State Board of Podiatry December 15, 2021

BOARD MEMBERS:

Robert B. Weber, D.P.M., J.D., M.B.A., Chairman K. Kalonji Johnson, Commissioner, Bureau of Professional and Occupational Affairs Michael J. Paris, D.P.M., M.B.A., Vice Chairman Dia D. McCaughan, D.P.M. William D. Fetchik, D.O.

1 2

BUREAU PERSONNEL:

Todd Kriner, Esquire, Board Counsel
Carole Clarke Smith, Esquire, Senior Board Counsel
Carolyn DeLaurentis, Deputy Chief Counsel, Prosecution
Division
Christopher K. McNally, Esquire, Board Prosecution
Liaison
Timothy J. Henderson, Esquire, Board Prosecutor

Paul J. Jarabeck, Esquire, Board Prosecutor Gregory Liero, Esquire, Board Prosecutor Nichole Wray, Board Administrator

Marc Farrell, Deputy Director, Office of Policy, Department of State

Michelle Witmer, Bureau of Finance and Operations,
Department of State

Amanda Richards, Acting Fiscal Chief, Bureau of Finance and Operations, Department of State

ALSO PRESENT:

Michael Davis Lori A. Behe

1

2 State Board of Podiatry

3 December 15, 2021

* * *

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5 | [Pursuant to Section 708(a)(5) of the Sunshine Act, at

6 9:30 a.m. the Board entered into Executive Session

7 | with Todd Kriner, Esquire, Board Counsel, for the

8 | purpose of conducting quasi-judicial deliberations on

9 matters listed under the Report of Board Counsel and

10 Report of Prosecutorial Division. The Board returned

11 to open session at 10:30 a.m.]

12

13 The regularly scheduled meeting of the State

14 Board of Podiatry was held on Wednesday, December 15,

15 | 2021. Robert B. Weber, D.P.M., J.D., M.B.A.,

16 Chairman, called the meeting to order at 10:32 a.m.

17

18 | Roll Call/Introduction of Attendees

19 | [Nichole Wray, Board Administrator, provided an

20 introduction of the Board members, staff, and audience

21 | in attendance. 1

22 ***

23 | [Nichole Wray, Board Administrator, reminded everyone

24 | that the meeting was being recorded, and those who

25 remained on the line were giving their consent to be

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4
1
   recorded.]
                               * * *
2
3
   Approval of minutes of the October 20, 2021 meeting
 4
   CHAIRMAN WEBER:
5
                 Could I have a motion for the approval of
 6
                 the minutes, please?
7
   DR. FETCHIK:
8
                 So moved.
9
   DR. PARIS:
10
                 I'll second.
11
   CHAIRMAN WEBER:
12
                 All in favor?
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   [The motion carried unanimously.]
                               * * *
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   Report of Prosecutors
15
16
   [Paul J. Jarabeck, Esquire, Senior Board Prosecutor,
17
   presented the VRP Consent Agreement for Case No. 21-
18
   44-016614.1
19
                               * * *
20
   CHAIRMAN WEBER:
21
                 I would like to have a motion to accept
22
                 the report?
23
   DR. FETCHIK:
24
                 I move to accept the report.
25
   COMMISSIONER JOHNSON:
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5 1 Second. 2 CHAIRMAN WEBER: 3 All in favor? 4 [The motion carried unanimously.] * * * 5 6 [Timothy J. Henderson, Esquire, Board Prosecutor, presented the Consent Agreements for Case No. 16-44-14094 and Case No. 16-44-14243.19 10 [Todd Kriner, Esquire, Board Counsel, informed the 11 Board that he was having technical difficulty. He 12 noted the Board met in Executive Session to engage in 13 quasi-judicial deliberations on the matters listed on 14 the Report of Board Counsel and Report of 15 Prosecutorial Division. 1 MR. KRINER: 16 17 With item 3, is there a motion to accept 18 the VRP Agreement at Case No. 21-44-016614? 19 20 I am asking someone from the Board to 21 make a motion to accept that agreement? 22 CHAIRMAN WEBER: 23 Could I have a motion from the Board to 24 accept the report? 25 DR. MCCAUGHAN:

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1
                 I make a motion to accept the VRP
2
                 Agreement.
3
   CHAIRMAN WEBER:
                 Second?
 4
5
   DR. FETCHIK:
 6
                 Second.
7
   CHAIRMAN WEBER:
8
                 All in favor?
9
   [The motion carried unanimously.]
10
                               * * *
   MR. KRINER:
11
12
                 Is there a motion to accept the Consent
                 Agreement at Case No. 16-44-14094?
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14
   DR. PARIS:
15
                 I'll make that motion.
   DR. MCCAUGHAN:
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17
                 I'll second the motion.
18
   CHAIRMAN WEBER:
                 All in favor?
19
20
   [The motion carried unanimously. The Respondent's
21
   name in Case No. 16-44-14094 is Brian Michael Elias,
22
   D.P.M.]
                               * * *
23
24
   MR. KRINER:
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                 Is there a motion to accept the Consent
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1
                 Agreement at Case No. 16-44-14243?
2
   CHAIRMAN WEBER:
3
                 Is there a motion to accept?
   DR. FETCHIK:
 4
5
                 So moved.
   DR. PARIS:
6
7
                 I'll second.
8
   CHAIRMAN WEBER:
9
                 All in favor?
10
   [The motion carried unanimously. No abstentions were
   noted. The Respondent's name at Case No. 16-44-14243
11
   is Mari Elizabeth Wargo-Dorsey, D.P.M.]
12
                               * * *
13
14
   Report of Board Counsel - Discipline
15
   MR. KRINER:
16
                 Item 6 on the agenda. Is there a motion
17
                 to authorize counsel to draft an
18
                 Adjudication and Order in the Matter of
19
                 Lawrence Kansky, D.P.M., Case No. 21-44-
20
                 001179?
21
   DR. PARIS:
22
                 I'll make that motion.
23
   DR. FETCHIK:
24
                 Second.
25
   CHAIRMAN WEBER:
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All in favor? Anyone abstain? 1 Νo 2 abstentions. 3 [The motion carried unanimously.] * * * 4 5 Report of Board/Regulatory Counsel - Other 6 [Todd Kriner, Esquire, Board Counsel, reported no changes for 16A-449 regarding acupuncture. He noted the draft preamble and the annex for the proposed 8 9 regulation was in front of regulatory counsel for 10 review. 11 Mr. Kriner also noted the final regulatory 12 package for 16A-4417 regarding continuing education 13 was being reviewed by Regulatory Counsel. 14 Mr. Kriner referred to 16A-4419 regarding licensure by endorsement and qualifications for 15 16 licensure. He stated the Board voted to combine those 17 two together in October and provided a draft annex for the Board's review. He informed the Board that he 18 19 would move forward with drafting everything else in 20 the proposed regulation if they are in agreement. 21 Mr. Kriner commented that no substantive issues 22

Mr. Kriner commented that no substantive issues or substantive documents were changed and will provide more information at the next meeting.]

24 CHAIRMAN WEBER:

23

25

Could I have a motion to accept?

1 DR. FETCHIK:

2 Move to accept.

3 DR. MCCAUGHAN:

4 | Second.

5 CHAIRMAN WEBER:

9

Any abstentions? Anybody not in favor?

7 All in favor?

8 [The motion carried unanimously.]

* *

10 | Appointment - Bureau of Finance and Operations Annual

11 | Budget Presentation

12 | [Michelle Witmer, Bureau of Finance and Operations,

13 Department of State, addressed licensee population

14 from a revenue standpoint. She noted 1,461 licensees

15 when the report was prepared and an increase to 1,462

16 as of this morning.

17 Ms. Witmer addressed revenue by category for a

18 | biennial total, noting 98% of revenue was coming from

19 renewals and applications with 2% coming from

20 | miscellaneous categories.

21 Ms. Witmer provided a categorical breakdown of

22 expenses. She noted expenses incur through direct

23 cost, timesheet-based cost, and licensee-based fees.

