State Board of Physical Therapy January 6, 2022

Professional and Occupational Affairs, on behalf of

Peter Blank, Policy Director, Secretary of Health

Sandra L. Campbell, PT, Ph.D., MBA, Vice Chair

Jeremy Robb, Attorney General's Office designee

3 4 5

1 2

BOARD MEMBERS:

6 7

Arion Claggett, Deputy Commissioner, Bureau of 8 9 10

11 12

13 14 15

16 17

18 19

20 21

22

23 24

25 26 27

28

29

30 31

32 33 34

35 36

37

38 39

40

41

42 43

44

BUREAU PERSONNEL:

Designee - Absent

Krista Wolfe, DPT, ATC

Brandie J. McClinton, DPT

Thomas M. Davis, Esquire, Board Counsel Heather J. McCarthy, Esquire, Board Prosecution Liaison

Andrea L. Costello, Esquire, Board Prosecutor Michelle Roberts, Board Administrator

Cynthia L. Potter, PT, DPT, Chairperson

Geraldine M. Grzybek, PT, GCS, Secretary

K. Kalonji Johnson, Commissioner

ALSO PRESENT:

David Buono Acting Deputy Insurance Commissioner -Office of Market Regulation, Pennsylvania Insurance Department

Katie Merritt, LSW, Director of Policy and Planning, Pennsylvania Insurance Department

Sandy Ykema, J.D., Department Counsel, Pennsylvania Insurance Department

3 * * * 1 2 State Board of Physical Therapy 3 January 6, 2022 * * * 4 5 [Pursuant to Section 708(a)(5) of the Sunshine Act, at 10:00 a.m. the Board entered into Executive 6 7 Session with Thomas M. Davis, Esquire, Board Counsel, for the purpose of conducting quasi-judicial deliberations and to receive advice of counsel on 10 matters upon which the Board will later vote. The Board commenced open session at 10:30 a.m.] 11 12 Meeting Instructions 13 14 [Michelle Roberts, Board Administrator, provided 15 instructions to be followed during the virtual 16 meeting.] * * * 17 The regularly scheduled meeting of the State 18 19 Board of Physical Therapy was held on Thursday, 20 January 6, 2022. * * * 21 22 Official Call to Order 23 [Cynthia L. Potter, PT, DPT, Chairperson, officially 24 called the meeting to order at 10:30 a.m.] 25

```
[Thomas M. Davis, Esquire, Board Counsel, noted the
1
   meeting was being recorded, and those who continued
2
3
   to participate were giving their consent to be
4
   recorded.
5
        Mr. Davis also informed everyone that the Board
6
   met in Executive Session prior to the meeting for the
   purpose of conducting quasi-judicial deliberations
   and to receive advice of Counsel.]
10
   Roll Call
11
   [A roll call of Board members was taken by Chair
12
   Potter.]
13
                              * * *
14
   Approval of minutes of the November 17, 2021 meeting
15
   CHAIR POTTER:
                  The first item on the agenda is the
16
17
                  approval of the minutes for the meeting
                  of November 17, 2021.
18
19
                       Are there any additions or
20
                  corrections to those minutes?
21
   [The Board discussed corrections to the minutes.]
22
   CHAIR POTTER:
23
                  If there are no other additions or
24
                  corrections, is there a motion to
25
                  approve the minutes?
```

5 1 MS. GRZYBEK: 2 So moved. 3 CHAIR POTTER: 4 Second? 5 DR. CAMPBELL: Second. 6 7 CHAIR POTTER: Moved and seconded to adopt the minutes 9 as corrected. We'll do a roll call. 10 11 Potter, aye; Deputy Commissioner, aye; 12 Campbell, aye; Grzybek, aye; McClinton, 13 aye; Robb, aye; Wolfe, aye. 14 [The motion carried unanimously.] 15 Report of Prosecution 16 [Andrea L. Costello, Esquire, Board Prosecutor, 17 18 presented the Consent Agreement for Case No. 21-65-017006.] 19 20 MR. DAVIS: 21 I'd like to ask if there is any Board 22 member who would like to reenter into 23 Executive Session to further discuss 24 this matter now that we've heard from 25 prosecution. Hearing none.

