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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 AUCTIONEER EXAMINERS
VIA TELECONFERENCE**

TIME: 10:40 a.m.

Monday, July 20, 2020

State Board of Auctioneer Examiners
July 20, 2020

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BOARD MEMBERS:

Nevin B. Rentzel, Chairman, Professional Member
Sherman E. Hostetter Jr., Professional Member
K. Kalonji Johnson, Commissioner, Bureau of
Professional and Occupational Affairs
Gerald A. Rader, Professional Member
Daniel A. Trace, Secretary, Professional Member
Heather M. Troutman, Consumer Protection Agent

BUREAU PERSONNEL:

Kenneth J. Suter, Esquire, Board Counsel
J. Karl Geschwindt, Esquire, Board Prosecution
Liaison
Terrie Kocher, Board Administrator
Marc Farrell, Deputy Policy Director, Department of
State
Theodore Stauffer, Executive Assistant, Bureau of
Professional and Occupational Affairs
Stephen Latanishen, Director, Office of
Intergovernmental Affairs, Department of State

ALSO PRESENT:

Jen Smeltz, Executive Director, Consumer Protection
and Professional Licensure Committee

1 ***

2 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
3 9:00 a.m. the Board entered into Executive Session
4 with Kenneth J. Suter, Esquire, Board Counsel, for the
5 purpose of conducting quasi-judicial deliberations on
6 matters that are currently pending before the Board.
7 The Board returned to open session at 10:30 a.m.]

8 ***

9 State Board of Auctioneer Examiners

10 July 20, 2020

11 ***

12 The regularly scheduled meeting of the State
13 Board of Auctioneer Examiners was held on Monday,
14 July 20, 2020. Nevin B. Rentzel, Chairman,
15 Professional Member, called the meeting to order at
16 10:40 a.m.

17 ***

18 Introduction of Audience

19 [Chairman Rentzel requested the introduction of
20 audience members in attendance.]

21 ***

22 Approval of minutes of the March 9, 2020 meeting

23 CHAIRMAN RENTZEL:

24 We will begin with approval of minutes
25 from our previous meeting on the agenda.

1 Do I hear a motion to accept the minutes
2 as presented?

3 MR. HOSTETTER:

4 So moved.

5 CHAIRMAN RENTZEL:

6 Is there a second?

7 MR. JOHNSON

8 Second.

9 CHAIRMAN RENTZEL:

10 All those in favor, give their consent
11 by saying aye. Opposed?

12 [The motion carried unanimously.]

13 ***

14 Report of Board Prosecution - No Report

15 ***

16 Report of Board Counsel

17 MR. SUTER:

18 Item No. 2 on the agenda is an
19 Application for Licensure by Reciprocity
20 for Kevin J. Mitchell.

21 As a result of discussions in
22 Executive Session, I understand the
23 Board will entertain a motion to deny
24 this application for licensure.

25 CHAIRMAN RENTZEL:

1 Do I hear a motion to accept the denial?

2 MR. RADER:

3 So moved.

4 CHAIRMAN RENTZEL:

5 Is there a second?

6 MR. JOHNSON:

7 Second.

8 CHAIRMAN RENTZEL:

9 Any discussion? All those in favor of
10 accepting the denial, give their consent
11 by saying aye. Any opposed?

12 [The motion carried unanimously.]

13 ***

14 MR. SUTER:

15 Item No. 3 on the agenda is an
16 Application for Licensure by Reciprocity
17 for Ann Shafer.

18 As a result of discussions in
19 Executive Session, I understand the
20 Board will entertain a motion to approve
21 the application for licensure.

22 MR. RADER:

23 So moved.

24 MR. HOSTETTER:

25 Second.

1 CHAIRMAN RENTZEL:

2 We have a motion made and a second. Any
3 discussion? All those in favor of
4 accepting the application for
5 reciprocity, give their consent by
6 saying aye. Any opposed?

7 [The motion carried unanimously.]

8 ***

9 MR. SUTER:

10 Item No. 4 on the agenda is the final
11 Adjudication and Order of Brian K.
12 Shotts. This was an Application for
13 Licensure.

