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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

F I N A L M I N U T E S

MEETING OF:

**STATE BOARD OF OCCUPATIONAL THERAPY
EDUCATION AND LICENSURE
VIA VIDEOCONFERENCE**

TIME: 10:30 A.M.

PENNSYLVANIA DEPARTMENT OF STATE

June 2, 2021

1 State Board of Occupational Therapy
2 Education and Licensure
3 June 2, 2021
4
5

6 BOARD MEMBERS:
7

8 Kerri L. Hample, OTD, OTR/L, Chairperson
9 K. Kalonji Johnson, Commissioner, Bureau of
10 Professional and Occupational Affairs
11 Joanne M. Baird, Ph.D., OTR/L, Vice Chair
12 Carolyn M. Gatty, MS, OTR/L, Secretary
13 Edward J. Mihelcic, Ph.D., OTR/L
14 Lisa Livingston, MS, OTR/L, SCDCM
15

16
17 BUREAU PERSONNEL:
18

19 Nicole L. VanOrder, Esquire, Board Counsel
20 Kenneth J. Suter, Esquire, Board Prosecution Liaison
21 Christina Townley, Board Administrator
22 Cynthia K. Montgomery, Esquire, Deputy Chief
23 Counsel/Regulatory Counsel, Department of State
24 Theodore Stauffer, Executive Assistant, Bureau of
25 Professional and Occupational Affairs
26 Kimberly Adams, Chief of Fiscal Management, Bureau of
27 Finance and Operations, Department of State
28 Marc Farrell, Deputy Policy Director, Department of
29 State
30 Thaddeus Cwiklinski, Legal Extern, Office of General
31 Counsel
32
33

34 ALSO PRESENT:
35

36 Brendan Lynch, Esquire, Community Legal Services of
37 Philadelphia
38 Christine Daeschner, MOT, OTR/L, Pennsylvania
39 Occupational Therapy Association
40 Jerry J. Livingston, Democratic Executive Director,
41 Senate Consumer Protection & Professional Licensure
42 Committee
43 Katie Svoboda-Kindle, Esquire, Community Legal
44 Services of Philadelphia
45 Kristen Neville, State Affairs Manager, American
46 Occupational Therapy Association
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1 ***

2 State Board of Occupational Therapy

3 Education and Licensure

4 June 2, 2021

5 ***

6 [Theodore Stauffer, Executive Secretary, Bureau of
7 Professional and Occupational Affairs, noted the
8 meeting was being recorded, and those who remained on
9 the line were giving their consent to being recorded.]

10 ***

11 The regularly scheduled meeting of the State
12 Board of Occupational Therapy Education and Licensure
13 was held on Wednesday, June 2, 2021.

14 ***

15 CHAIRPERSON HAMPLE:

16 Motion to call the meeting to order?

17 MR. STAUFFER:

18 I'll be happy to make that motion.

19 CHAIRPERSON HAMPLE:

20 Could I have a second?

21 MS. LIVINGSTON:

22 Second.

23 CHAIRPERSON HAMPLE:

24 All in favor? Anybody no? The meeting
25 is called to order.

1 [The motion carried unanimously.]

2 ***

3 Kerri L. Hample, OTD, OTR/L, Chairperson,
4 officially called the meeting to order at 10:30 a.m.

5 K. Kalonji Johnson, Commissioner, Bureau of
6 Professional and Occupational Affairs, was not present
7 during commencement of the meeting.

8 ***

9 Appointment - Bureau of Finance and Operations Annual
10 Budget Presentation

11 [Kimberly Adams, Chief of Fiscal Management, Bureau of
12 Finance and Operations, Department of State, addressed
13 licensee population from a revenue standpoint. She
14 noted a licensee population of 12,164 in 2016 with an
15 increase of 912 in 2018 to 13,076 and another increase
16 of 724 for a total of 13,800 licensees for FY 2020-
17 2021. She noted a recent increase of an additional 30
18 licensees, bringing the recent total to 13,830
19 licensees.

20 Ms. Adams noted revenue by source. She reviewed
21 categories and actual revenue for FY 2018-2019 and FY
22 2019-2020 and the biennial total. She noted 95.4% of
23 revenue comes from renewals and applications. She
24 noted the last fee increase was in 1985 with current
25 renewal rates at \$55 for occupational therapists and

1 \$45 for occupational therapy assistants. She
2 mentioned expenses incur from timesheet-based charges,
3 direct-based charges, and licensee-based charges.

