# State Board of Occupational Therapy Education and Licensure March 8, 2023

### BOARD MEMBERS:

Kerri L. Hample, OTD, OTR/L, Chairperson
Arion R. Claggett, Acting Commissioner, Bureau of
 Professional and Occupational Affairs - Absent
Joanne M. Baird, Ph.D., OTR/L, Vice Chair
Edward J. Mihelcic, Ph.D., OTR/L
Lisa Livingston, MS, OTR/L, SCDCM, Secretary

#### BUREAU PERSONNEL:

Dean F. Picarella, Esquire, Senior Board Counsel
Judith Pachter Schulder, Esquire, Board Counsel
Kenneth J. Suter, Esquire, Board Prosecution Liaison
J. Karl Geschwindt, Esquire, Board Prosecution
Liaison
Paul Keller, Board Administrator
Christina Townley, Former Board Administrator
Carolyn A. DeLaurentis, Esquire, Executive Deputy

Chief Counsel, Department of State
Deena Parmelee, Legal Office Administrator 1,
Department of State

#### ALSO PRESENT:

Christine Daeschner, MOT, OTR/L, President, Pennsylvania Occupational Therapy Association Ben Morrow

3 \* \* \* 1 2 State Board of Occupational Therapy 3 Education and Licensure 4 March 8, 2023 \* \* \* 5 [Pursuant to Section 708(a)(5) of the Sunshine Act, 6 7 at 10:00 a.m. the Board entered into Executive Session with Judith Pachter Schulder, Esquire, Board Counsel, on behalf of Shana M. Walter, Esquire, Board 10 Counsel, for the purpose of conducting quasi-judicial 11 deliberations on a number of matters currently 12 pending before the Board and to receive the advice of 13 counsel. The Board returned to open session at 10:30 14 a.m.] 15 \* \* \* 16 The regularly scheduled meeting of the State 17 Board of Occupational Therapy Education and Licensure 18 was held on Wednesday, March 8, 2023. Kerri L. 19 Hample, OTD, OTR/L, Chairperson, officially called 20 the meeting to order at 10:35 a.m. \* \* \* 21

[Paul Keller, Board Administrator, informed everyone that the meeting was being recorded, and voluntary participation constituted consent to be recorded.]

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   Introduction of Board Members/Attendees
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   [Kerri L. Hample, OTD, OTR/L, Chairperson, requested
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   an introduction of Board members and attendees.]
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   Approval of Minutes
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   CHAIRPERSON HAMPLE:
                  Can we start with approval of the
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                  minutes from the past meeting on
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                  December 1, 2022.
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   DR. BAIRD:
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                  I move to approve those minutes.
   DR. MIHELCIC:
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                  I second.
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   CHAIRPERSON HAMPLE:
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                  Any discussion? Hearing none. I'll
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                  ask for a vote.
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                  Hample, aye; Baird, aye; Mihelcic, aye;
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                  Livingston, aye.
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   [The motion carried unanimously.]
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   Approval of Minutes
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   CHAIRPERSON HAMPLE:
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                  I also call for approval of the Special
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                  Meeting Minutes from January 3, 2023.
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   DR. BAIRD:
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                  I move to approve the minutes from the
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                  Special Meeting in January.
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   DR. MIHELCIC:
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                  I second.
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   CHAIRPERSON HAMPLE:
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                  Call for a vote.
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                  Hample, aye; Baird, aye; Mihelcic, aye;
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                  Livingston, aye.
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   [The motion carried unanimously.]
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   Appointment - Prosecution Division Annual Report
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     Presentation
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   [Carolyn A. DeLaurentis, Esquire, Executive Deputy
   Chief Counsel, Department of State, informed Board
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   members that she is now the executive deputy chief
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   counsel for the Department of State but is presenting
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   to the Board on behalf of the prosecution division in
20
   her former role to provide the presentation.
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   mentioned Karl Geschwindt would be the new deputy for
22
   the prosecution division starting on Monday.
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        Ms. DeLaurentis presented to the Board to provide
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   a summary of the prosecution division's role and
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present annual numbers for 2022. She informed Board

