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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

December 10, 2020

1 State Board of Occupational Therapy
2 Education and Licensure
3 December 10, 2020
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 Christine L. Hischmann, MS, OTR/L, FAOTA
14 Lisa Livingston, MS, OTR/L, SCDCM
15 Edward J. Mihelcic, Ph.D., OTR/L
16
17

18 BUREAU PERSONNEL:
19

20 Nicole L. VanOrder, Esquire, Board Counsel
21 Paul J. Jarabeck, Esquire, Board Prosecution Liaison
22 David N. Smith, Esquire, Board Prosecutor
23 Christina Townley, Board Administrator
24 Cynthia K. Montgomery, Esquire, Deputy Chief
25 Counsel/Regulatory Counsel, Department of State
26 Theodore Stauffer, Executive Secretary, Bureau of
27 Professional and Occupational Affairs
28 Andrew LaFratte, MPA, Policy Fellow, Department of
29 State
30 Marc Farrell, Deputy Policy Director, Department of
31 State
32
33

34 ALSO PRESENT:
35

36 Christine Daeschner, MOT, OTR/L, Legislation/Advocacy
37 Chair, Pennsylvania Occupational Therapy Association
38 Jen Smeltz, Executive Director, Senate Consumer
39 Protection & Professional Licensure Committee
40 Jerry J. Livingston, Democratic Executive Director,
41 Senate Consumer Protection & Professional Licensure
42 Committee
43 Shannon Snell, Research Analyst, Democratic House
44 Professional Licensure Committee
45 Tammy Blauch, Executive Secretary, Senator Robert
46 Tomlinson's Office
47
48
49
50

1 ***

2 State Board of Occupational Therapy

3 Education and Licensure

4 December 10, 2020

5 ***

6 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
7 9:00 a.m. the Board entered into Executive Session
8 with Nicole L. VanOrder, Esquire, Board Counsel, to
9 have attorney-client consultations and for the purpose
10 of conducting quasi-judicial deliberations. The Board
11 returned to open session at 10:30 a.m.]

12 ***

13 The regularly scheduled meeting of the State
14 Board of Occupational Therapy Education and Licensure
15 was held on Thursday, December 10, 2020.

16 ***

17 [Nicole L. VanOrder, Esquire, Board Counsel, noted the
18 meeting was being recorded, and those remaining on the
19 call were consenting to being recorded.]

20 ***

21 [Kerri L. Hample, OTD, OTR/L, Chairperson, officially
22 called the meeting to order at 10:30 a.m.]

23 ***

24 Introductions

25 [Chairperson Hample requested introductions from those

1 in attendance.]

2

3 Approval of minutes of the September 3, 2020 meeting

4 CHAIRPERSON HAMPLE:

5

The first item on our agenda is to

6

approve the minutes of the last meeting.

7

Is there any discussion on the minutes?

8

Could I have a motion to approve

9

the minutes?

10 MS. GATTY:

11

So moved.

12

DR. MIHELICIC:

13

Second.

14

CHAIRPERSON HAMPLE:

15

We have a move from Carolyn Gatty and a

16

second from Ed. All in favor? Anyone

17

no?

18

[The motion carried unanimously.]

19

20

Report of Board Counsel

21

[Nicole L. VanOrder, Esquire, Board Counsel, addressed

22

the immediate temporary suspension (ITS) blanket

23

delegation order, where there is an issue with an

24

individual of immediate and irreparable harm to either

25

themselves or the public. She explained that the case

1 goes before the Probable Cause Screening Committee and
2 then an expedited hearing is held before a hearing
3 examiner. She stated an ITS blanket order makes it
4 clear that those cases would be delegated to a hearing
5 examiner.]

6 ***

7 CHAIRPERSON HAMPLE:

8 Could I have a motion to approve the ITS
9 blanket order as is written on the
10 agenda?

11 COMMISSIONER JOHNSON:

12 So moved.

13 CHAIRPERSON HAMPLE:

14 Second?

15 DR. MIHELICIC:

16 Second.

17 CHAIRPERSON HAMPLE:

18 All in favor? Any opposition?

19 [The motion carried unanimously.]

20 ***

21 Report of Board Prosecution

22 [David N. Smith, Esquire, Board Prosecutor, informed
23 that Board that his wife, Marissa Smith, worked under
24 Lisa Livingston for a period of time in the event
25 there is any discussion in terms of abstention from

1 the vote on this particular case.