4 Ms. Adams provided a categorical breakdown of
5 expenses for FY 2018-2019 and FY 2019-2020 with a
6 current budget for FY 2020-2021 and expenses as of May
7 19, 2021. She noted current expenses rose in
8 prosecution, noting the current expense total. She
9 stated the current budget for FY 2020-2021 should be
10 adequate.

11 Ms. Adams reviewed revenues and expenses for FY
12 2020-2021 and reported a bottom-line figure. She
13 stated the total revenue for FY 2018-2019 and FY 2019-
14 2020 and expenditures for the same biennial period,
15 showing expenses exceeded revenue. She suggested the
16 Board consider a fee increase at some point.

17 Ms. Adams reviewed Board member expenses, noting
18 the current budget and expenses for FY 2020-2021. She
19 noted the \$8,000 budget was more than adequate and
20 would be carried over to FY 2021-2022. She mentioned
21 any excess money will remain in the restricted account
22 for the Board's use.

23 Ms. Adams addressed the fee increase, noting
24 expenses are outweighing revenue on an ongoing basis
25 and the bottom line is dropping. She noted the Board

1 would want to cover a biennial period, which would
2 provide enough time to get it through the Independent
3 Regulatory Review Commission (IRRC). She offered to
4 provide a fee increase package next year, if needed.

5 Ms. Adams stated IRRC may question the
6 implementation of a fee increase at this time and
7 suggested the Board wait to see what happens because
8 the licensee count increased and will bring in more
9 renewals.

10 Chair Hample commented that licensee applications
11 are rolled in with continuing education applications.
12 so the Board does not know how much of that was
13 continuing education and how many were new clinicians,
14 noting the Board should know how much was coming in
15 before increasing license fees.

16 Ms. Gatty agreed with Chair Hample, where the
17 Board could make better informed decisions if expense
18 and revenue lines were more delineated.

19 Dr. Baird also noted it to be important to know
20 because of discussions at the March meeting regarding
21 BPOA considering outsourcing tracking continuing
22 education, noting there would be a cost with that.
23 She mentioned it would be interesting to know how much
24 it costs internally in order to make a good decision
25 and know how much revenue that was bringing in versus

1 how much it would cost for the Board to track that.

2 Ms. Adams offered to provide the requested
3 information to the Board.]

4 ***

5 Introduction of Board Members/Guests

6 [Ms. VanOrder requested an introduction of Board
7 members and guests. She also introduced a new intern,
8 Thaddeus Cwiklinski.

9 Thaddeus Cwiklinski, Legal Extern, Office of
10 General Counsel, noted being excited to listen and
11 learn.]

12 ***

13 Approval of Minutes

14 [The Board discussed corrections to the minutes.
15 Chair Hample noted the minutes of the December 10,
16 2020 and June 2, 2021 meeting will be tabled till the
17 next meeting. Ms. Townley will send Board members a
18 copy of Board minutes via email due to difficulties
19 reading the minutes from various servers and the
20 eAgenda.]

21 ***

22 Appointment - Community Legal Services

23 [Brendan Lynch, Esquire, Community Legal Services,
24 addressed the Board with concerns regarding the
25 proposed list of offenses directly related to

1 occupational therapy pursuant to Act 53.

2 Mr. Lynch stated Community Legal Services (CLS)
3 was aware that there would be an opportunity for the
4 Board working with the commission to revise those
5 after the notice, comment process, and publishing in
6 the *Pennsylvania Bulletin* later this year.

7 Mr. Lynch addressed the list of offenses CLS
8 suggests the Board remove from offenses that are
9 directly related because they do not meet the
10 definition of offenses by the General Assembly for
11 BPOA boards, including the State Board of Occupational
12 Therapy. He expressed concern that the list will keep
13 qualified people out of the profession and pose an
14 unnecessary burden.

15 Mr. Lynch commented that the purpose of Act 53 is
16 to encourage boards to narrow convictions that would
17 exclude people or make it more difficult for people to
18 join a profession. He stated the law requires there
19 to be a direct bearing on the duties and
20 responsibilities that are necessarily related to the
21 occupation to performing the work of an occupational
22 therapist. He submitted that individuals not trained
23 on or tested on something is probably not directly
24 related to the profession.

25 Mr. Lynch stated each board is directed to

1 consider the facts and circumstances of any given
2 particular conviction to see if the facts and
3 circumstances of that particular case do create a
4 relation to the duties and responsibilities of the
5 profession.