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members that the Bureau of Professional and

Cocupational Affairs provides administrative and

legal support to all 29 licensing boards and

commissions with the mission to protect the health

and safety of the public and the integrity of the

profession. She noted legal support includes the

prosecution division, counsel division, hearing

examiners, and support staff.
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Ms. DeLaurentis explained that the Office of Chief Counsel is under the Governor's Office of General Counsel and assigned to the Department of State, noting the prosecution division is one division under the Office of Chief Counsel and has about 38 attorneys and support staff. She noted the prosecution division works with the Bureau of Enforcement and Investigation (BEI), along with the Professional Compliance Office (PCO).

Ms. DeLaurentis stated BEI, PCO, and prosecution are all tasked with receiving complaints, investigating allegations, ensuring public safety, and enforcing compliance with the acts and regulations that govern the 29 licensing boards and commissions.

Ms. DeLaurentis stated the prosecution division has five senior prosecuting attorneys, noting Karl

Geschwindt is an acting senior prosecutor and responsible for supervising the team that handles the Board's cases. She also noted Paul Jarabeck, Heather McCarthy, Ray Michalowski, and William Newport are senior prosecutors for other boards. She mentioned they currently have 32 prosecuting attorneys and are currently recruiting for 1 more.

Ms. DeLaurentis explained that prosecution is a complaint-driven agency, noting complaints are received from any source but prefer complaints be submitted through the Pennsylvania Licensing System (PALS) at pals.pa.gov because it is the most efficient. She noted prosecution also accepts complaints from sister agencies, state and federal, law enforcement, and through media outlets.

Ms. DeLaurentis discussed levels of review, including jurisdiction checks to see if the complaint falls under their jurisdiction. She mentioned complaints are referred to the appropriate agency if prosecution does not have jurisdiction.

Ms. DeLaurentis stated prosecution works with BEI inspectors and investigators to determine whether there is a violation. She noted BEI interviews witnesses and gathers documents and social media evidence.

Ms. DeLaurentis addressed the various levels of review and determining whether there was a violation. She explained that matters could be closed if there is not a violation to focus attention on cases where there may be a violation. She stated everything is submitted to the prosecution division to be reviewed once BEI completes their investigation.

Ms. DeLaurentis noted attorneys make charging decisions and determine whether to file an order to show cause, file a citation, or close a case. She addressed due process rights with formal charges through a hearing process, noting it is similar to a regular criminal trial, where both sides are able to present evidence by way of witness testimony, documents, and legal arguments.

Ms. DeLaurentis noted hearing examiners generally issue a proposed adjudication and order and then the final decision is made by the Board. She addressed consent agreements, where both sides have negotiated and reached a settlement they wished to present before the Board, but the Board has the final authority of whether to accept or reject the consent agreement.

Ms. DeLaurentis addressed the prosecution division's role at Board meetings, including

presenting consent agreements and listening to concerns of the Board. She pointed out that prosecution has a confidentiality statute that applies to their files, where all of the contents within their files is confidential under the law and is why prosecution cannot speak on some matters. noted all of the prosecuting attorneys and staff sign confidentiality affidavits indicating they understand all records are confidential and privileged and may be disciplined for any violations.

Ms. DeLaurentis stated BEI conducts interviews and inspections for certain boards to obtain evidence. She noted BEI also serves subpoenas and deliver orders and letters, along with testifying to the results of their investigations and inspections. She noted BEI is not considered law enforcement in Pennsylvania and does not have search warrant authority.

Ms. DeLaurentis addressed document authority, where some boards have regulations that require cooperation if a request is made to review their records but not everyone complies, where prosecution may want to look at charging options.