24 | She reported a budget for FY21-22 and the current

25 expenses as of the report preparation. She noted a

recent increase in expenses.

Ms. Witmer reviewed revenues and expenses for FY21-22, noting the balance. She mentioned the projected expenses through FY24-25 are exceeding revenue and would like to present the Board with fee increase information.

Ms. Witmer reviewed Board member expenses, noting a breakdown of expenses by expense type. She provided an overview of actual expenses for FY19-20, FY20-21, and the current expenses for FY21-22. She noted the \$7,000 budget will be maintained at that level.

Ms. Witmer stated any money not used goes back into the Board's restricted account for the Board's use.

Dr. Fetchik asked why the projected revenue was going down in the previous slide.

Ms. Witmer explained that there has been a fluctuation over the last few years in licensees from 1,439 to 1,509 to 1,385, and the fees are based on revenue. She mentioned that it may be something as simple as increasing the application fee to keep revenue substantial, and the Bureau of Finance and Operations (BFO) would review the numbers and provide options at a later date for the Board's review.

Dr. Fetchik asked whether COVID had anything to

do with the decrease in licensure.

Commissioner Johnson explained that it is hard to speculate the reason for the dip. He mentioned that quantitative efforts are captured, like license counts, but not qualitative information as to why licenses go inactive. He mentioned it may be helpful to look further back to get a better picture of what the professional community was trending into before COVID.

Commissioner Johnson expressed concern of expenses continuing to rise due to the processes around the way licensees are monitored. He mentioned not being out of COVID and the wondered whether FY20-21 is anomalous or presents a more ominous turn toward a different type of trend.

Ms. Witmer stated the Board renews in December of even years, and BFO could return to present fee information or hold off until 2023. She noted that BFO could just keep an eye on the numbers and would know more after the next renewal period.

Chairman Weber commented that it would be helpful to have some type of analysis of age and how long the licensee has been in practice. He mentioned that nobody is interested in having licensure fees increased, but the Board would be happy to entertain

any information that will guide them in making a decision.

Chairman Weber noted that many podiatrists who hold a license in more than one state have less dues than Pennsylvania. He stated it is the Board's obligation to analyze why dues may be increased and find areas where numbers could be tightened up without increasing dues.

Commissioner Johnson vigorously implored the folks who represent the professional associations to exercise the opportunity to take that on as a project. He mentioned that the policy team spent the past three years drafting a comprehensive review of tangible licensing requirements, fees, qualification, and education that is on all of the boards' webpages.

Commissioner Johnson stated it could be a starting point for a group like the national and statewide associations, state government, and National Conference of State Legislatures (NCSL) to exercise those research and writing muscles. He commented that everybody is struggling with those questions, and it would be nice to see a collaborative effort from all of those entities.

Chairman Weber noted appreciation to BFO enlightening the Board regarding how looking at the

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1
   future is necessary to be fiscally responsive to
2
   members and licensure.
3
   CHAIRMAN WEBER:
 4
                 I would like to have a motion, whether
 5
                necessary or not, to accept the
                presentation on our financial
 6
                 responsibilities.
8
                     Could I have a motion from the floor,
9
                please?
   COMMISSIONER JOHNSON:
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11
                 I move to accept the presentation as
                 offered.
12
   DR. PARIS:
13
                 I'll second.
14
15
   CHAIRMAN WEBER:
16
                All in favor?
                                Any abstentions?
                                                   Anyone
17
                not in favor?
   [The motion carried unanimously.]
18
                              * * *
19
20
   Report of Board Chair
21
   [Robert B. Weber, D.P.M., J.D., M.B.A., Chairman,
22
   apologized to everybody because of the delay getting
23
   onto Webex. He noted joining the Board in 2014 with
24
   Dr. Paris and asking him to take over as Board chair
25
   upon Board approval because of a belief in term
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limits.

Chairman Weber mentioned being hopeful of filling vacancies and was pleased with having new Board member, Dr. Fetchik. He commented that he looked forward to meeting in person again after March and thanked the Board for their fantastic job. He also thanked Ms. Wray, legal counsel, and Commissioner Johnson for all of their help and advice.]