6 Mr. Lynch noted concern when an offense is listed
7 and a presumption is created that licensure of the
8 individual could cause a substantial risk, where the
9 burden shifted to the application or current licensee
10 to show the Board they do not pose a substantial risk.
11 He stated the text of the law does not say how strict
12 the presumption is or how high the barrier should be
13 and future boards may apply it in a way that is very
14 strict and create a high barrier.

15 Mr. Lynch noted Community Legal Services concern
16 of keeping qualified and suitable applicants from
17 practicing occupational therapy. He referred to
18 crimes that Community Legal Services believed should
19 be removed from the list that do not necessarily
20 involve occupational therapy. He noted the Board
21 would still have an opportunity to review a conviction
22 by an applicant for any of those offenses, even if
23 they are not on the list.

24 Mr. Lynch mentioned that many occupational
25 therapists may do administrative and financial tasks,

1 but the law requires that any offense listed is
2 necessarily related to be an occupational therapist.
3 He noted people could just do the work of working one-
4 on-one with individuals who need therapy.

5 Mr. Lynch commented that employers are still
6 going to have every opportunity and right to conduct
7 their own background checks and submitted to the Board
8 that Act 53 is a direction to the boards to not use
9 occupational licensing as a way to do employment
10 screening. He stated the definition of directly
11 related is a direction to the Board that generalized
12 overall concerns about someone's character traits are
13 not supposed to be the sphere of what is considered
14 directly related and urged the Board to remove the
15 offenses CLS listed from the Act 53 schedule.

16 Katie Svoboda-Kindle, Esquire, Community Legal
17 Services, addressed empirical research regarding time
18 limits and a tiered list for offenses. She noted
19 people with records are no more likely than the
20 general population to be rearrested after seven years
21 based on a landmark study by Alfred Blumstein and
22 Kiminori Nakamura. She provided a timeperiod that
23 included four years for drug offenses, three to four
24 years for property offenses, and four to seven years
25 for violent offenses.

1 Ms. Svoboda-Kindle noted CLS is proposing boards
2 create a tiered list instead of creating lifetime
3 presumptions.

4 Dr. Baird questioned whether the information
5 regarding the landmark study could be sent to the
6 Board and whether there were any other studies.

7 Ms. Svoboda-Kindle commented that the study done
8 in 2009 was in relation to litigation at that time
9 that created lifetime bans based on certain criminal
10 convictions. She noted Dr. Nakamura is actually
11 producing something that would be more directly
12 related to occupational licensing and will be
13 presented to the Board. She also offered to provide
14 the 2009 study, noting it is pointed toward the
15 litigation happening at that time.

16 Mr. Lynch stated the Equal Employment Opportunity
17 Commission put out a set of guidelines on the use of
18 arrest and conviction records in employment in 2012,
19 and they consulted a series of these studies which all
20 point in the same direction with slightly different
21 conclusions, but all converge around the idea that
22 after the passage of a number of years the risk that
23 someone will commit a future offense is no greater
24 than the risk of anyone walking down the street.

25 Mr. Lynch referred to another study by Megan

1 Kurlychek and others, called *Scarlet Letters and*
2 *Recidivism: Does an Old Criminal Record Predict*
3 *Future Offending* with similar conclusions. He was
4 hopeful that new material from Dr. Nakamura will be
5 received referencing and building on the empirical
6 studies.

7 Dr. Baird questioned what occupation the study
8 referred to and whether it involved vulnerable
9 populations.

10 Mr. Lynch explained that there was a PEAKE case
11 about six years ago that did not deal directly with
12 occupational licensing but dealt with the application
13 of the Older Adults Protective Services Act, which
14 also had a lifetime ban for convictions of certain
15 offenses. He mentioned there was empirical evidence
16 presented to the court in that case with essentially
17 the same points and relied on the same studies.

18 Chair Hample addressed licensure requirements.
19 She commented that occupational therapists are trained
20 on documentation and billing, noting every single
21 therapist may not be directly involved in billing, but
22 every therapist creates some type of documentation.

23 Chair Hample stated the Board has been gracious
24 and always considered the element of time when
25 reviewing cases and offered to put that in writing.

1 Ms. VanOrder commented that there have been some
2 changes in the way good moral character is applied,
3 and this is really a shift in focus considering the
4 Act 53 factors. She noted time is absolutely
5 considered under Act 53.

6 Mr. Lynch addressed Chair Hample's comments
7 regarding documentation, submitting that it is
8 distinct from theft by unlawful taking or disposition
9 and having that sort of theft offense because of a raw
10 generalized concern for someone making accurate
11 records is the kind of broad concern that is not
12 narrowly tailored in the way Act 53 would direct.