Based on the Board's discussions in 1 2 Executive Session, I believe the Chair 3 will entertain a motion to adopt the VRP Agreement at Case No. 21-65-017006. 4 5 Is there a motion? 6 MS. GRZYBEK: 7 So moved. 8 MR. ROBB: 9 Second. 10 CHAIR POTTER: The motion has been moved and seconded 11 12 as read by Counsel. We'll do a roll 13 call vote. 14 15 Potter, aye; Deputy Commissioner, aye; Campbell, aye; Grzybek, aye; McClinton, 16 17 aye; Robb, aye; Wolfe, aye. [The motion carried unanimously. The individual's 18 19 name has been withheld because this person is 20 entering into the voluntary recovery program, and his 21 or her participation in that program will remain 22 confidential as long as he or she abides by the terms 23 and conditions of the program.] 24 25 Appointment - Applicant, Claire Warner - Request for

3rd Attempt 1 2 [Claire Warner presented to the Board to request a 3 third attempt at the National Physical Therapy 4 Examination. She noted utilizing a detailed study 5 plan and the implementation of many steps to help her 6 pass the exam next time. Chair Potter informed Ms. Warner that the Board will be voting on her request, and the Board 9 Administrator will inform her of the decision.] * * * 10 Report of Board Chair 11 12 [Cynthia L. Potter, PT, DPT, Chairperson, noted she and Ms. Grzybek will be attending the Board and 13 14 administrator regulatory training February 11-13, 15 2022. She informed everyone that she will be the liaison from the Federation of State Boards of 16 17 Physical Therapy (FSBPT) to the Pennsylvania Board.] 18 * * * 19 20 Report of Board Counsel 21 [Thomas M. Davis, Esquire, Board Counsel, addressed 22 Recusal Guidelines. He discussed mandatory, strongly 23 suggested, and discretionary recusals, and explained 24 what to do if a Board member is uncertain.

encouraged Board members to contact him for advice if

25

anyone has questions on whether to recuse themselves.

Mr. Davis also addressed the Sunshine Act, noting the act is available to everyone on the Office of Open Records (OOR) website at openrecords.pa.gov. He stated the general rule is everything the Board does must be on the record at a public meeting. He noted exceptions include conferences, training programs, seminars, and Executive Session. He emphasized the importance of not discussing Board business outside of the Board meeting.

Mr. Davis discussed a recent update to the Sunshine Act via Act 65 of 2021, where the Board may not take official action on a matter of Board business at a meeting if the matter was not included in the published agenda. He noted emergency exceptions include clear and present danger or de minimis matters not involving the expenditure of funds.

Mr. Davis addressed Act 100 of 2021, which was signed on December 22, 2021. He noted the first part of the act discusses virtual meetings, where each licensing board and licensing commission shall use a virtual platform to conduct business when a public meeting is held.

Mr. Davis noted the second part discusses quorum,

where boards may use a virtual platform to establish a quorum and effectuate business if the platform allows for live participation.

Mr. Davis discussed the third part regarding distance education, where the board shall establish rules and regulations for continuing education (CE) that provides for distance education. He commented that the Board already allows distance education for all CE, but they may have to write a regulation and is looking into that.

Mr. Davis stated the act addresses virtual supervision and the Board may have to establish rules and regulations, which will be discussed further at the next Board meeting.

Mr. Davis updated the Board regarding licensure by endorsement under Act 41. He noted completing the Regulatory Analysis Form (RAF) and sending the package to regulatory counsel on December 2.

