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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 CRANE OPERATORS
VIA TELECONFERENCE**

TIME: 10:31 A.M.

PENNSYLVANIA DEPARTMENT OF STATE

July 23, 2020

State Board of Crane Operators
July 23, 2020

BOARD MEMBERS:

Michael A. Becker, Chair, Professional Member
K. Kalonji Johnson, Commissioner, Bureau of
Professional and Occupational Affairs
Andrew S. Goulet, Professional Member
Daniel R. Haulman, Professional Member
F. Allan "Buddy" Mauger Jr., Public Member
Brian M. Schmoyer, Professional Member

BUREAU PERSONNEL:

Dean F. Picarella, Esquire, Board Counsel
Colby B. Widdowson, Esquire, Board Prosecution Liaison
Amanda Li, Board Administrator
Theodore Stauffer, Executive Secretary, Bureau of
Professional and Occupational Affairs
Andrew LaFratte, MPA, Policy Office, Department of
State
Marc Farrell, Deputy Policy Director, Department of
State

ALSO PRESENT:

Doug K. Marsico, Esquire, Caldwell & Kerns, P.C.
Graham Brent, National Commission for the
Certification of Crane Operators Foundation
Jen Smeltz, Executive Director, Consumer Protection
and Professional Licensure Committee
Neil Tolson, Executive Director, Electrical Industry
Certifications Association
Richard Thompson, National Commission for the
Certification of Crane Operators

1 ***

2 State Board of Crane Operators

3 July 23, 2020

4 ***

5 The regularly scheduled meeting of the State
6 Board of Crane Operators was held on Wednesday, July
7 23, 2020. Michael A. Becker, Chair, Professional
8 Member, called the meeting to order at 10:31 a.m.]

9 ***

10 CHAIR BECKER:

11 Do I have a motion to start the meeting?

12 MR. JOHNSON:

13 So moved.

14 CHAIR BECKER:

15 Do I have a second?

16 MR. GOULET:

17 Second.

18 CHAIR BECKER:

19 Motion passes.

20 [The motion carried unanimously.]

21 ***

22 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
23 9:00 a.m. the Board entered into Executive Session
24 with Dean F. Picarella, Esquire, Board Counsel, for
25 the purpose of conducting quasi-judicial deliberations

1 on a number of matters that are currently pending
2 before the Board and received the advice of counsel.
3 The Board returned to open session at 10:31 a.m.]

4

5 [Dean F. Picarella, Esquire, Board Counsel, noted the
6 meeting was being recorded, and voluntary
7 participation constitutes consent to being recorded.

8

Mr. Picarella referred to Section 301(1) of the
9 Crane Licensure Act, where the Board is required to
10 meet at least four times a year in Harrisburg, noting
11 the requirement had been waived with the disaster
12 declaration from Governor Wolf on March 17, 2020.]

13

14 Introductions

15 [Chair Becker requested the introduction of the Board
16 members, staff, and audience in attendance.]

17

18 Approval of minutes of the May 27, 2020 meeting

19 CHAIR BECKER:

20 Next on the agenda is the approval of
21 minutes from the May 27, 2020 Board
22 meeting.

23

24

Do I have a motion to approve the
minutes from that meeting?

25 MR. MAUGER:

1 I make a motion to approve the minutes
2 from the May 27, 2020 Crane Board
3 Meeting.

4 MR. GOULET:

5 I second that motion.

6 CHAIR BECKER:

7 All in favor, say aye. Opposed, say
8 nay.

9 [The motion carried unanimously.]

10 ***

11 Report of Prosecutorial Division

12 [Colby B. Widdowson, Esquire, Board Prosecution
13 Liaison, presented the Consent Agreement for Case No.
14 19-71-012646.]

15 ***

16 MR. PICARELLA:

17 I believe the Board will entertain a
18 motion to adopt the Consent Agreement
19 and Order for Case No. 19-71-012646.

20 MR. MAUGER:

21 I make a motion that we adopt the
22 Consent Agreement as drawn up at 19-71-
23 012646.

24 MR. HAULMAN:

25 I second that motion.

1 CHAIR BECKER:

2 All in favor, say aye. Opposed, say
3 nay.

4 [The motion carried unanimously.]