Ms. DeLaurentis addressed post-investigation, where BEI is gathering facts and present the evidence

- to the legal office for review. She stated BEI is not determining whether or not a law has been violated or determining whether someone should be charged because that is the role of the prosecution division. She noted prosecuting attorneys work with legal analysts to determine whether there was a violation to decide whether to close the matter or file charges.
  - Ms. DeLaurentis addressed immediate temporary suspensions, where a license is immediately suspended if someone is an immediate danger to the health and safety of the public. She noted automatic suspensions include 302 commitments, drug act violations, and orders for examination for some boards. She also noted petitions for appropriate relief are when someone has violated a board order.

- Ms. DeLaurentis stated the levels of discipline include revocations, suspensions, probations, reprimands, fines, remedial education, and cost of the investigation.
- Ms. DeLaurentis referred to the confidentiality statute under 63 Pa.C.S. § 3109, where prosecution and investigative files are deemed privileged and confidential under the law. She explained that investigative records are deemed noncriminal

investigative records and exempt from disclosure under the Right-to-Know Law.

Ms. DeLaurentis stated that information could be shared with other agencies in furtherance of investigative efforts but only their final action could be shared publicly, including final adjudications and orders, final consent agreements, and final letters.

Ms. DeLaurentis provided data as of January 3, 2023, where the number of open cases for the prosecution division was 13,154, which is down from 2022 at 15,141. She stated 16,084 cases were opened in 2022 and is down from 2021 at 18,363 cases. She reported closing 17,826 cases in 2022 and is up from 2021, where 15,994 cases were closed. She thanked the prosecution division, counsel division, hearing examiners, BEI, and the Board for their group effort.

Ms. DeLaurentis informed Board members that an annual report is issued to the General Assembly, which includes a breakdown of case categories.

Ms. DeLaurentis addressed specific information for the State Board of Occupational Therapy Education and Licensure as of January 3, 2023, noting 32 cases were opened in 2022 and 26 in 2021. She reported 42 cases were closed in 2022 and 33 in 2021. She noted

the Board currently has 31 open cases.

Ms. DeLaurentis referred to disposition of closed cases, including discipline and non-discipline. She stated their Board is not a high discipline Board and means they have a compliant licensee population. She noted some cases may result in more than one type of discipline and could be counted twice. She reported 1 fine, 3 fines related to citations, and 1 voluntary surrender.

Ms. DeLaurentis stated non-discipline Z codes are used when closing cases in their system. She referred to Z18 warning letters, noting 13 warning letters, which was a decrease from the prior year at 21. She explained that warning letters are not disciplinary but used for de minimis violations. She noted warning letters are a great tool for prosecutors on behalf of the Board to remind licensees to follow the act and regulations to protect the health and safety of the public and maintain the integrity of the profession.

Chair Hample asked for more specific information concerning warning letters for occupational therapy (OT). She mentioned the Board had a lot of warning letters concerning malpractice around two years and found that the regulations were not clear so wanted

1 to make sure their language was clear on the current
2 warning letters.

Ms. DeLaurentis asked Mr. Suter to look at case categories related to the 13 warning letters and report back at the next meeting.

Chair Hample requested information regarding Act

Mr. Geschwindt commented that OT is one of their lower volume boards in terms of cases and explained that Act 48 citations are mostly lapsed licenses and fairly minor things.

Chair Hample thanked Ms. DeLaurentis for the presentation.]

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15 Report of Board Counsel

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16 [Judith Pachter Schulder, Esquire, Board Counsel, on

17 | behalf of Shana M. Walter, Esquire, Board Counsel,

18 referred to the final annex and preamble for 16A-6713

19 regarding licensure by endorsement under Act 41. She

20 informed Board members that Ms. Walter wanted to ask

21 the Board to adopt the regulation in final form that

22 addresses the comments by way of the preamble the

23 Board received from the Independent Regulatory Review

24 Commission concerning clarification issues.

Ms. Pachter Schulder noted it is an alternate

pathway by which a person could be licensed and is an endorsement opportunity for those licensees in other states who are trying to come to Pennsylvania.