14 I understand, as a result of
15 discussions in Executive Session, the
16 Board will entertain a motion to approve
17 the final Adjudication and Order.

18 CHAIRMAN RENTZEL:

19 Do I hear a motion to that effect?

20 MR. RADER:

21 So moved.

22 MR. TRACE:

23 Second.

24 CHAIRMAN RENTZEL:

25 Any discussion? All those in favor,

1 concern was under Section 1 (a)(2), where the Board
2 was already stating it is substantially equivalent to
3 Pennsylvania and are saying they are competent because
4 they had experience 2 of the past 5 years immediately
5 preceding the application but that we would also have
6 them require to take the examination.

7 He noted regulatory counsel requested the Board
8 consider dropping the examination because it would
9 counter the whole Act 41 concept of getting people
10 licensed from other jurisdictions. He mentioned the
11 issue, where the Board already stated it was
12 substantially equivalent since there is an
13 examination, which would be the way the individual
14 would become licensed.

15 Mr. Suter also mentioned the issue, where the
16 Board already looked at there was an examination
17 equivalent to Pennsylvania's examination so why take
18 the Pennsylvania examination.

19 Mr. Suter commented that regulatory counsel also
20 informed him of this being an issue if it goes to the
21 Governor's Office because it was counter to Act 41 in
22 terms of getting people licensed in Pennsylvania. He
23 stated regulatory counsel noted it to be double review
24 by making individuals take the exam and already
25 determining the substantial equivalence.

1 Commissioner Johnson commented that the position
2 of the agency and administration is to honor the
3 legislative intent behind Act 41, which would assure
4 unduly administrative burdens are reduced to assure
5 the individuals who were initially intended to be the
6 beneficiaries of this, which are military spouses and
7 individuals who are traveling and caught in between
8 states.

9 Chairman Rentzel stated the Board agreed with the
10 spirit of why Act 41 was passed but had an issue with
11 enforcement from their end. He explained if someone
12 from Brazil applies through this, the Board has no way
13 of being able to enforce it and asked that there be a
14 residency because the Board may be the only profession
15 licensed in the commonwealth that can conduct business
16 from outside the commonwealth.

17 Chairman Rentzel stated the Board's issue was not
18 with someone in the military, where their family
19 wanted to auctioneer while they were stationed
20 somewhere in the Board's vicinity but more so where
21 someone from Brazil says they have a license that was
22 commensurate with Pennsylvania's. He mentioned if
23 someone in the commonwealth would file a complaint on
24 that individual for whatever reason, the Board has no
25 way of enforcing that.

1 Commissioner Johnson stated it was going to be a
2 more individualized analysis for this particular
3 Board, and as people come from different
4 jurisdictions, that analysis must be used to set the
5 precedent moving forward. He commented that there was
6 a clear intent to make sure that even if Pennsylvania
7 was getting applicants from international
8 jurisdictions they still have to conform with a
9 substantial equivalency to the commonwealth.

10 Mr. Suter commented that the burden was on the
11 applicant to demonstrate their jurisdiction was
12 substantially equivalent. He stated the taking of the
13 Pennsylvania exam was an extra added measure of
14 security to make sure the person was qualified because
15 it was so difficult to do the analysis of other
16 jurisdictions to know if they are substantially
17 equivalent in terms of their exam. He mentioned their
18 exams are proprietary, and they are not going to turn
19 over their exam.

20 Mr. Suter mentioned that regulatory counsel noted
21 that it was the burden of the individual to
22 demonstrate substantial equivalence, and if they
23 cannot demonstrate that it was substantially
24 equivalent, do not give them the licensure exam.

25 Mr. Suter stated the issue in the language was

1 the individual would have to do both.

2 Mr. Hostetter stated the Board's main charge is
3 to protect the public. He stated it only takes six
4 months to two years to become an auctioneer, yet they
5 handle the public's lifetime assets. He noted the
6 need for competency and thinks the test was the best
7 way to go no matter where someone was from.