2 Mr. Smith presented the Consent Agreement for
3 Case No. 19-67-009088.]

4 ***

5 MS. VANORDER:

6 I believe the Board chair would
7 entertain a motion in relation to this
8 item on the agenda at No. 3.

9 DR. BAIRD:

10 I move to adopt the Consent Agreement
11 and Order negotiated by the commonwealth
12 prosecuting attorney in settlement of
13 the following matters: the Commonwealth
14 of Pennsylvania Bureau of Professional
15 and Occupational Affairs v. Krista
16 Kreider, COTA/L, Case No. 19-67-009088.

17 CHAIRPERSON HAMPLE:

18 Could I have a second?

19 COMMISSIONER JOHNSON:

20 Second.

21 CHAIRPERSON HAMPLE:

22 Is there anyone who needs to recuse
23 themselves or abstain from the vote?
24 Hearing none. All in favor? Any
25 opposition?

1 [The motion carried unanimously.]

2

3 Report of Board Chairperson

4 [Kerri L. Hample, OTD, OTR/L, Chairperson, noted
5 discussions with the Pennsylvania Occupational Therapy
6 Association and the American Occupational Therapy
7 Association as to whether Pennsylvania would be
8 involved in preliminary compact conversations. She
9 wanted the Board to be aware that it may be a matter
10 Pennsylvania would entertain.

11 Chairperson Hample encouraged Board members to
12 pay attention to the compact information and start to
13 think about what would need to take place should that
14 move forward.

15 Chairperson Hample addressed COVID waivers and
16 how they change the way practice looks and how that
17 will turn out as things change and perhaps those
18 waivers disappear. She noted the practice has changed
19 quite a bit, particularly in telehealth and some of
20 the supervision rules and regulations.

21 Commissioner Johnson informed the Board that all
22 of the waivers had sunset provisions built in in 90
23 days and that sunset provision tied into the
24 extinguishing of the Executive Order. When the
25 Executive Order ends in the future, there will be a

1 wind-down period. He reported having ongoing
2 discussions with colleagues in the legislature
3 regarding regulatory structure after COVID.

4 Commissioner Johnson encouraged stakeholders in
5 the audience to reach out to executive directors on
6 the oversight committees to assure discussions
7 concerning compacts. He reported difficulty with
8 other compacts being implemented due to not taking
9 into account some of the nuances and variations
10 between states. He noted the importance of
11 legislature being involved in the process, so they do
12 not have to clean up discrepancies that exist after
13 the compact has been pushed.

14 Dr. Baird noted a representative from the
15 Pennsylvania Occupational Therapy Association (POTA)
16 is an attendee on the call.

17 Chairperson Hample mentioned being aware some
18 other professions had trouble implementing compact
19 legislation.

20 Commissioner Johnson addressed waivers and
21 mentioned sorting through all of the information from
22 the last several months and collating that data to
23 develop the best strategy policy-wise. He requested
24 stakeholder colleagues continue to curate all of the
25 data and anecdotal information, noting the need for

1 discussions in the New Year from a policy and legal
2 perspective.

3 Commissioner Johnson commented that suggestions
4 and concerns would be better managed through
5 stakeholders and not through department email and
6 resources that are setup strictly for PALS and
7 practice-related questions.

8 Chairperson Hample addressed fieldwork in
9 Pennsylvania, where there is a higher number of
10 students and significantly lower fieldwork
11 availability. She mentioned schools currently do not
12 know where to place students, which may cause a
13 shortage of practitioners.

14 Commissioner Johnson stated the difficulty was
15 not finding places but making sure not to run afoul of
16 any regulatory requirements. He mentioned having some
17 type of pilot program in conjunction with potential
18 labor.

19 Commissioner Johnson noted the need for
20 discussion with policy staff and associations that
21 could best represent the coalitions and associations
22 speaking on behalf of the schools to get individuals
23 practical training and to ensure safeguards are in
24 place for the public and offered to help set that up.

25 Chairperson Hample suggested looking at national

1 conversation and seeing other people are doing.

2 Chairman Hample questioned whether anyone from
3 the Board would like to represent Pennsylvania at the
4 American Occupational Therapy Association (AOTA)
5 Conference in the spring. The Board decided to wait
6 for AOTA's decision of whether the conference will be
7 hybrid or completely virtual.]

8 ***

9 Appointment - Act 53 Proposed List of Crimes Related
10 to the Occupational T herapy Profession
11 [K. Kalonji Johnson, Commissioner, Bureau of
12 Professional and Occupational Affairs, addressed Act
13 53, which was signed by Governor Wolf in June, 2020
14 with an effective date of 180 days. He noted that
15 under the Act, as Commissioner, he is required to
16 publish a schedule of offenses directly related to the
17 practices of each profession under the auspices of the
18 Department of State after soliciting public comment.
19 He commented that the offenses listed are not an
20 automatic bar to licensure but rather creates a
21 rebuttable presumption. Additionally, the list will
22 eventually be part of a regulation package that must
23 undergo regulatory review.