Dr. Baird commented that Ms. Walter did an excellent job, especially with the final preamble regarding the wording and linking together the comments and Board responses because they struggled with how the legislation came through, where the burden did not fall on the applicant to supply the information and how they would manage that.

Dr. Baird mentioned that there is a typo on page three in the first paragraph, where the Board does not think it is necessary to amend the regulations to distinguish between formal discipline and a complaint. She referred to the sentence after a complaint is not formal or informal discipline, where the Board does not wish, noting the word wish is missing a letter.]

19 CHAIRPERSON HAMPLE:

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20 With that change, do I have a motion to adopt the annex and preamble for 16A22 5713?

23 MS. LIVINGSTON:

Motion to approve.

25 DR. MIHELCIC:

1 I second.

2 CHAIRPERSON HAMPLE:

We'll do a vote.

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5 Hample, aye; Baird, aye; Mihelcic, aye;

6 Livingston, aye.

7 [The motion carried unanimously.]

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9 Report of Board Counsel

10 | [Judith Pachter Schulder, Esquire, Board Counsel, on

11 behalf of Shana M. Walter, Esquire, Board Counsel,

12 addressed Custer v. BPOA, noting the Board would be

13 | going back to Executive Session at the end of their

14 open session regarding 564 MD 2018 to say that the

15 matter has been settled.]

16

17 | Report of Board Prosecution

18 [Kenneth J. Suter, Esquire, Board Prosecution

19 Liaison, had nothing to report from the prosecution

20 division but offered to answer any questions.

21 Mr. Suter commented that officers are being

22 elected today and requested the Board make sure the

23 Probable Cause Screening Committee is reappointed or

24 appointed to have it on the record that Dr. Mihelcic

25 is the Probable Cause Screening member or whomever is

16 selected.] 1 \* \* \* 2 3 Report of Board Chairperson - No report \* \* \* 4 5 Report of Acting Commissioner - No Report \* \* \* 6 7 Report of Board Administrator [Paul Keller, Board Administrator, referred to the reactivation application in front of the Board for a 10 request to waive retaking of the examination for an 11 individual who has been inactive for more than four 12 years but has an active National Board for 13 Certification in Occupational Therapy (NBCOT) 14 certification. 1 15 CHAIRPERSON HAMPLE: 16 I'll ask the Board if there are 17 questions or concerns. 18 DR. BAIRD: 19 I have no questions or concerns. 20 reviewed the information, and I have no 21 questions or concerns. 22 DR. MIHELCIC: 23 I second. 24 MS. PACHTER SCHULDER: 25 You are taking it that Dr. Baird was