8 Mr. Hostetter mentioned policing individuals as
9 an issue with online auctions, where individuals could
10 be in Brazil or any other state in the United States,
11 and if they are licensed in Pennsylvania, they could
12 do that property Pennsylvania and never set foot in
13 the state,

14 Mr. Hostetter suggested giving an exclusion to
15 United States military spouses.

16 Mr. Hostetter opined that he would not take the
17 test out and made a motion to leave the verbiage the
18 way it is.

19 Mr. Rader seconded the motion.

20 Commissioner Johnson commented that Act 41 does
21 not require the Board to accept all jurisdictions and
22 was more to eliminate some of the administrative
23 hurdles.

24 Marc Farrell, Deputy Policy Director, Department
25 of State, mentioned that the governor's policy office

1 has not given approval to other Boards that have woven
2 a test into the second step of competency and believed
3 it may be a waste of time to keep it in there when it
4 was almost certain to be rejected.

5 Mr. Farrell explained that much of the initial
6 cut was going to come when the Brazil applicant has to
7 show their test, regulations, and standards are
8 substantially equivalent and where the Board would
9 inform the individual of not meeting the burden of
10 establishing substantial equivalency.

11 Mr. Hostetter suggested leaving the language the
12 way it was. He mentioned hearing the intent being for
13 military spouses, and was in full support for the
14 military and the police, but believed this had
15 expanded outside of that and was not interested in
16 putting the public in that kind of a position.

17 Mr. Suter will send the proposed regulation out
18 as an exposure draft.

19 Ms. Troutman commented that it was going to be
20 hard either way consumer protection-wise, but if there
21 was no statutory ability to do it, nothing can be done
22 about the escrows or anything like that. She stated
23 the only way of knowing there was going to be a
24 problem is when the problem arises and then deal with
25 it at that point.]

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MR. SUTER:

Sherm made a motion to keep it the way it was. Was there a second to that, and who was it?

MR. RADER:

I did.

CHAIRMAN RENTZEL:

Any comments? The motion has been made and seconded that we leave the verbiage the way we had it.

All those in favor, give consent by saying aye. Any opposition?

[The motion carried unanimously.]

[Kenneth J. Suter, Esquire, Board Counsel, addressed Act 53 of 2020 and provided a copy of Act 53 for the Board's review. He stated Act 53 considers criminal convictions in application cases and disciplinary proceedings and organizes the matter from a legal perspective. He stated Act 53 dictates how boards and commissions consider criminal convictions for applicants and disciplinary procedures.

Mr. Suter stated Act 53 requires licensing Boards and the commissioner to develop a list of criminal

1 convictions directly related to the profession within
2 180 days. He noted the importance of the definition
3 of "directly relates," which is the nature of the
4 criminal conduct for which the person was convicted
5 has a direct bearing on the fitness or ability to
6 perform one or more of the duties or responsibilities
7 necessarily related to the profession, trade, or
8 occupation for which the individual seeks licensure.

9 Mr. Suter mentioned having provisions in the
10 existing act that lists different types of crimes to
11 be considered for auctioneers but also noted the need
12 to develop this list with the commissioner's office
13 for publication at the end of the year.

14 Mr. Suter referred to § 3113 regarding
15 consideration of criminal convictions, where the Board
16 shall follow the procedures in this section when
17 determining whether an individual with a criminal
18 conviction qualifies for a license or registration.
19 The Board shall not consider good moral character,
20 crimes of moral turpitude, ethical or dishonest
21 practice.

22 Mr. Suter noted the need to first determine
23 whether the criminal conviction directly relates to
24 the occupation and then look at the schedule of
25 offenses developed within the 180 days. He stated if

1 the offense is on that list of offenses, there is a
2 rebuttable presumption that the licensure of the
3 individual would pose a substantial risk to the health
4 and safety of the public. He stated if it is not on
5 the list, there is no rebuttable presumption. He
6 explained that a rebuttable presumption means it is
7 presumed that the person is a risk to public health
8 and safety if they were convicted of that particular
9 crime from the list, but they may bring in evidence to
10 say it is not an issue here.

