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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 VIDEOCONFERENCE**

TIME: 10:30 A.M.

PENNSYLVANIA DEPARTMENT OF STATE

November 18, 2020

1 State Board of Crane Operators

2 November 18, 2020

3 ***

4 The regularly scheduled meeting of the State
5 Board of Crane Operators was held on Wednesday,
6 November 18, 2020. Michael A. Becker, Chair,
7 Professional Member, called the meeting to order at
8 10:30 a.m.

9 ***

10 [Dean F. Picarella, Esquire, Senior Board Counsel,
11 noted the meeting was being recorded, and those who
12 remained on the call were giving their consent to
13 being recorded.]

14 ***

15 [Dean F. Picarella, Esquire, Senior Board Counsel,
16 referred to Section 301(1) of the Crane Licensure Act,
17 noting the requirement had been waived during the
18 COVID-19 emergency declaration from Governor Wolf on
19 March 17, 2020, allowing videoconferences.]

20 ***

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

1 currently pending before the Board and to receive the
2 advice of counsel. The Board returned to open session
3 at 10:30 a.m.]

4 ***

5 Roll Call/Introductions

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

8 ***

9 Approval of minutes of the September 23, 2020 meeting

10 CHAIR BECKER:

11 Next on the agenda is the approval of
12 the minutes. Could I have someone make
13 a motion for the approval of the
14 September 23 minutes?

15 [The Board discussed corrections to the minutes.]

16 CHAIR BECKER:

17 With those changes, do we have a motion
18 to approve the September 23 minutes?

19 MR. SCHMOYER:

20 I make a motion we approve the September
21 23 minutes.

22 MR. HAULMAN:

23 I'll second that motion.

24 CHAIR BECKER:

25 All in favor, say aye. Any who do not

1 approve the minutes, say nay.

2 [The motion carried. Michael Becker recused himself
3 from voting on the motion.]

4 ***

5 Report of Prosecutorial Division

6 [Colby B. Widdowson, Esquire, Board Prosecution
7 Liaison, presented the Consent Agreement for Case No.
8 19-71-006408.]

9 ***

10 MR. PICARELLA:

11 This matter was previously discussed in
12 Executive Session this morning.

13 Based upon the presentation and
14 discussions in Executive Session, I
15 believe the Board would entertain a
16 motion to accept the Consent Agreement
17 as proposed at Case No. 19-71-006408.

18 Do we have such a motion?

19 MR. GOULET:

20 So moved.

21 MR. HAULMAN:

22 I'll second the motion.

23 CHAIR BECKER:

24 I would like to see if we could have a
25 vote on whether we accept as proposed.

1 All those in favor, say aye. Opposed,
2 say nay.

3 [The motion carried unanimously. The caption in that
4 matter is the Commonwealth of Pennsylvania BPOA v.
5 Daniel M. DeAugustine, L.C.O., Case No. 19-71-006408.]

6 ***

7 Report of Board Counsel

8 [Dean F. Picarella, Esquire, Senior Board Counsel,
9 addressed progress on regulations. He referred to
10 16A-7104 regarding Act 41 of 2019, noting a regulation
11 package was prepared and forwarded for promulgation
12 consistent with the Board's direction at the last
13 meeting.

14 Mr. Picarella referred to 16A-7103 under Act 48
15 regarding citation authority, noting it continued to
16 move through the process. He stated the regulation
17 was within the 30-day public comment period, which
18 would close on November 23, 2020. He noted receiving
19 no comments on that regulation.

20 Mr. Picarella addressed prior discussion
21 regarding changing the definition of "crane" to
22 include digger derricks. He stated the definition was
23 also in the Act at Section 102, where digger derricks
24 are not cranes, and given that it was in the Act as
25 well, the definition would need to go through a

1 legislative change. He questioned whether the Board
2 would like him to pursue a legislative change to the
3 definition, so digger derricks could be used to test
4 for certification.

5 Mr. Schmoyer did not have an issue with digger
6 derricks being used as long as it could be configured
7 as a crane for practical exams. He did express
8 concerns with technology changes, manufacturer
9 equipment types, and design changes. He was also
10 concerned about drawing a line as to what would be
11 allowed to be used as a crane for practical exams.

12 Mr. Schmoyer commented that they are the State
13 Board of Crane Operators, and it must be set up as a
14 B30.5 piece of equipment according to the way the Act
15 is written. He is concerned with what was involved in
16 changing it and what other avenues needed to be
17 reviewed, so it would not create an issue later.

18 Mr. Goulet stated additional requirements, other
19 than the accreditation and OSHA requirements, needed
20 to be clearly listed. He suggested continuing to
21 review the requirement in order to be fair no matter
22 where an individual would receive certification.

23 Mr. Picarella tabled the issue until Mr. Goulet
24 and Mr. Schmoyer examine the matter further and
25 present it at a future Board meeting.