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17
                  making a motion to permit reactivation
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                  for Alicia Clymans?
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   CHAIRPERSON HAMPLE:
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                  Yes, and Ed is seconding that.
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                  go for a vote.
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                  Hample, aye; Baird, aye; Mihelcic, aye;
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                  Livingston, aye.
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   [The motion carried unanimously.]
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   [Kerri L. Hample, OTD, OTR/L, Chairperson, added a
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12
   point of clarification, where the Board traditionally
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   offers applicants who have current NBCOT
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   certification a license without holding them up
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   unless there is something else in their record that
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   would prevent them from doing that.]
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   Miscellaneous - American Occupational Therapy
     Association Conference
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   [Paul Keller, Board Administrator, noted the American
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   Occupational Therapy Association Conference would be
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   held in Kansas City, MO, April 20-23, 2023, and
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   requested expenses be paid for anyone attending.]
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   CHAIRPERSON HAMPLE:
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                  Could I have a motion to approve
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                  payment of expenses for Joanne Baird to
                  attend the AOTA Conference in Kansas
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3
                  City, Missouri in April 2023?
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   DR. MIHELCIC:
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                  I make a motion that Dr. Baird be
 6
                  allotted the appropriate funding to
7
                  attend the AOTA Conference in Missouri.
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   MS. LIVINGSTON:
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                  I second.
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   CHAIRPERSON HAMPLE:
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                  We'll do a vote.
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                  Hample, aye; Baird, abstain; Mihelcic,
14
                  aye; Livingston, aye.
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   [The motion carried. Joanne Baird abstained from
16
   voting on the motion.]
17
18
   Miscellaneous - Election of Officers
   CHAIRPERSON HAMPLE:
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                  I would entertain nominations for
21
                  Chairperson.
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   DR. MIHELCIC:
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                  I'd like to nominate Dr. Kerri Hample
24
                  as Chair of the Licensure Board.
   CHAIRPERSON HAMPLE:
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19 1 Any other nominations? What I am 2 hearing is a nomination for me for 3 Chairperson, a nomination for Ed for Vice Chairperson, a nomination for Lisa 4 5 for secretary, and then a nomination 6 for Joanne Baird for probable cause and 7 continuing education. 8 MS. LIVINGSTON: 9 I'll make the motion to approve the so 10 stated election. DR. MIHELCIC: 11 I would second. 12 13 CHAIRPERSON HAMPLE: 14 Could we have a vote? 15 16 Hample, aye; Baird, aye; Mihelcic, aye; 17 Livingston, aye. 18 [The motion carried unanimously.] \* \* \* 19 20 [Kerri L. Hample, OTD, OTR/L, Chairperson, wanted to 21 go on the record as saying she accepted that 22 reluctantly recognizing that she has been in that 23 position for a long time and welcomed anyone who 24 would like to move forward in the next few years. 25 She commented that she would do her best to honor

1 that position.

Dr. Mihelcic stated Dr. Hample did an amazing job and looked forward to continuing to work with the rest of the group.

5 Chair Hample also thanked everyone for their 6 service.

7

8 Miscellaneous - Proposed 2024 Board Meeting Dates 9 [Kerri L. Hample, OTD, OTR/L, Chairperson, stated the

10 proposed 2024 Board meeting dates would be tabled

11 until the next Board meeting on June 1, 2023.]

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13 | Meeting Dates

14 [Kerri L. Hample, OTD, OTR/L, Chairperson, noted the

15 remaining 2023 Board meeting dates are June 1,

16 | September 21, and December 1.]

17

18 Prosecution Annual Report Discussion (cont.)

19 [Kenneth J. Suter, Esquire, Board Prosecution

20 Liaison, provided warning letter information Chair

21 | Hample requested earlier, where two-thirds of the

22 warning letters dealt with driving under the

23 influence (DUI) convictions, 1 recordkeeping

24 | violation, 1 lapsed license case, and 1 disciplinary

25 action in another state.

Mr. Suter commented that the Board is a rarity because it does not have a mental and physical provision like most of the other health boards and would have to be addressed by the General Assembly.

Mr. Suter mentioned that he did not believe the warning letters to be a problem of the regulations, and the fact that there is no mental and physical provision in the act is troubling from a prosecution perspective but is not something they could address as a Board.

Ms. Pachter Schulder informed Board members that they could have Ms. Walter request a legislative initiative to address the issue.

Chair Hample asked whether the DUIs were first convictions.

Mr. Suter suspected that the majority of the DUIs were first-time convictions and related to the profession because of the wording of their act. He explained that prosecution reviews the facts and circumstances, where somebody is drinking at work or there is some type of relationship to the office, noting that is not the case the vast majority of the time.

Mr. Suter stated the analysis is different for their Board because they look at the time of the day

and whether there was an accident with other health boards. He mentioned that the standard is different from a legal perspective because of the wording of the act and the fact the Board has no mental and physical provision contained within the act and is limited in terms of what they could do to look into it.

Mr. Suter further explained that the Board does not have the wording in their act or the ability to send someone for a mental evaluation to have them evaluated by a physician who deals in addiction to tell the Board whether the person has an addiction issue.

Ms. Pachter Schulder mentioned that she relay the discussion concerning the request of a legislative initiative to Ms. Walter, including the prior discussion and history.