24 Cynthia K. Montgomery, Esquire, Deputy Chief
25 Counsel, Department of State, referred to the list of

1 criminal offenses draft, which is a schedule of
2 criminal convictions that may constitute grounds to
3 refuse to issue; suspend; or revoke a license,
4 certificate, registration, or permit for each
5 profession.

6 Ms. Montgomery stated the list was developed by
7 Board counsel and prosecution based on prior cases and
8 case law and by reviewing Act 53, the Occupational
9 Therapy Practice Act, and the Crimes Code.

10 Ms. Montgomery referred to § 3117 of Act 53, where
11 the application of the schedule would be used for
12 preparing preliminary determination, where individuals
13 considering entering the profession could apply for a
14 preliminary determination to determine whether their
15 criminal history record information would be an
16 impediment to licensure, used in determining
17 discipline of a licensee, and used in determining
18 whether to refuse to issue a license to an applicant.

19 Ms. Montgomery referred to § 3113(d) regarding
20 sexual offenses, which applies to all health care
21 practitioners. She also referred to § 3113(e)
22 regarding acts of violence, where an individual could
23 receive a license if it had been at least 3 years from
24 incarceration or 3 years from imposition of the
25 sentence, the individual has remained conviction-free,

1 and demonstrates significant rehabilitation.

2 Ms. Montgomery noted the Board must be convinced
3 the individual does not pose a substantial risk to the
4 health and safety of patients, clients, or the public
5 or a substantial risk of further conviction. She
6 provided a definition of "directly related," when
7 evaluating items on the list.

8 Ms. Montgomery noted the Board must be convinced
9 the individual does not pose a substantial risk to the
10 health and safety of patients, clients, or the public
11 or a substantial risk of further conviction. She
12 provided a definition of "directly related," when
13 evaluating items on the list.

14 Ms. Montgomery stated crimes on the list of
15 offenses directly related to the profession have a
16 rebuttable presumption, where the Board believed
17 licensure of the individual would pose a significant
18 risk to the safety of their clients or the public or a
19 significant risk of further criminal convictions. She
20 noted the individuals would have to prove they do not
21 pose such a risk.

22 Ms. Montgomery addressed criminal convictions not
23 determined to be directly related, where the
24 prosecution division would have to prove that the
25 individual poses a substantial risk.

1 Ms. Montgomery stated the Commissioner would be
2 consulting with the Board to determine if the list is
3 acceptable to the Board.

4 Ms. Montgomery noted the list was sent to
5 interested parties and stakeholders but did not
6 receive any written comments. She offered attendees
7 at the meeting to provide comments.

8 Ms. Montgomery stated all applicants complete a
9 criminal background check and notices of all
10 convictions are received through the Pennsylvania
11 Justice Network (JNET) and reviewed by the legal
12 office prior to granting a license. She explained the
13 purpose of the list was to inform people of crimes
14 deemed to be directly related to the profession, where
15 the individual would have to demonstrate to the Board
16 they do not pose such a risk under § 3113(c).

17 Ms. Montgomery addressed the best practices guide
18 that will be published for individuals with a criminal
19 history who want to consider entering a profession
20 licensed by a Bureau of Professional and Occupational
21 Affairs (BPOA) board.

22 Ms. Montgomery offered to answer questions
23 concerning Act 53 but deferred questions regarding a
24 specific crime on the list to Ms. VanOrder. She
25 curated the list with the assistance of attorneys in

1 the prosecution division.

2 Chairperson Hample wanted to make sure
3 Commissioner Johnson was aware that the National Board
4 for Certification in Occupational Therapy (NBCOT) has
5 their own list for people going into occupational
6 therapy (OT) checking their eligibility to sit for the
7 exam before attending school.]

8 ***

9 [K. Kalonji Johnson, Commissioner, Bureau of
10 Professional and Occupational Affairs, exited the
11 meeting at 11:30 a.m.]

12 ***

13 [Ms. Montgomery addressed why number 1 was missing
14 from the list, noting that other boards have another
15 section under drug trafficking that applies to their
16 boards. She commented that drug trafficking is for
17 boards that have a provision where individuals
18 convicted of a felony under the Controlled Substance,
19 Drug, Device, and Cosmetic Act do not get a license
20 for 10 years.

21 Ms. Montgomery explained that Act 53 revised that
22 standard to say it has to be a drug trafficking
23 offense to get the 10-year bar. She noted there are
24 three crimes under the Controlled Substance, Drug,
25 Device, and Cosmetic Act that qualify as drug

1 trafficking offenses.