1 Mr. Picarella noted prior discussion in Executive
2 Session regarding the initial license application with
3 certification that the Board would vote on later.

4 Mr. Picarella noted that Mr. Becker, Mr. Haulman,
5 and Mr. Schmoyer will be entering USQ status as Board
6 members on December 8, 2020. He stated Mr. Haulman
7 and Mr. Schmoyer already started the reappointment
8 process, and Mr. Becker may not be rejoining the Board
9 but will serve out his USQ until replaced. He also
10 noted one public member position available on the
11 Board and suggested anyone interested in the position
12 to contact their legislators.]

13 ***

14 Report of Board Chair

15 [Michael A. Becker, Chair, Professional Member, noted
16 the need for nominations and election of Board
17 officers for 2021.]

18 ***

19 MR. PICARELLA:

20 At this moment, we would open the
21 nominations to succeed Mr. Becker as
22 Board chair.

23 Are there any nominations?

24 MR. GOULET:

25 I would like to nominate Mr. Haulman as

1 Board chair.

2 MR. SCHMOYER:

3 Second that.

4 CHAIR BECKER:

5 All those in favor of Mr. Haulman
6 becoming the 2021 Board chair, say aye.

7 Any opposed, say nay.

8 [The motion carried unanimously.]

9 ***

10 Applications

11 MR. PICARELLA:

12 Based upon our discussions in Executive
13 Session, I believe the Board will
14 entertain a motion to accept the
15 Application of Marc E. Wilson to become
16 a licensed crane operator.

17 Is there any such motion?

18 MR. HAULMAN:

19 I will make that motion that we should
20 accept the Application of Mr. Wilson and
21 approve him for a license.

22 MR. SCHMOYER:

23 I'll second that motion.

24 CHAIR BECKER:

25 All in favor of accepting Mr. Wilson's

1 application, say aye. Any opposed, say
2 nay.

3 [The motion carried unanimously.]

4 ***

5 Miscellaneous

6 Dean F. Picarella, Esquire, Board Counsel, noted
7 tentative 2021 meeting dates for the Board's review.

8 Ms. Li requested Board members notify her of any
9 issues with the meeting dates as soon as possible.]

10 ***

11 Report of Commissioner - Act 53 Discussion

12 [Cynthia K. Montgomery, Esquire, Deputy Chief
13 Counsel/Regulatory Counsel, Department of State,
14 presented to the Board to address the Act 53 list of
15 crimes. She stated Act 53 was signed into law on July
16 1, 2020, and slightly alters the way boards consider
17 criminal history record information.

18 Ms. Montgomery referred to § 3117 of Act 53, where
19 Commissioner Johnson, after consultation with the
20 licensing boards and representatives of the business
21 community with knowledge of the respective
22 professions, has the duty to publish a schedule of
23 criminal convictions that may constitute grounds to
24 refuse to issue; suspend; or revoke a license,
25 certificate, registration, or permit. She noted there

1 would be 29 separate lists for all of the boards and
2 commissions.

3 Ms. Montgomery referred to the Board's list of
4 crimes, stating that crimes identified by Board
5 counsel working with prosecuting attorneys as directly
6 related to the profession are marked with a number 1
7 next to the crime. She provided a definition of
8 "directly relates." She referred to § 3117, where the
9 schedule has to indicate which offenses the Board
10 deemed directly related to the profession.

11 Ms. Montgomery stated Commissioner Johnson has
12 the responsibility of publishing a notice of the
13 availability of the list of crimes and completion of
14 the schedule to be published in the *Pennsylvania*
15 *Bulletin* and on each board's website, along with
16 promulgating it as proposed rulemaking within 180 days
17 and as final rulemaking within 2 years.

18 Ms. Montgomery referred to § 3117, noting the
19 list is used by the Board for preparing preliminary
20 determinations, where individuals considering to enter
21 a particular occupation or profession could apply for
22 a preliminary determination to determine whether their
23 criminal history record information would be an
24 impediment to licensure. She noted the list is also
25 used in determining discipline and in determining

1 whether to refuse to issue a license, certificate,
2 registration, or permit.

3 Ms. Montgomery noted a two-stage process and
4 referred to § 3113 regarding determining whether the
5 criminal conviction directly relates to the
6 profession. She addressed rebuttable presumption,
7 where individuals convicted of crimes on the list of
8 offenses directly related to the profession would pose
9 a substantial risk to the health and safety of the
10 public or a substantial risk of further criminal
11 convictions. She mentioned the applicant or licensee
12 would have to demonstrate they do not pose such a risk
13 by showing evidence set forth in § 3113(c).

14 Ms. Montgomery emphasized that the list is to
15 provide transparency in the process, where individuals
16 seeking licensure know upfront what crimes the Board
17 believed are directly related to the profession.