Mr. Davis addressed early exam and continuing education for clinical education, noting the annex has been approved. He will be amending the preamble and RAF and should be sending that to regulatory counsel before the next meeting.

Chair Potter requested an update regarding what meetings will look like past March as far as in-

person attendance versus virtual attendance for Board 1 2 members.

Arion Claggett, Deputy Commissioner, Bureau of Professional and Occupational Affairs, explained that issues are still being worked out, and the technical aspects of having in-person and virtual meetings are being finalized.]

3

4

5

6

7

8

9

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Appointment - Applicant, Ashley Gess - Request for 10 3rd Attempt

[Ashley Gess presented to the Board to request a third attempt at the National Physical Therapy Examination. She referred to the documentation she submitted to show everyone she is committed. She mentioned utilizing Orthopaedics for the Physical Therapist Assistant by Mark Dutton and having a tutor

to help with the musculoskeletal area.

Dr. Campbell advised Ms. Gess to know why the wrong answers are wrong because understanding mistakes in the exam can be incredibly helpful. She recommended utilizing the Practice Exam and Assessment Tool (PEAT) from the federation because they are old exam questions with all of the rationale listed. She noted the importance of remembering that every question is based on commonly used textbooks.

Ms. Gess noted that her PEAT expired but should be able to repurchase it and retake it.

Dr. Campbell explained that PEAT has an individual exam that she could purchase herself and the school could help her purchase the academic version and recommended looking at the individual version if she already had the academic one.

Chair Potter informed Ms. Gess that the Board will be voting on her request, and the Board administrator will inform her of the decision.]

11 **

12 Appointment - Applicant, Colby Musick-Breggle -

Request for 3rd Attempt

14 [Colby Musick-Breggle presented to the Board to

15 request a third attempt at the National Physical

16 | Therapy Examination. She mentioned becoming

17 discouraged and struggling with not knowing what she

18 is doing wrong.

1

2

3

4

5

6

7

10

22

23

24

25

Chair Potter asked Ms. Musick-Breggle to provide
more information regarding her study plan and how she
is preparing for the exam.

Ms. Musick-Breggle noted utilizing small group tutoring twice a week and one-on-one sessions and classes with the National Physical Therapy

Examination Final Frontier (NPTEFF) three times a

week for approximately 1.5 to 2 hours.

1

2

3

4

5

6

7

10

11

12

13

14

15

16

17

18

Dr. Campbell encouraged Ms. Musick-Breggle to do something that helps her analyze what is happening with how she is answering questions in the moment. She also recommended she understand not just what the right answer is but why the wrong answers are wrong and to utilize textbooks more than current literature or class notes. She also advised her to utilize either the individual or academic version of PEAT.

Ms. Musick-Breggle mention having a habit of inventing a story with the questions.

Dr. Campbell noted the importance of recognizing those habits and developing a skill of stopping that in the moment.

Chair Potter informed Ms. Musick-Breggle that the Board will be voting on her request, and the Board administrator will inform her of the decision.]

* * *

19 Appointment - Pennsylvania Department of

20 | Insurance - No Surprises Act

21 | [Katie Merritt, LSW, Director of Policy and Planning,

22 Pennsylvania Insurance Department (PID), stated the

23 No Surprises Acts was voted on by Congress in 2019.

24 | She noted Governor Wolf just signed an Executive

25 Order last month focusing on consumer protection and

tasked the Department of Insurance with upholding the
No Surprises Act and enforcing it and working with
other state agencies to make sure consumers are
protected from surprise medical bills.

Sandy Ykema, J.D., Department Counsel,

Pennsylvania Insurance Department, noted being
appreciative of the partnership between the

Pennsylvania Insurance Department and the Department
of State as they inform providers and make sure the

No Surprises Act is implemented in a way that best
protects Pennsylvania consumers and works well for
providers and facilities.