* * *

10 Report of Commissioner

requirement.

[K. Kalonji Johnson, Commissioner, Bureau of
Professional and Occupational Affairs, again noted the
virtual platform will be utilized until March 31,

2022. He addressed transitioning to a hybrid
platform, noting active legislation and movement
earlier this week with respect to legislation that
would provide for virtual satisfaction of the quorum

Commissioner Johnson commented that the department was working internally to ensure that the streaming component of the Board meeting survives beyond March 31, 2022, to continue to ensure meetings reach the greatest number of people. He believed that projecting the meetings across the Commonwealth had far exceeded any conflict or frustration. He noted

the Department was working to improve that experience
for all Board members and the public and will keep
everyone apprised.

Commissioner Johnson addressed a new portal specifically for out-of-state travel to facilitate administrative approvals to regional or national conferences. He mentioned that in-state travel was still governed by the traditional process, but noted amendments to the Sunshine act requiring travel be included on the agenda, formalized, and properly sunshined. He reminded Board members to notify counsel and the Board Administrator as soon as possible of any opportunities so they could be adequately discussed in open session and approved.

Commissioner Johnson wished everyone a restful, peaceful, and healthy holiday season.]

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18 Report of Board Administrator

19 | [Nichole Wray, Board Administrator, also wished

20 everybody a happy and healthy holiday season and

21 | thanked everyone for their cooperation.]

22 **

23 | For the Board's Information/Discussion - Old

24 | Business - New Business

25 | [Robert B. Weber, D.P.M., J.D., M.B.A., Chairman,

16 1 noted 2023 Board meeting dates.] 2 CHAIRMAN WEBER: 3 Could I have a motion to accept the 4 upcoming Board meeting dates? 5 DR. PARIS: I'll make that motion. 6 7 CHAIRMAN WEBER: Could I have a second, please? 8 9 DR. MCCAUGHAN: 10 I'll second the motion. 11 CHAIRMAN WEBER: 12 Any abstentions? Anybody disagree, 13 different type of dates? All in favor? 14 [The motion carried unanimously.] 15 16 [Nichole Wray, Board Administrator, noted the approved 17 2023 Board meeting dates are February 15, April 19, June 21, August 16, October 18, and December 20.] 18 19 20 For the Board's Information/Discussion - Annual Election of Officers 21 22 CHAIRMAN WEBER: 23 I'd like to have a nomination from the 24 floor for chairman of our Board, please? 25 DR. MCCAUGHAN:

17 I'd like to nomination Mike Paris for 1 2 chairman. 3 CHAIRMAN WEBER: 4 I second the motion. Are there any other 5 nominations for chairman? The only other officer at this time 6 would be for secretary. Could I kindly 8 have a nomination for secretary? DR. PARIS: 10 I nominate Dia McCaughan for secretary. CHAIRMAN WEBER: 11 12 Any seconds, please? I'll second for Dia. 13 14 Do we have any other nominations for the position of secretary? If there are 15 no further nominations for chairman or 16 17 secretary, 18 Would somebody like to make a nomination from the floor for someone for 19 20 vice chair? 21 DR. PARIS: 22 I'll nominate Dr. Weber as the vice 23 chair. 24 DR. MCCAUGHAN: 25 I'll second that.

1 CHAIRMAN WEBER:

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8

2 Any other nominations for positon as vice

chair?

4 Since there are no other nominations

from the floor, I'd like to have a motion

to accept these three separate

nominations; one is for chairman, vice

chairman, and secretary.

9 Could we have a motion from the floor

to accept the nomination for these

individuals for these three positions?