5 ***

6 Report of Board Counsel

7 [Dean F. Picarella, Esquire, Board Counsel, reviewed
8 the current open case list in the system. There are
9 currently eight disciplinary files open. We are in
10 good shape. Prosecution has done a good job of moving
11 files.

12 Mr. Picarella addressed the Act 41 exposure draft
13 now listed as proposed regulation 16A-7104 sent out to
14 stakeholders, noting he has not received any comments
15 as of today. He was drafting the preamble and
16 regulatory analysis form and would address any
17 comments received or move forward if nothing was
18 received by August 8, 2020.

19 Mr. Picarella mentioned that he continues to
20 review and revise the Act 48 regulation regarding
21 citation authority.

22 Mr. Picarella addressed Act 53 of 2020, formerly
23 Senate Bill 637, which amended the Criminal History
24 Record Information Act (CHRIA) directed toward
25 licensing boards and commissions regarding when the

1 Board may or may not use a criminal conviction as a
2 basis for a denial of a license. He stated it also
3 prohibits consideration of juvenile adjudications and
4 gives preliminary determinations on requests from
5 respective licensees as to whether a criminal
6 conviction would cause any issues with being licensed.

7 Mr. Picarella stated the Board can use crimes
8 directly related to the profession as a basis for
9 discipline or refuse a license under CHRIA. He noted
10 the definition of a crime directly related to the
11 profession, which is "nature of the criminal conduct
12 for which the person was convicted and has direct
13 bearing on the fitness or ability to perform a
14 profession, trade, or occupation for which the
15 individual seeks licensure."

16 Mr. Picarella commended the Board for being
17 fairly good with giving people convicted of certain
18 crimes the chance to be rehabilitated and gain
19 employment.

20 Mr. Picarella stated the act takes effect January
21 1, 2021, and the Board will need to put together a
22 list of criminal convictions directly related to the
23 profession. He commented that the Board traditionally
24 has looked at many crimes that may affect the person's
25 ability to operate a crane in a safe manner, including

1 drug-related convictions or driving under the
2 influence (DUI).

3 Mr. Picarella will be reviewing crime codes with
4 other people and Board members to provide a list of
5 crimes directly related to the profession. He noted
6 the Board should not consider good moral character or
7 crimes of moral turpitude and unethical or dishonest
8 practices under CHRIA.

9 Mr. Picarella explained this as a two-tier
10 system, where the first tier involves the crime being
11 on the list. He mentioned rebuttable presumption,
12 where the person could show they are not a risk to the
13 health and safety of clients or the public even though
14 the crime was on the list.

15 Mr. Picarella addressed the second tier, which is
16 an individualized assessment, for individuals who have
17 a criminal conviction that was not on that list.

18 Mr. Picarella commented that the act does allow
19 for automatic suspensions for felony drug convictions
20 and compared the old CHRIA version with the new CHRIA.
21 He stated the old CHRIA version would allow any felony
22 conviction or misdemeanor crimes directly related to
23 the profession to be a basis for discipline in
24 Pennsylvania. He stated the new CHRIA version
25 lessened that for felony convictions to felony drug

1 trafficking-type offenses defined in the act.

2 Mr. Picarella referred to Section 13(a)(4) of the
3 controlled substance act, which would not apply to the
4 Board because it deals with the dispensing and
5 delivery of prescriptions by health practitioners or
6 assistants.

7 Mr. Picarella stated Section 13(a)(30) regarding
8 manufacture, delivery, or possession could have
9 ramifications for the Board depending on the amount of
10 drugs the person was convicted of having on their
11 person.

12 Mr. Picarella stated Section 13(a)(37) regarding
13 the possession by any person other than a registrant
14 of more than 30 doses labeled as a dispensed
15 prescription or more than 3 trade packages of any
16 anabolic steroids listed in the act may also have
17 ramifications for the Board.