Ms. Ykema stated the No Surprises Act applies to emergency air ambulance services, emergency room services, and nonemergency services in connection with a visit to a facility. She explained that the act says anyone providing services in a facility or in connection with a visit to a facility may not balance bill the consumer if they are out of network unless they have notice and consent.

Ms. Ykema addressed health plans that must follow the act, including insurance and self-funded plans. She further explained that somebody who gets their coverage through an employer, state-based marketplace Pennie, or directly purchase insurance is covered or

- 1 if they get it through their employer through a self-
- 2 | funded arrangement. She mentioned that the act does
- 3 | not apply to Medicare, Medicaid, or Indian Health
- 4 | Services and so forth, which are covered by other
- 5 laws.
- 6 Ms. Ykema noted the act does not apply to limited
- 7 benefit plans or short-term limited duration
- 8 insurance, some of the plans that do not cover
- 9 comprehensive major medical coverage, health care
- 10 | sharing ministries, or the Amish.
- 11 Ms. Ykema addressed a provision in the law
- 12 | concerning uninsured individuals and Good Faith
- 13 | Estimates that must be provided upon request or upon
- 14 scheduling when someone asks how much a service is
- 15 going to cost.
- 16 Ms. Ykema noted that Health and Human Services
- 17 (HHS) has a proposed form, which will eventually
- 18 apply to both uninsured and insured, but recognizing
- 19 the technological challenge of out-of-network
- 20 providers or providers who may not deal directly with
- 21 | insurance companies, the technology is iffy and is
- 22 | just focusing on providing that Good Faith Estimate
- 23 to the uninsured.
- 24 Ms. Ykema addressed balance billing provisions,
- 25 where providers may not balance bill if they are out

of network and have to comply with the No Surprises

Act, which includes emergency room providers,

anesthesiologists, and pathologists, because the

consumer does not have a choice in selecting those

individuals. She mentioned a notice of consent

process to get permission if the provider is not in

the patient's insurance network to get permission to

provide services and then balance bill the amount due

beyond what the insurance company pays.

Ms. Ykema commented that providers and facilities are required to make sure they are in the insurance company's provider directory so when somebody looks to see if they are in their plan's network, they get the correct information. She noted the plan also has the duty to keep the directory current. She noted that the patient gets reimbursed if the provider or a facility bills more than the in-patient cost-sharing amount but they were in network.

Ms. Ykema discussed continuity of care, where sometimes a plan terminates a provider and they are no longer in network, but the cost sharing would continue to be in network or at the in-network rate even after the provider has left the network.

Ms. Ykema addressed complaints and encouraged everyone to contact the Pennsylvania Insurance

Department and submit a referral form, where they will look into it and figure out what is going on and how to resolve the complaint.

Ms. Ykema mentioned that this is a federal law, and the federal government also has a website but that it could take 60 days for them to acknowledge the complaint. She also encouraged everyone to contact them regarding a complaint about a patient but to try to educate the patient first because it is a new act, and the patient may not understand it.

Ms. Ykema addressed the importance of the disclosure requirement, where disclosure to the consumer is required if services were provided in a facility where there might be a balance billing scenario. She noted that Pennsylvania has a model notice but may require slight revisions because HHS just came out with a proposed revision.

Ms. Ykema stated the disclosure notice lays out the explanation of requirements and prohibitions of the law. She noted they do not have any particular state balance bill prohibitions, but if someone operates in other states and other states do, they need to be aware of that and how to contact someone if there is a problem. She mentioned that the disclosure has to be available by the facility and

needs to be a written agreement when contracting with a facility, noting it is the facility's job to put that disclosure up there and is easier for the facility because they have so many providers.

Ms. Ykema addressed notice and consent, where someone provides services but is not in network and must get notice and consent from the patient agreeing to pay whatever the insurance company does not pay for their services. She explained that the notice has to be provided three business days in advance, and if a service is scheduled within three days, they must provide notice and consent at least one business day after scheduling.