- 12 DR. FETCHICK:
- So moved.
- 14 CHAIRMAN WEBER:
- In that case, I congratulate Mike.
- 16 MR. KRINER:
- 17 Is there a motion to have Dr. Paris as
- the chairperson of the Board?
- 19 DR. FETCHICK:
- 20 So moved.
- 21 MR. KRINER:
- Is there a second?
- 23 DR. MCCAUGHAN:
- 24 I'll second that motion.
- 25 MR. KRINER:

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19
1
                 Anyone oppose? Any abstentions?
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   [The motion carried unanimously.]
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   MR. KRINER:
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                 Is there a motion to accept Dr. McCaughan
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                 as secretary?
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   DR. PARIS:
8
                 I'll make that motion.
9
   DR. FETCHICK:
10
                 Second.
   MR. KRINER:
11
12
                 Anyone opposed? Any abstentions? All in
                 favor?
13
14
   [The motion carried unanimously.]
                               * * *
15
   MR. KRINER:
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17
                 Is there a motion to accept Dr. Weber as
18
                 the vice chair?
19
   DR. FETCHICK:
20
                 So moved.
21
   DR. MCCAUGHAN:
22
                 I'll second the motion.
23
   MR. KRINER:
24
                 Anyone opposed? Any abstentions?
                                                      All in
25
                 favor?
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   [The motion carried unanimously.]
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   [Chairman Weber congratulated Dr. Paris and Dr.
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   McCaughan and requested Dr. Paris take over as chair
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   for the remainder of the meeting.]
                              * * *
 6
 7
                 DR. PARIS ASSUMED THE CHAIR
8
   For the Board's Information/Discussion - Old
9
10
     Business - New Business
11
   [Michael J. Paris, D.P.M., Chairman, referred to the
12
   Act 41 Committee, noting he and Dr. Weber currently
13
   are on that committee.
14
        Dr. Kriner noted prior discussion regarding a
   third committee member should there be a tie.
15
16
        Chairman Paris suggested Dr. McCaughan be the
17
   third member on the committee, and Dr. McCaughan
18
   agreed.
        Chairman Paris referred to the Probable Cause
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20
   Screening Committee, noting Dr. McCaughan has been the
21
   acting member of that committee for the last month or
22
   so, and she offered to continue with that committee.
23
        Mr. Jarabeck explained Probable Cause Screening
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Committee responsibilities, where the committee member

looks at cases that would be separated from the full

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25

2.1

Board concerning petitions for mental and physical examination, violations of a previous order issued by the Board or disciplinary order, and immediate temporary suspensions.

- Ms. Wray suggested the committee have an alternate in the event that Dr. McCaughan has to recuse herself or is unavailable, and Dr. Weber agreed to be the alternate committee member.
- Chairman Paris referred to the Drug Enforcement Administration (DEA) requirements for license renewal with the State Board of Podiatry.
- Mr. Kriner commented that there was no prerequisite for having an active DEA license in order to renew a podiatry license. He further explained that they do not need the DEA license if the licensee indicates that they are not going to be prescribing in a particular way. He noted the guidance on the website also suggests that they are exempt from opioid CE requirements.
- Dr. Weber mentioned receiving an email from a member of the Pennsylvania Podiatric Medical Association (PPMA) Board, who received an email from a member concerning a DEA license. He noted Mr. Kriner to be correct but mentioned an issue is some hospitals demanding a DEA number for legalities. He stated the

DEA license to prescribe had become very expensive, around \$800, and the average podiatrist hardly ever writes any narcotics. He mentioned the importance of individuals understanding and appropriately handling situations where a patient does require an opioid.

Chairman Paris noted previous Board discussion regarding auxiliary personnel performing radiological procedures. He stated the Board agreed with a podiatric assistant taking X-rays in a podiatrist's office following their passing a test administered by the American Society of Podiatric Medical Assistants or the American Registry of Radiologic Technologists.

Chairman Paris asked Mr. Kriner to clarify 49 Pa. Code § 29.82(a)(3), where the person has passed an examination approved and administered by the Board and asked him to explain what the process would look like for licensees if some other organization or individual wanted to approach the Board with an examination for approval.

Mr. Kriner did not believe there was a process currently in place and the Board would have to vote on anything presented to them. He mentioned that it would have to meet certain requirements outlined in the administrative code for third-party exams and the process would have to be written into the regulation

to make sure there was a process in place.

Mr. Kriner referred to § 29.83(b), where the applications for examination shall be completed on forms furnished by the Board. He explained that it was through that third-party administrator and suggested that particular regulation section be updated given that the Board should not be administrating the exam itself.