11 Mr. Suter explained that individuals do not
12 automatically get a license if their crime was not on
13 the list, but the Board does not get that presumption
14 from the start. He stated he wants everything on the
15 list that directly relates because the Board would be
16 in much better shape to do the analysis and determine
17 whether or not somebody should have a license.

18 Mr. Suter mentioned that the process would not
19 change in terms of a provisional denial, where
20 individuals would be able to come in, go through a
21 hearing, and a decision could be made then.

22 Mr. Suter explained the next stage after the list
23 would be an individualized assessment to determine
24 whether the license should be granted anyway. He
25 noted the need to look at whether the criminal conduct

1 involved an act or threat of harm against the
2 individual, the facts and circumstances surrounding
3 the criminal conviction, the number of criminal
4 convictions, increase in age or maturity of the
5 individual, the individual's criminal history or lack
6 of criminal history, successful completion of
7 education and training activities, references from
8 employers, progress in personal rehabilitation,
9 whether the individual meets all other licensing
10 qualifications, and any other factor deemed relevant
11 by the Board.

12 Mr. Suter stated there was no rebuttable
13 presumption if the criminal offense is not on the list
14 of crimes directly related to the trade or profession,
15 and the analysis goes to the second stage, which is
16 the assessment of a risk to public health and safety.

17 Mr. Suter mentioned sexual offenses as an
18 exception, which prohibits the Board from issuing a
19 license and appears to be a permanent bar from any
20 license for healthcare professions.

21 Mr. Suter also mentioned crimes of violence as
22 another exception, where the Board can grant a license
23 if it is a crime of violence but three years must have
24 elapsed since the release from incarceration and three
25 years since imposition of sentence if other than

1 incarceration and remain free of conviction from that
2 three-year period and then the Board has to do the
3 individualized assessment and determine the person is
4 not a risk to public health and safety.

5 Mr. Suter referred to Title 42 Pa.C.S. § 9714,
6 where only these crimes of violence meet the
7 definition.

8 Mr. Suter stated the drug trafficking portion
9 applies more to health-related boards.

10 Mr. Suter referred to § 3114 concerning juvenile
11 adjudications, noting the Board was prohibited from
12 considering those.

13 Mr. Suter referred to § 3115 regarding preliminary
14 determinations, where individuals can pay a \$45 fee
15 and contact the Board if they cannot tell whether or
16 not they can get a license by reading the Best
17 Practices Guide and list of crimes.

18 Mr. Suter mentioned the wording for this was very
19 confusing in the act where it reads, if I issue one of
20 those or the Board depending on the procedure set up,
21 it was not final or binding and then goes on to say
22 that the determination shall be binding.

23 Mr. Suter referred to § 3116, where a Best
24 Practices Guide regarding criminal history must be
25 developed by the commissioner within 180 days. He

1 commented that the legislature was concerned about the
2 whole criminal history aspect and how all of the
3 Boards have been treating criminal history in terms of
4 licensure.

5 Mr. Suter referred to § 3117 regarding the list of
6 criminal offenses, where the commissioner, in
7 consultation with the boards and business community
8 with knowledge of the respective profession, must
9 publish the Schedule of Criminal Convictions and
10 promulgate a regulation within two years. He stated
11 the commission also must update the Schedule of
12 Criminal conviction.

13 Mr. Suter mentioned the Schedule of Offenses for
14 each Board has to be made part of the application,
15 Best Practices Guide, has to be on the department's
16 website, and has to be in English and Spanish. He
17 stated the list was subject to change based upon new
18 enactments by the General Assembly.

19 Mr. Suter commented that he will develop this
20 list by doing some research to see if he can find
21 something that lists all of the crimes the Board can
22 look at to determine whether certain crimes pertain to
23 the profession.

24 Commissioner Johnson suggested starting with the
25 universe of offenses, where the Board has already set

1 the precedent in terms of what offenses have resulted
2 in discipline.