Ms. Ykema mentioned that PID does not have a Pennsylvania-specific form, but there is a federal form available on the HHS website. She also noted the patient must receive a copy and the signed consent must be kept for seven years.

Ms. Ykema noted an important piece, where the provider cannot do the notice and consent if they are the only provider in the hospital and that patient needs care they can provide because the patient does not have the alternative of another provider.

Ms. Ykema addressed payment, noting the patient may be billed if they have no insurance. She

mentioned providers may collect cost sharing in

patients with insurance who are given a surprise

medical service but only at the in-network rate and

is where communication with the insurance company is

going to matter.

Ms. Ykema noted that any charges billed beyond the in-network cost sharing must be billed to the patient's plan. She stated the plan will pay what is called a qualifying payment amount and is based on the median in-network rate. She mentioned that providers not satisfied with the amount may negotiate and then there is a process called an independent dispute resolution that the federal government has set up, where the provider may arbitrate to receive whatever additional funds they think they should get paid.

Ms. Ykema stated there is also a federal government dispute resolution arbitration process if an individual is uninsured and has a dispute with the amount billed. She explained that the amount billed needs to be more than \$400 above your Good Faith Estimate. She noted there is some protection in the No Surprises Act for the uninsured.

Ms. Ykema commented that the Governor has asked the Pennsylvania Insurance Department to be the lead

1 agency and that they are coordinating with the

2 Department of State, Department of Health, and

3 Department of Drug and Alcohol Programs to implement

4 and enforce the law within the context of state law.

5 | She noted that her agency regulates the insurance

6 companies, and the other agencies regulate providers,

7 hospitals, and so forth.

Ms. Ykema commented that the state law applies unless it prevents the application of the federal law, so they have the authority to move forward to the extent of their laws, which includes licensure laws and professional conduct laws that the Department of State oversees. She mentioned working closely with the Department of State to get this up and running and that it is all set to go.

Ms. Ykema addressed reporting, where the Department of State routes calls to them for triage of the complaint and follow up as appropriate. She mentioned having consumer services representatives who are terrific at tracking, reviewing, and reaching out, whether they are reaching out to the provider, patient, or health plan to address the complaint as efficiently as possible. She commented that they will coordinate with federal enforcement if they do not have jurisdiction and work with the Department of

1 Labor if the complaint is about a self-funded plan.

Ms. Ykema stated the new law is in development but up and running, and they will update the webpage when they receive any real issues. She noted that Carolyn DeLaurentis in the Department of State has been point on this. She encouraged everyone to inform them of anything that can be placed on their webpage to help providers and consumers of

Pennsylvania benefit from the new law.

Ms. Grzybek asked whether individual licensees would also be sent a communication because licensees may not frequent their website as often as they should for updates.

Ms. Ykema commented that PID would be happy to work with the Department of State to communicate with licensees. She noted the PowerPoint is available on their No Surprises Act webpage and will provide it to their contacts for circulation as well.

Deputy Commissioner Claggett offered to assist with sending out communications to licensees via an email blast.

Chair Potter thanked the Pennsylvania Insurance Department for their presentation.]

* * *

25 | Appointment - Prosecution Division Annual Report

Presentation

[Carolyn A. DeLaurentis, Esquire, Deputy Chief Counsel, Prosecution Division, provided a summary of the prosecution division's caseload during 2021.

Ms. DeLaurentis informed the Board that 108 cases were opened in 2021 and is up from 2020 with 53 cases but was unable to provide an answer at this point for the increase and was not sure how COVID impacted the Board. She noted closing 101 cases, which was also nearly double the year before at 59. She reported 79 open cases for the State Board of Physical Therapy as of January 1, 2022.

Ms. DeLaurentis addressed enforcement actions with 8 cases that resulted in discipline and 39 warning letters in 2021 for the State Board of Physical Therapy. She commented that the prosecution division normally does not see a lot of discipline for the physical therapy licensee population.

