City, OK, on 10/27/19. He emphasized the present composition of Compact member states, the projected 2020 growth in participation, and the relatively robust number of Compact privileges that have been purchased to date by credential holders whose home state is Tennessee.

CSG's Occupational Licensing Policy Learning Seminar

Mr. Majors circulated PowerPoint slides for a presentation he gave at the Council of State Governments Occupational Licensing Policy Learning Seminar held in Lexington, Kentucky on 10/03/19. This

presentation addressed the development of the Physical Therapy Licensure Compact, with a focus placed on the similarities and differences the PT Compact enjoys with compacts for other licensing professions.

Administrative Hearings Training

Mr. Poynter recently attended the Administrative Hearings Training on 10/25/19 in Frankfort, Kentucky. He discussed presentations relative to the Kentucky Rules of Evidence, judicial deference with respect to administrative law, and bias training.

Action taken: Following discussion, Mr. Martin asked Mr. Majors to review opportunities for the Board and staff to undergo bias training, and to discuss this topic with Mr. Pennington, the Board's 2020 Chair, to determine whether such training should be presented at a future meeting.

Policy Change to Military Fees

Mr. Majors reported that the Department of Defense ("DoD") is reassessing its policy to require providers who are active duty members to possess at least one active and "unrestricted" license. This policy is in conflict with KRS 12.355 that requires the Board to waive renewal application fees and waive all continued competency requirements for every renewal period. Mr. Majors reported that this situation would most likely be resolved between affected stakeholders, and he will update the Board at the January meeting if any substantive developments take place.

KBPT AT&T Circuit Upgrade

Mr. Majors reported that on 12/12/19 contractors with AT&T, working in tandem with the Commonwealth Office of Technology, are scheduled to replace a circuit board located in the building that houses the Board's office. This step is intended to increase the speed of the internet connection available to Board members and staff while working in the office. This new circuit board will also support the Board's potential upgrade to a VoIP telephone system in the future.

Online Applications

Mr. Curley reported that the Board has received the statement of work from Kentucky Interactive for the online application portal. Additionally, he reported that everything should be completed and fully implemented by the spring of 2020.

Action taken: No action taken.

Executive Director's Report

CAPTE Decisions

Mr. Majors circulated a summary of accreditation actions taken by the Commission on Accreditation in Physical Therapy Education at its Commission meeting held on 10/29/19.

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 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 the proposed 2021-2022 biennial budget was completed and filed with the Legislative Research Commission and the Office of the State Budget Director prior to the deadline of 11/01/19.

KBPT School Presentations

Ms. Ramsey briefly reported that she conducted a school visit with Western Kentucky University on 11/20/19. Additionally, she is scheduled to conduct an in-person school visit at Somerset Community College on 02/18/20.

The meeting concluded at 2:54 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott D. Majors', with a stylized flourish at the end.

Scott D. Majors
Executive Director