3 Commissioner Johnson, in terms of the binding and
4 nonbinding, thinks the person who pays the \$45 for the
5 evaluation, there was a strong presumption that the
6 determination provided by the Board, provided nothing
7 changes and provided this individual otherwise meets
8 all of the other requisite criteria for licensure,
9 that particular offense with which they requested a
10 preliminary deliberation would not bar them from
11 getting a license.

12 Mr. Suter mentioned looking at the adjudications
13 and orders the Board issued and what has resulted in
14 discipline from the Board in terms of criminal
15 convictions. He stated the act specifically lays out
16 if somebody was convicted of forgery, embezzlement,
17 obtaining money under false pretenses, extortion,
18 criminal conspiracy to defraud, or other like
19 offenses. He mentioned that was a good starting point
20 because that was already in the act.

21 Commissioner Johnson noted currently developing
22 the functionality to maintain the database and working
23 to develop the Best Practices Guide in conjunction
24 with the Pennsylvania Licensing System (PALS), so
25 individuals moving through or contemplating the

1 application process will have all the information they
2 need.

3 Chairman Rentzel questioned whether changes will
4 need to go before legislature after the guide was
5 implemented.

6 Commissioner Johnson explained that there should
7 be no problem adding something to the system, noting
8 the guide should be treated like something that was
9 inevitably going to change as time moves forward or it
10 was useless.

11 Commissioner Johnson noted it should read, "as
12 these are the offenses the Board has taken action on
13 in the past and everything else becomes the
14 discussion," stating it gets interesting for Board
15 counsel because they have no real idea what
16 individuals will be asking.

17 Mr. Suter addressed the Bureau of Professional
18 and Occupational Affairs (BPOA) Recusal Guidelines for
19 the Board's review. He provided an overview of
20 mandatory, strongly suggested, discretionary, and
21 uncertain guidelines. He encouraged members to
22 contact him if any issues arise.

23 Mr. Suter also addressed the Sunshine Act,
24 explaining the act as sun shining on the proceedings
25 of the Board in terms of bringing the public in and

1 having light on what the Board was doing. He stated
2 the whole purpose of the act was so deliberations and
3 policy are done within public view with no secrecy.

4 Mr. Suter stated Executive Session was one of the
5 exceptions to the rule as well as conferences or
6 training. He also noted personnel issues,
7 consultations with legal advisor, and agency business
8 in terms of quasi-judicial deliberations as other
9 exceptions.

10 Mr. Suter explained Board business as something
11 that needs to be conducted in public session, and
12 agency or Board business should not be discussed
13 outside of the Board meeting or what was appropriate
14 in the Executive Session.

15 Mr. Suter mentioned the Board has an Application
16 Committee responsible for administrative matters in
17 terms of reviewing applications. He stated the only
18 time the committee presents to the Board was if they
19 need the Board's input or if an application was going
20 to be denied because the denial was something the
21 Board does as a whole.

22 Mr. Suter also stated there are other exceptions
23 for the Probable Cause Screening Committee because
24 there are other functions of the Board, so a subset
25 was appointed for that.

1 Ms. Kocher referred to the request to take the
2 examination prior to two years.]

3 ***

4 MR. SUTER:

5 The motion would be for a waiver to
6 approve Mr. Driscoll's testing prior to
7 the two-year period of being an
8 apprentice auctioneer once he applies.

9 CHAIRMAN RENTZEL:

10 Do I hear a motion to that effect?

11 MR. RADER:

12 So moved.

13 CHAIRMAN RENTZEL:

14 Do I hear a second?

15 MR. JOHNSON:

16 Second.

17 CHAIRMAN RENTZEL:

18 Any discussion? If not, all those in
19 favor, give consent by saying aye.

20 Those opposed?

21 [The motion carried unanimously.]

22 ***

23 [Mr. Suter noted item 10 was discussed during
24 Executive Session.

25 Mr. Suter noted the publication in the

1 *Pennsylvania Bulletin* regarding technical corrections
2 to the Schedule of Civil Penalties for informational
3 purposes. He mentioned previous discussion regarding
4 the Citation Schedule at the last meeting, where a
5 regulation to change the priority to the Board in
6 terms of what a citation is and is not and penalties.