18 Ms. Montgomery commented that Act 53 will offer a
19 best practices guide for individuals with a criminal
20 conviction to be able to acquire information of
21 obtaining a license and the information needed for a
22 hearing. She mentioned Board counsel worked with
23 prosecuting attorneys to review the crime codes, the
24 statute, and Act 53.

25 Ms. Montgomery addressed items listed with a

1 number 2 next to the crime and referred to § 3113(e)
2 regarding acts of violence. She stated an individual
3 may receive a license if it has been at least 3 years
4 from incarceration or 3 years from imposition of the
5 sentence, the individual has remained conviction-free,
6 and demonstrates significant rehabilitation.

7 Ms. Montgomery stated the Board would need to use
8 the factors provided in § 3113(c) and perform an
9 individualized assessment to determine licensure of
10 the individual.

11 Ms. Montgomery explained that a crime could come
12 before the Board if it is on the list, and it does not
13 mean the prosecution division could not bring it to
14 the Board's attention if it is not on the list. She
15 noted crimes of violence as set forth in § 3113(e) and
16 crimes identified by Board counsel and the prosecution
17 division as those that directly relate to the crane
18 operator profession.

19 Ms. Montgomery requested Board members review the
20 list of crimes to see whether they agree the items on
21 the list identified with a number 1 are directly
22 related to the crane operator profession and would
23 constitute grounds for denial of a license and whether
24 the Board has any additions or deletions.

25 Ms. Montgomery noted the list was sent to

1 interested parties and stakeholders but did not
2 receive any written comments. She offered attendees
3 at the meeting to provide comments.

4 Commissioner Johnson appreciated Ms. Montgomery's
5 comprehensive overview of Act 53 and offered to
6 address any specific questions from the Board.

7 Ms. Montgomery also offered to answer any
8 questions concerning Act 53 but deferred to Board
9 counsel with any questions regarding specific crimes
10 on the list.

11 Mr. Picarella noted Commissioner Johnson has the
12 duty to continually modify the lists as necessary,
13 informing the Board that the list could be changed in
14 future if they wish to do so.

15 Ms. Montgomery emphasized that just because a
16 crime did not appear on the list did not mean the
17 Board would not see it. She commented that crimes
18 were being identified by virtue of a conviction of
19 that crime representing that the individual would pose
20 a substantial risk to the public or substantial risk
21 of further criminal convictions, where the criminal
22 conduct has a direct bearing on the fitness or ability
23 to perform duties and functions of a crane operator.

24 Commissioner Johnson stated future iterations of
25 the list would essentially be wrapped into the formal

1 regulatory process. He commented that future
2 additions or statutory changes would involve the
3 formal regulatory process.

4 Mr. Widdowson addressed disciplining current
5 licensees and requested the Board consider identifying
6 the crimes of violence that have been identified by a
7 number 2 on the list to identify some or all of those
8 crimes of violence as being directly related to the
9 practice of the profession.

10 Mr. Widdowson stated it was prosecution's
11 position that some of those offenses are directly
12 related to the practice of the profession and should
13 be identified as such. He also requested that the
14 crimes be identified as directly related to avoid any
15 questions in the future as to whether or not the
16 crimes are directly related.]

17 ***

18 COMMISSIONER JOHNSON:

19 I would humbly ask the Board to raise
20 the motion to accept this list as
21 presented for publication at the Board's
22 earliest convenience so that we may
23 begin the formal promulgation of a
24 regulatory package.

25 MR. PICARELLA:

1 consideration and allowing the presentation. He also
2 thanked Board counsel, Deputy Chief Counsel
3 Montgomery, and the prosecutorial division for all of
4 their work regarding curating the list. He commented
5 that he would put the list in to ensure publication
6 before December 26.]

7 ***

8 Adjournment

9 CHAIR BECKER:

10 Could I please get a motion to adjourn
11 the November 18, 2020 meeting of the
12 State Board of Crane Operators?

13 MR. SCHMOYER:

14 I make a motion to adjourn.

15 COMMISSIONER JOHNSON:

16 Second.

17 CHAIR BECKER:

18 All those who approve, say aye.

19 Opposed, say nay.

20 [The motion carried unanimously.]

21 ***

22 [The State Board of Crane Operators Meeting adjourned
23 at 11:34 a.m.]

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CERTIFICATE

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



Evan Bingaman,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF CRANE OPERATORS
REFERENCE INDEX

November 18, 2020

	TIME	AGENDA
1		
2		
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5		
6		
7		
8	9:00	Executive Session
9	10:30	Return to Open Session
10		
11	10:30	Official Call to Order
12		
13	10:33	Roll Call/Introductions
14		
15	10:36	Approval of Minutes
16		
17	10:37	Report of Prosecutorial Division
18		
19	10:43	Report of Board Counsel
20		
21	10:54	Report of Board Chairman
22		
23	10:55	Applications
24		
25	10:57	Miscellaneous
26		
27	11:00	Report of Commissioner - Act 53
28		Discussion
29		
30	11:34	Adjournment
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