18 Mr. Picarella explained, under the new CHRIA
19 version, the automatic suspension for the Board would
20 be limited but the Board would still be able to
21 discipline them under normal disciplinary procedures
22 for other drug convictions.

23 Mr. Picarella addressed preliminary
24 determination, where an individual with a criminal
25 history but unable to tell by the Board's list whether

1 they may have issues getting a license is allowed to
2 petition the Board to make a preliminary
3 determination.

4 Mr. Picarella stated there is a filing fee of
5 \$45, which cannot be waived if certain conditions
6 occur or are present. He commented that the Board has
7 45 days to issue a preliminary determination as to
8 whether the person will be barred or subject to
9 discipline from the Board for having that conviction
10 before they go through any licensure expense.

11 Mr. Mauger offered to review the crimes codes and
12 provide a list of applicable items.

13 Mr. Picarella congratulated Commissioner Johnson
14 on his permanent position.

15 Chair Becker also congratulated Commissioner
16 Johnson.]

17

18 Report of Commissioner

19 [K. Kalonji Johnson, Commissioner, Bureau of
20 Professional and Occupational Affairs, congratulated
21 members who have been successfully reconfirmed. He
22 encouraged members who are up for reappointment to
23 seek that and offered to provide support and resources
24 by contacting the Director of the Office of
25 Intergovernmental Affairs.

1 Commissioner Johnson noted Jen Smeltz, Executive
2 Director for the Senate Consumer Protection and
3 Professional Licensure Committee, has been a great
4 colleague to work with in the legislature.

5 Commissioner Johnson mentioned looking at all of
6 the boards individually this year and finding
7 synergies in terms of making sure the regulations are
8 adequately addressing the intent of the practice acts
9 and making sure communication with legislators was
10 synonymous in finding the best avenues and platforms
11 for mediating any concerns.

12 Commissioner Johnson thanked Ms. Li and program
13 staff for their fine work throughout the challenging
14 last several weeks. He also acknowledged Deputy
15 Policy Director Marc Farrell and Andrew LaFratte from
16 the policy office, who have been largely responsible
17 for a lot of the successes in making sure the Boards
18 and Board regulations met the needs of citizens
19 throughout this pandemic.

20 Commissioner Johnson mentioned that board counsel
21 and prosecutorial counsel continue to work through
22 this pandemic and made the transition as seamlessly as
23 possible in terms of making sure services are
24 available for folks who need to be addressed through
25 administrative and in-person hearings.

1 Commissioner Johnson ensured the Board the
2 administrative proceedings and access through audio
3 and visual platforms was available to address the
4 needs of the public and the regulated communities.]

5 ***

6 Report of Board Chair - No Report

7 ***

8 Report of Board Administrator

9 [Amanda Li, Board Administrator, noted the need for
10 discussion regarding practical exams and national
11 certification examinations on certain types of cranes.

12 Mr. Goulet mentioned researching exams taken with
13 digger derricks or exams taken on cranes that do not
14 meet the American Society of Mechanical Engineers
15 (ASME) B30.5 requirement. He stated a lot of other
16 states are using the Occupational Safety and Health
17 Administration (OSHA) 1427 requirement for their state
18 licensing requirements. He commented the definition
19 of crane is different between OSHA 1400 and ASME
20 B30.5.

21 Mr. Goulet mentioned that other states do not
22 have the ASME B30.5 requirement and are able to take
23 the practical exam on a digger derrick and obtain
24 certification and state licensure. He questioned how
25 the Board wants to proceed when it comes to Act 41

1 with that information. He noted Pennsylvania's
2 statute does not really comply with 1 ton or 2000
3 pounds in the OSHA 1400 definition of a crane.

4 Mr. Picarella noted the importance under Act of
5 determining that the individual's path to licensure is
6 substantially equivalent to Pennsylvania, which is the
7 individual's burden to show by sending information
8 when applying.

9 Marc Farrell, Deputy Policy Director, Department
10 of State, questioned whether other states are stricter
11 or less strict compared to Pennsylvania.

12 Mr. Goulet commented that states vary, but no
13 other state that has a 15-ton requirement like
14 Pennsylvania. He noted that individuals who receive
15 their certification and state license in a state with
16 a 10-ton requirement will not comply with
17 Pennsylvania.