13 Mr. Lynch referred to § 3113(a) and § 3113(a)(1)
14 directing the use of directly related offenses, where
15 individualized assessments shall apply notwithstanding
16 the following, which includes any statutory provision
17 regarding the consideration of good moral character
18 with respect to disqualification of licensure due to
19 criminal conviction.

20 Mr. Lynch also referred to § 3113(a)(1)(a.1),
21 where a licensing board may not consider the provision
22 specified under subsection (a.1) and includes
23 provisions regarding good moral character except as in
24 accordance with the section. He noted it to be the
25 direction from the General Assembly that boards not

1 include offenses that touch upon or suggest a
2 generalized lack of good moral character, rather the
3 list is directed to be significantly narrower than
4 that.

5 Ms. Svoboda-Kindle commented that a lot of people
6 decide never to go before the Board because they see
7 the list and are discouraged and may be discouraged
8 with putting money into training programs.

9 Mr. Lynch commented that Act 53 did not eliminate
10 the requirement of good moral character and is still
11 part of the law, but boards should not use criminal
12 convictions as evidence of a lack of good moral
13 character except in accordance with the narrow
14 standards set in Act 53.

15

16 [K. Kalonji Johnson, Commissioner, Bureau of
17 Professional and Occupational Affairs, entered the
18 meeting.]

19

20 [Commissioner Johnson noted that the point of Act 53
21 is to eliminate bias, where individuals use the
22 evidence of past history solely as the basis for
23 determining a person's ability or capacity for
24 character and to correct the very real evidentiary
25 problem of bias that is also a problem that

1 adjudicatory bodies across a multitude of professions
2 face.

3 Ms. VanOrder stated the Board understood the
4 arguments and the concerns CLS raised and would take
5 all into consideration.]

6 ***

7 Report of Board Counsel

8 [Nicole L. VanOrder, Esquire, Board Counsel, addressed
9 the Regulatory Status Report and hopeful to have the
10 final regulatory package on educational programs at
11 the September meeting.]

12 ***

13 Miscellaneous

14 [Nicole L. VanOrder, Esquire, Board Counsel, addressed
15 a scam alert, noting an increase in scams targeting
16 licensees. She informed everyone that it was
17 available on the Department of State website and
18 encouraged organizations to get the word out by
19 providing a direct link to the website. She read the
20 scam alert, where persons pretending to be from one of
21 the health-related licensing boards are contacting
22 licensees by phone and mail concerning the status of
23 their license.

24 Ms. VanOrder reported scammers are threatening
25 license suspension for failure to act and falsely

1 claiming involvement with the Federal Bureau of
2 Investigation (FBI) and the Drug Enforcement
3 Administration (DEA). She stated scammers are known
4 to aggressively threaten license suspension for
5 failure to provide personal information

6 Ms. VanOrder provided reminders from the Bureau
7 of Professional and Occupational Affairs (BPOA)
8 concerning contact and personal information.

9 Ms. VanOrder mentioned that those who are the
10 subject of an investigation or disciplinary action
11 will receive notice by certified mail and/or personal
12 service and are provided with a contact name and phone
13 number. She informed everyone to contact their local
14 police department or the Pennsylvania State Police if
15 they have been a victim of the scam.

16 Kristen Neville, State Affairs Manager, American
17 Occupational Therapy Association (AOTA) provided
18 information in the online chat that the scam was
19 happening nationwide and not just Pennsylvania.

20 Ms. VanOrder questioned whether the Board would
21 like to ratify the cost associated with Ms.
22 Livingston's attendance at the AOTA's INSPIRE 2021
23 Conference.]

24 CHAIRPERSON HAMPLE:

25 Could we have a motion to ratify Lisa

1 Livingston's participation in the AOTA
2 virtual conference?

3 COMMISSIONER JOHNSON:

4 So moved.

5 CHAIRPERSON HAMPLE:

6 How about a second?

7 MR. MIHELICIC:

8 Second.

9 CHAIRPERSON HAMPLE:

10 All in favor? Anybody no. Hearing
11 none. It's approved.

12 [The motion carried unanimously.]

13 ***

14 Report of Board Chairperson

15 [Kerri L. Hample, OTD, OTR/L, Chairperson, questioned
16 whether anyone would like to attend the virtual
17 Pennsylvania Occupational Therapy Association (POTA)
18 Conference this fall.]

19 CHAIRPERSON HAMPLE:

20 We are going to move forward with Lisa
21 Livingston, Dr. Joanne Bard, Dr. Ed
22 Mihelcic, and myself. If I hear from
23 Carolyn, I will add her.