Mr. Kriner commented that there was a fear that there were only two places where a radiologist could get certified. He noted not knowing how practical it was for someone in a podiatrist's office to pass the other tests from either the Board of Medicine, Board of Chiropractic, or Osteopathic Medicine Board, but the regulation provides that as well. He mentioned not being aware of any test that is approved by the Board.

Chairman Paris asked what the process would be for a podiatrist who is not a member of the PPMA to get his assistant certified to take X-rays in their office, like a test a dental assistant may be required to take.

Mr. Kriner explained that the Board would have to vote to approve that specific test and make sure under § 29.83(a), an examination in radiology shall cover

the subjects and as long as the administration of the exam or the exam itself meets the administrative code, then that is something that could be approved. He commented that once the proposal is made, the Board would have to review it and make sure it meets all of those guidelines to approve the test.

Mr. Jarabeck commented that he was fairly certain the test for dental assistants is administered by the Dental Association National Board (DANB).

Dr. Paris commented that the difference with the Board of Dentistry is that a dental assistant does not have to be employed by a dentist to be able to keep their certification, whereas a podiatric assistant has to be employed by a podiatrist who is a member of the PPMA in order to keep that certification.

Dr. Paris noted that the assistant cannot carry that certification with them from practice to practice if they are going from a practice that has a PPMA doctor and going to a practice that has a non-PPMA doctor.

Mr. Kriner stated the regulation should be revised, especially since the Board is not to be administering tests, and the examination by the Board in § 29.83(b) should be amended.

Dr. Weber mentioned that there used to be

communication with people from the certifying board for assistants taking X-rays and becoming certified as podiatric assistants and suggested plans be made where someone from that board could provide a presentation to the Board.

Ms. Wray commented that there was some initial contact made but put on hold because of looking at other things, where that may not have made as much of a difference. She referred to past conversations, one being what the Board specifically requires and another issue of doing yearly certified for the assistants versus biyearly.

Ms. Wray explained that those issues are more on the association side of things and/or the Department of Environmental Protection (DEP) because they have separate requirements for the use of X-ray equipment. She noted it may be a separate conversation to have with those associations that currently are sort of the normal go to as to why they have things implemented the way they do but is not necessarily something the Board would have jurisdiction over because it is a separate department that handles that. She mentioned it may be at least worth having a conversation to have a better understanding directly from those sources.

Dr. Weber asked Ms. Wray to contact PPMA and

mention the Board's concern to see if their board has any input or inquiries from members or nonmembers asking the same question.

Chairman Paris thanked Dr. Weber for his many years of service as Chairman, noting the Board members had benefited from being members of the Board under his direction. He commented that Dr. Weber had done a great job, and he would do his best as the current Board Chairman.]

[Todd Kriner, Esquire, Board Counsel, asked Chairman Paris to sign a piece of paper to be used for consent agreements and orders. Ms. Wray also asked Chairman Paris to email the signature to her or Mr. Kriner, so it could be utilized to draft an electronic signature.

Commissioner Johnson stated there was no one who

more personifies their profession and commitment to be a servant leader and thanked Dr. Weber on behalf of the Department and citizens of the Commonwealth of Pennsylvania. He commented that it had truly been a privilege and honor.]

22 | ***

23 | Adjournment

24 COMMISSIONER JOHNSON:

I move to adjourn this meeting.

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   CHAIRMAN PARIS:
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 2
                 Can we get a second to the commissioner's
 3
                 motion?
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   DR. WEBER:
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                 I second.
 6
   CHAIRMAN PARIS:
                 All in favor? Any objections or
 8
                 abstentions? In that case, our meeting
 9
                 is adjourned.
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    [The motion carried unanimously.]
                               * * *
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12
    [There being no further business, the State Board of
13
   Podiatry Meeting adjourned at 12:08 p.m.]
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I hereby certify that the foregoing summary minutes of the State Board of Podiatry meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Podiatry meeting.

CERTIFICATE

Lori A. Behe

Minute Clerk

Sargent's Court Reporting Service, Inc.