18 Mr. Goulet noted OSHA and ASME B30.5 have
19 requirements that an operator must be certified for
20 anything over 1 ton or 2000 pounds, but Pennsylvania
21 does not require individuals to be state licensed
22 until they operate a 15-ton crane, where they
23 technically can operate a 14-ton crane in Pennsylvania
24 without being licensed as the statute currently
25 allows.

1 Mr. Goulet explained that most states require an
2 accredited crane certification and do not look at the
3 practical exam because they follow the OSHA
4 requirement of over 2000 pounds.

5 Mr. Goulet suggested 1926.1427(f) regarding
6 employer evaluations be included in the statute, where
7 every employer has to evaluate that individual on that
8 specific crane, and OSHA requires that evaluation to
9 be with the operator at all times on that particular
10 crane.

11 Mr. Picarella questioned whether Mr. Goulet meant
12 including it as part of Act 41 or changing something
13 in the regulation.

14 Mr. Goulet suggested changing it in the
15 regulation as well as including the OSHA requirement.
16 He stated it is the Board's job to make sure
17 individuals are state licensed as well as certified to
18 operate a crane. He explained that there are people
19 who are operating cranes that are under 15 tons or
20 digger derricks that have maybe a 70,000-pound
21 capacity with just an auger on the side and operating
22 as a crane, but the board is not requiring them to
23 have a state license.

24 The importance of looking at all crane types when
25 delving into certain areas, including articulating

1 cranes was noted. The regulation requirements for the
2 state are a B30.5 crane, B30.3 tower crane, or B30.20
3 self-erecting tower crane.

4 It was noted a decision came about in August or
5 September of 2016 regarding digger derricks, where the
6 Board directed toward B30.5. OSHA considers a crane
7 anything that moves and loads either vertically or
8 horizontally using a hook with exemptions being a
9 forklift, telehandler, excavator, etc. Individuals
10 received citations under OSHA for using rotating
11 wreckers for setting air conditioning units, electric
12 motors, etc., which is considered construction.

13 Chair Becker offered to find information and
14 obtain all of the facts before having a committee
15 investigate and bring it to the Board.

16 Mr. Goulet offered to work with Chair Becker in
17 determining how to proceed.

18 Ms. Li noted crane renewal will go into effect
19 within the next month or two, which will be similar or
20 exactly the same as last year through the Pennsylvania
21 Licensing System (PALS) online.]

22 ***

23 Adjournment

24 CHAIR BECKER:

25 I ask for a motion that we adjourn the

1 July 23, 2020 meeting of the
2 Pennsylvania State Board of Crane
3 Operators?

4 MR. GOULET:

5 I make a motion.

6 MR. JOHNSON:

7 Second.

8 CHAIR BECKER:

9 All in favor, say aye. Opposed, nay.

10 [The motion carried unanimously.]

11 ***

12 [The State Board of Crane Operators Meeting adjourned
13 at 11:15 a.m.]

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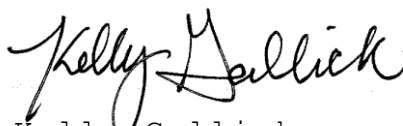
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CERTIFICATE

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2
3 I hereby certify that the foregoing summary
4 minutes of the State Board of Crane Operators meeting,
5 was reduced to writing by me or under my supervision,
6 and that the minutes accurately summarize the
7 substance of the State Board of Crane Operators
8 meeting.

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12 Kelly Gallick,

13 Minute Clerk

14 Sargent's Court Reporting
15 Service, Inc.
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STATE BOARD OF CRANE OPERATORS
REFERENCE INDEX

July 23, 2020

TIME	AGENDA
9:00	Executive Session
10:31	Return to Open Session
10:31	Official Call to Order
10:34	Introductions
10:37	Approval of Minutes
10:38	Report of Prosecutorial Division
10:39	Report of Board Counsel
10:56	Report of Acting Commissioner
11:02	Report of Board Administrator
11:15	Adjournment

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