7 Mr. Suter stated it is a separate package from
8 this and does not just deal with auctioneers but with
9 many of the Boards. He commented that these are
10 technical corrections. He mentioned 2016 amendments
11 causing sites for citations to be incorrect in the
12 Citation Schedule since they had been renumbered, and
13 this corrects the legal citation for it.

14 Mr. Suter mentioned that it does not change the
15 substance for any of the boards and is moving through
16 relatively quickly since it is just technical changes.
17 He commented that cases will move through the citation
18 process more easily once this goes through.]

19

20 Report of Board Chairman - No Report

21 [Nevin B. Rentzel, Chairman, Professional Member,
22 questioned whether Mr. Latanishen would be joining the
23 meeting.

24 Mr. Stauffer stated Mr. Latanishen was unable to
25 stay online, but he will schedule an appointment with

1 Mr. Latanishen to attend the next meeting for updates
2 regarding public member and trading assistant
3 vacancies.]

4

5 Report of Acting Commissioner - No Report
6 [K. Kalonji Johnson, Commissioner, Bureau of
7 Professional and Occupational Affairs, thanked Mr.
8 Farrell for taking part in the conversation today. He
9 mentioned Jen Smeltz, Executive Director, Consumer
10 Protection and Professional Licensure Committee, was
11 listening to the Board meeting. He noted having a
12 great relationship with the legislative committees in
13 terms of reaching out to them and collaborating on
14 being proactive and making sure issues and concerns
15 are getting addressed with regard to professional
16 licensure.

17 Commissioner Johnson hoped everyone was staying
18 safe and healthy. He appreciated everyone's patience
19 and flexibility in terms of the virtual platform and
20 use of the technology.

21 Mr. Suter thanked Commissioner Johnson for being
22 available while for him while working virtually.

23 Commissioner Johnson also thanked Ms. Kocher and
24 program staff for all their work.

25 Commissioner Johnson welcomed Mr. Trace on his

1 recent confirmation.]

2

3 Report of Board Administrator

4 [Terrie Kocher, Board Administrator, addressed a
5 request from Pearson VUE to conduct an item bank
6 review of test questions this year.

7 Chairman Rentzel stated the test questions were
8 split up between professional members last time and
9 then reviewed all together, noting it took quite a bit
10 of time.

11 Mr. Rader suggested setting up the virtual time
12 for a day other than a regular meeting.

13 Mr. Hostetter suggested splitting up the
14 questions and setting up no longer than 2-hour Zoom
15 calls at a time until they have gone through all of
16 the questions.

17 Ms. Kocher will schedule the review for a
18 separate day from a regular meeting.]

19

20 Miscellaneous

21 [Terrie Kocher, Board Administrator, noted the
22 remaining scheduled Board meetings on September 14 and
23 November 9, 2020. She informed the Board the meetings
24 may be rescheduled if there was more than one meeting
25 taking place at the same time.

1 MR. TRACE:

2 Second.

3 CHAIRMAN RENTZEL:

4 All those in favor, say aye.

5 [The motion carried unanimously.]

6 ***

7 [There being no further business, the State Board of
8 Auctioneer Examiners Meeting adjourned at 12:18 p.m.]

9 ***

10

11 CERTIFICATE

12

13 I hereby certify that the foregoing summary
14 minutes of the State Board of Auctioneer Examiners
15 meeting, was reduced to writing by me or under my
16 supervision, and that the minutes accurately summarize
17 the substance of the State Board of Auctioneers
18 meeting.

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22

Derek Richmond,

23

Minute Clerk

24

Sargent's Court Reporting

25

Service, Inc.

26

STATE BOARD OF AUCTIONEER EXAMINERS
REFERENCE INDEX

July 20, 2020

TIME	AGENDA
9:00	Executive Session
10:30	Return to Open Session
10:40	Official Call to Order
10:41	Introduction of Audience Members
10:42	Approval of Minutes
10:42	Report of Board Counsel
12:06	Report of Board Administrator
12:10	Miscellaneous
12:18	Adjournment

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