2 Ms. Montgomery offered to hear any comments from
3 the regulated community participating in the meeting.]

4 ***

5 MR. STAUFFER:

6 I would ask for a motion to accept this
7 as presented.

8 CHAIRPERSON HAMPLE:

9 Could I have a second?

10 DR. BAIRD:

11 I'll second that.

12 CHAIRPERSON HAMPLE:

13 All in favor? Any opposition? Anyone
14 need to recuse?

15 [The motion carried unanimously.]

16 ***

17 [Ms. Montgomery thanked the Board for their
18 consideration. She informed the Board that the notice
19 will be published on December 26 with the intent to
20 publish the list on the Board's website by December
21 28, along with the best practices guide and then start
22 the regulatory review process as proposed rulemaking.]

23 ***

24 Report of Commissioner - No Report

25 [Theodore Stauffer, Executive Secretary, Bureau of

1 Professional and Occupational Affairs, on behalf of
2 Commissioner Johnson, welcomed Ms. Livingston to the
3 Board and wished everyone a happy holiday.]

4 ***

5 Report of Board Administrator

6 [Christina Townley, Board Administrator, updated the
7 board on the application processing time, noting it to
8 be about 5 to 7 business days.]

9 ***

10 Miscellaneous - Election of Officers

11 MS. VANORDER:

12 Are there any nominations for the chair
13 position? This would be starting in the
14 New Year, as of January 1, 2021.

15 DR. MIHELICIC:

16 I would like to nominate Dr. Kerri
17 Hample for chair, please. I think she
18 is the leader we need.

19 MS. GATTY:

20 I'll second that.

21 MS. VANORDER:

22 Are there any other nominations before
23 we move to a vote? Hearing none.

24 Is there a motion from the Board to
25 elect Dr. Hample as continuing chair

1 moving forward into the New Year,
2 effective January 1, 2021, for the next
3 year?

4 DR. BAIRD:

5 So moved.

6 DR. MIHELICIC:

7 Second.

8 MS. VANORDER:

9 All in favor? Any objections?

10 [The motion carried unanimously.]

11 ***

12 MS. VANORDER:

13 Are there any nominations for vice
14 chair?

15 CHAIRPERSON HAMPLE:

16 I'd like to nominate Dr. Joanne Baird.
17 I don't know if we can do this, but I
18 would like to do it. I know I am in
19 USQ. I know in the past we have done it
20 this way, so should the chair be
21 replaced, the vice chair would assume
22 the role of the chair. I'd like to
23 nominate it with that clause.

24 Do we have any other nominations
25 for vice chair?

1 Nominations for secretary?

2 DR. MIHELICIC:

3 I would like to nominate Carolyn Gatty.

4 CHAIRPERSON HAMPLE:

5 Carolyn, do you accept?

6 MS. GATTY:

7 Yes.

8 CHAIRPERSON HAMPLE:

9 Any other nominations for that? We

10 nominated Joanne Baird. There are no

11 other nominations, and we nominated

12 Carolyn Gatty for secretary. There are

13 no other nominations for that.

14 Could I have a motion to approve

15 both of those individuals in their

16 officer positions?

17 DR. MIHELICIC:

18 So moved.

19 CHAIRPERSON HAMPLE:

20 Second?

21 DR. BAIRD:

22 Second.

23 CHAIRPERSON HAMPLE:

24 All those in favor? Any opposition.

25 Any recusals?

1 [The motion carried unanimously.]

2 ***

3 [Chairperson Hample noted the next scheduled meeting
4 is March 4, 2021. She also noted the remaining 2021
5 meeting dates scheduled for June 2, September 2, and
6 December 10.]

7 ***

8 Adjournment

9 CHAIRPERSON HAMPLE:

10 Is there a motion to adjourn?

11 MS. GATTY:

12 So moved.

13 CHAIRPERSON HAMPLE:

14 Second?

15 DR. MIHELICIC:

16 Second.

17 CHAIRPERSON HAMPLE:

18 All in favor of adjourning? Anybody no?

19 [The motion carried unanimously.]

20 ***

21 [There being no further business, the State Board of
22 Occupational Therapy Education and Licensure Meeting
23 adjourned at 11:45 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.



Kelly Gallick,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF OCCUPATIONAL THERAPY
EDUCATION AND LICENSURE
REFERENCE INDEX

December 10, 2020

TIME	AGENDA
9:00	Executive Session
10:30	Return to Open Session
10:30	Official Call to Order
10:31	Introductions
10:38	Approval of Minutes
10:39	Report of Board Counsel
10:44	Report of Board Chairperson
11:04	Appointment - Act 53 of 2020 List of Relevant Crimes
11:36	Report of Board Administrator
11:37	Miscellaneous
11:45	Adjournment