Chair Hample noted discussing the issue many times and then goes away with different counsel.

Ms. Pachter Schulder explained that she has not seen a lot of success with recommending some of the legislative initiatives in the past and did not believe the change in counsel caused this to go away. She thought it may be a good time to have open discussion again concerning the legislative

1 initiative and would mention it to Ms. Walter.

Chair Hample commented that the last time the Board formally went forward was almost 10 years ago and were not the only health board that did not have it but now are one of the only boards that does not have it.

Dr. Baird requested clarification as to whether the legislative initiative would mean they are opening their practice act.

Mr. Suter explained that it would and is why there is always reluctance to do legislative initiatives because it is not necessarily going to be limited to the request once they open the act.

Dr. Baird mentioned that when the Board weighed the risks and benefits previously that they believed the risks outweighed the benefits.

Chair Hample commented that the Board is aware that they have an act and regulations that have language that is not as modern as they would like but are also being very due diligent with risks and how they impact their profession.

Ms. Pachter Schulder believed their Act 53
Regulations included DUI and explained that they do have the ability to have more inquiry with an applicant and licensee even if they do not have the

2.4

1 ability to send someone for an examination. 2 Chair Hample commented that the Board had 3 applications of individuals with prior DUIs and ruled 4 on them depending on different circumstances. 5 stated the Board would leave it alone for now and see 6 what kind of new things may come up in the future.] 7 8 [Lisa Livingston, MS, OTR/L, SCDCM, Secretary, exited 9 the meeting at 11:29 a.m.] 10 11 Miscellaneous - Proposed 2024 Board Meeting 12 Dates - (cont.) [Paul Keller, Board Administrator, noted the proposed 13 14 2024 Board meeting dates are March 7, June 6,

September 5, and December 18. He informed Board

members that the dates would be on the next agenda

for voting.]

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[Pursuant to Section 708(a)(5) of the Sunshine Act, at 11:30 a.m. the Board entered into Executive Session with Judith Pachter Schulder, Esquire, Board Counsel, on behalf of Shana M. Walter, Esquire, Board Counsel, for the purpose of conducting quasi-judicial deliberations on a number of matters currently pending before the Board and to receive the advice of

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   counsel. The Board returned to open session at 12:15
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   p.m.]
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   Adjournment
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   CHAIRPERSON HAMPLE:
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                  Motion to adjourn?
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   DR. MIHELCIC:
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                  I make a motion to adjourn this
9
                  meeting.
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   CHAIRPERSON HAMPLE:
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                  Do we have a second?
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   DR. BAIRD:
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                  I second.
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   CHAIRPERSON HAMPLE:
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                  The meeting is adjourned.
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   [There being no further business, the State Board of
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   Occupational Therapy Education and Licensure Meeting
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   adjourned at 12:16 a.m.]
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#### CERTIFICATE

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

Benjamin Morrow

Ben Morrow,

Minute Clerk

Sargent's Court Reporting Service, Inc.

# STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE REFERENCE INDEX

March 8, 2023

7 8 9	TIME	AGENDA
10 11 12 13	10:00 10:30	Executive Session Open Session
14 15	10:35	Official Call to Order
16	10:36	Introduction of Board Members/Attendees
17 18	10:37	Approval of Minutes
19 20 21 22 23	10:38	Appointment - Carolyn A. DeLaurentis, Esquire, Executive Deputy Chief Counsel, Department of State, Annual Prosecutorial Division Presentation
24 25	11:06	Report of Board Counsel
26 27	11:12	Report of Board Administrator
28 29	11:14	Miscellaneous
30 31 32 33 34 35 36 37 38 39 40 41 42 43	11:20	Prosecution Annual Report Discussion (cont.)
	11:29	Miscellaneous - Proposed 2024 Board Meeting Dates (cont.)
	11:30 12:15	Executive Session Open Session
	12:16	Adjournment