Ms. DeLaurentis noted 1,223 cases were opened in the prosecution division regarding COVID complaints in 2020, noting 4 of those were for physical therapy. She reported 543 complaints in 2021, which is a significant decrease, and believed it was due to businesses opening in Pennsylvania.

Ms. DeLaurentis mentioned that more complaints

are now related to health-care fields, where they
used to be related to the business boards, mostly
cosmetology, barbering, and real estate. She
reported 7 physical therapy COVID cases were opened
in 2021.

Ms. DeLaurentis stated the current number of files opened as of January 1, 2022, in the entire office was 15,141, and the total number of cases opened for the whole year is 18,363. She noted 13,394 were opened in 2020, which is a large increase in cases opened and is being monitored.

Ms. DeLaurentis reported 15,994 cases were closed in 2021 and 13,274 in 2020. She commented that while they did not close as many files as they opened, they closed a lot more files than the previous year and is proud of her department.

Chair Potter thanked Ms. DeLaurentis for her presentation.]

19 ***

20 MOTIONS

21 MR. DAVIS:

Numbers 3, 4, and 5 on the Board's agenda, where the individuals we heard ask for a third attempt at the examination.

After hearing from those individuals, are there any Board members who would like to enter into Executive Session to further discuss those matters? Hearing nothing.

Based on the Board's discussions in Executive Session, I believe Board Chair would accept a motion approving the requests of the following individuals for permission to take the National Physical Therapy Exam a third time: Claire Warner, Ashley Gess, and Colby Musick-Breegle.

Is there a motion?

15 MS. GRZYBEK:

16 So moved.

17 DR. CAMPBELL:

18 Second.

19 CHAIR POTTER:

Motion has been moved and seconded to allow the individuals a third attempt at the exam as read by Counsel. All in favor? We'll do a roll call vote.

Potter, aye; Deputy Commissioner, aye;

Campbell, aye; Grzybek, aye; McClinton,

- 2 aye; Robb, aye; Wolfe, aye.
- 3 [The motion carried unanimously.]
- 4 ***
- 5 Report of Commissioner
- 6 | [Arion Claggett, Deputy Commissioner, Bureau of
- 7 | Professional and Occupational Affairs, on behalf of
- 8 K. Kalonji Johnson, Commissioner, had no report to
- 9 offer.
- 10 Chair Potter asked Deputy Commissioner Claggett
- 11 | whether he had any information concerning any
- 12 prospects for professional and public member
- 13 vacancies as a follow-up from the last meeting.
- 14 Deputy Commissioner Claggett had nothing to offer
- 15 but was hopeful to be able to provide an update at
- 16 | the next meeting.]
- 17
- 18 Miscellaneous
- 19 [Cynthia L. Potter, PT, DPT, Chairperson, noted 2022
- 20 | Board meeting dates.]
- 21 ***
- 22 Adjournment
- 23 CHAIR POTTER:
- 24 Is there a motion to adjourn?
- 25 MS. GRZYBEK:

```
25
                  So moved.
1
2
   CHAIR POTTER:
3
                  Is there a second?
4
   DR. CAMPBELL:
                  Second.
5
6
   CHAIR POTTER:
7
                  We'll do a roll call vote.
9
                  Potter, aye; Deputy Commissioner, aye;
10
                  Campbell, aye; Grzybek, aye; McClinton,
11
                  aye; Robb, aye; Wolfe, aye.
   [The motion carried unanimously.]
12
                               * * *
13
14
   [There being no further business, the State Board of
15
   Physical Therapy Meeting adjourned at 11:44 a.m.]
16
17
18
19
20
21
22
23
24
25
```

CERTIFICATE

I hereby certify that the foregoing summary minutes of the State Board of Physical Therapy meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Physical Therapy meeting.

Samantha Sabatini,

Minute Clerk

Sargent's Court Reporting

Service, Inc.