24 Could we have a motion to send the
25 four people who were just mentioned to

1 the Pennsylvania Occupational Therapy
2 Association virtual conference in
3 October?

4 COMMISSIONER JOHNSON:

5 So moved.

6 CHAIRPERSON HAMPLE:

7 How about a second?

8 MS. LIVINGSTON:

9 Second.

10 CHAIRPERSON HAMPLE:

11 All in favor? Anybody no?

12 [The motion carried unanimously.]

13 ***

14 Report of Board Administrator

15 [Christina Townley, Board Administrator, informed
16 Board members that there are 28 days left until
17 licenses expire on June 30. She reported about 40
18 percent of occupational therapists and 35 percent of
19 occupational therapy assistants renewed as of Monday.

20 Ms. Townley noted renewal applications are
21 current and have been submitted to the Board with
22 about 60 inactive requests out of the total licensing
23 number. She reported initial application processing
24 time is about 15-20 business days but should go down
25 as renewals trickle off.

1 Chair Hample complemented Ms. Townley on all of
2 her hard work at at being at 15-20 days during
3 renewal, noting the nationwide average is much
4 longer.]

5 ***
6 Report of Prosecution - No Report

7 ***
8 Report of Commissioner - No Report
9 [K. Kalonji Johnson, Commissioner, Bureau of
10 Professional and Occupational Affairs, offered no
11 formal report but recommended everyone check the
12 website and keep in touch with Ms. Townley regarding
13 whether the next meeting will be virtual or in person.
14 He will keep the Board informed of any changes.]

15 ***
16 [Nicole L. VanOrder, Esquire, Board Counsel, noted the
17 remaining 2021 Board meeting dates with the next
18 meeting scheduled for September 2.]

19 ***
20 [Joanne M. Baird, Ph.D., OTR/L, Vice Chair, questioned
21 whether there was any updated information regarding
22 continuing education carryover, where BPOA was in an
23 exploratory phase of looking at the viability of
24 entering into a third-party agreement. She mentioned
25 having a lot of continuing education reviews lately

1 and questioned whether there was a formal way of
2 tracking time.

3 Chair Hample informed Dr. Baird to submit it to
4 Ms. Townley after she has 8 hours.

5 Commissioner Johnson noted receiving a massive
6 response with boards that are interested. He
7 mentioned still slugging through the initial technical
8 documentation and trying to identify the vendors that
9 could handle the volume of the requests. He commented
10 that it would not undermine the Board's authority to
11 approve providers but would take some of the pressure
12 off of Ms. Townley regarding auditing functions.

13 Chair Hample mentioned there have been a few more
14 applications for providers that are less than stellar
15 and encouraged those approving continuing education to
16 read the applications carefully.

17 Commissioner Johnson commented that he would like
18 to see discussions across the spectrum with regard to
19 an auditing function for providers, but the logistics
20 of doing that have always eluded individuals in the
21 past. He stated it was not just the one-time approval
22 but continued adherence to the standards the Board
23 sets.

24 Chair Hample stated there are providers the Board
25 approves and ones preapproved in the regulation that

1 do not understand the requirements, noting the
2 importance of continuing to evolve to handle that
3 component.]

4 ***

5 Adjournment

6 CHAIRPERSON HAMPLE:

7 Motion to adjourn?

8 MR. MIHELICIC:

9 Motion to adjourn.

10 CHAIRPERSON HAMPLE:

11 How about a second?

12 DR. BAIRD:

13 Second.

14 CHAIRPERSON HAMPLE:

15 All in favor? Anybody no?

16 [The motion carried unanimously.]

17 ***

18 [There being no further business, the State Board of
19 Occupational Therapy Education and Licensure Meeting
20 adjourned at 11:59 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.



Evan Bingaman,
Minute Clerk
Sargent's Court Reporting
Service, Inc.

STATE BOARD OF OCCUPATIONAL THERAPY
EDUCATION AND LICENSURE
REFERENCE INDEX

June 2, 2021

TIME	AGENDA
10:00	Executive Session
10:30	Return to Open Session
10:30	Official Call to Order
10:31	Appointment - Kimberly Adams, Chief of Fiscal Management, Bureau of Finance and Operations Annual Budget Presentation
10:51	Introduction of Board Members/Guests
11:02	Appointment - Community Legal Services of Philadelphia
11:37	Report of Board Counsel
11:37	Miscellaneous
11:44	Report of Board Chairperson
11:47	Report of Board Administrator
11:59	Adjournment