State Board of Massage Therapy August 13, 2019

BOARD MEMBERS:

5 Becky D. Caufman, LMT, Chair 7 Nancy M. Porambo, MS, LMT, C

Nancy M. Porambo, MS, LMT, CNMT, NCTMB, Vice Chair, Professional Member

Kalonji Johnson, Acting Commissioner, Bureau of Professional and Occupational Affairs

Katelin Lambert, Deputy Commissioner, Bureau of Professional and Occupational Affairs

Camille Baughman, BS, MA, LMT, Professional Member Gloria E. Rosado, LMT, Professional Member - Absent Linda A. Chamberlain, MS, BSN, RN, CNDLTC, Secretary of Health designee - Absent

Jessica A. Nelson, Office of Attorney General designee Shea M. Rhodes, Esquire, Public Member - Absent Ellyn Jo Waller, Ed.D., Public Member

BUREAU PERSONNEL:

Thomas M. Davis, Esquire, Board Counsel
Monty J. Batson, Esquire, Board Prosecution Liaison
Carolyn DeLaurentis, Esquire, Deputy Chief Counsel,
Prosecution
Division

Marc Farrell, Deputy Policy Director, Department of State

Carol J. Niner, Board Administrator

ALSO PRESENT:

Edward Portley Jr., LMT, Just This Side of Heaven Massage & Continuing Education for Massage Therapists

Carolyn Hubert-Black, LMT, Continuing Education Provider

Natalie Cook, Associate, McNees-Winter Group LLC, representing the American Massage Therapy Association Pennsylvania Chapter

Kelly L. Givens, LMT, CR, American Massage Therapy Association

Fred I. Nault, LMT, American Massage Therapy Association

Nina M. Kottcamp, LMT, NCMT, Coordinator, Harrisburg Area Community College

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2 State Board of Massage Therapy

August 13, 2019

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The regularly scheduled meeting of the State

Board of Massage Therapy was held on Tuesday, August

13, 2019. Becky D. Caufman, LMT, Chair, called the

meeting to order at 9:34 a.m.

K. Kalonji Johnson, Acting Commissioner, Bureau of Professional and Occupational Affairs, was not present at the commencement of the meeting.

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[Chair Caufman requested that all cell phones be turned off.

Chair Caufman requested audience members register. She also requested the introduction of Board members, staff, and audience.]

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19 Report of Board Prosecution

20 | [Monty J. Batson, Esquire, Board Prosecutor, presented

21 the Consent Agreement for File No. 16-72-10203.

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23 [K. Kalonji Johnson, Acting Commissioner, Bureau of

24 Professional and Occupational Affairs, entered the

25 | meeting at 9:38 a.m.]

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2 | Appointment - Carolyn A. DeLaurentis, Esquire, Deputy

3 Chief Counsel, Prosecution Division Presentation

4 [Carolyn A. DeLaurentis, Esquire, Deputy Chief

5 | Counsel, Prosecution Division, introduced herself and

6 provided a brief summary of her professional

7 background.]

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9 [K. Kalonji Johnson, Acting Commissioner, Bureau of

10 | Professional and Occupational Affairs, exited the

11 | meeting at 9:41 a.m.]

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13 [Ms. DeLaurentis provided information for the

14 | Pennsylvania State Board of Massage Therapy for

15 FY 2018-2019, noting that 233 files were opened with

16 261 open files as of July 1, 2019.

17 Ms. DeLaurentis noted 33 warning letters, 8

18 suspensions, 2 voluntary surrenders, 3 probations, and

19 | 1 revocation were issued.

20 Ms. DeLaurentis noted 69 immediate temporary

21 suspensions in the prosecution division in

22 FY 2018-2019. She commended the Bureau of Enforcement

23 and Investigation (BEI) for doing their best to serve

24 the immediate temporary suspensions the same day. She

25 | noted 11,359 open cases as of July 1, 2019. She

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reviewed the last fiscal year, noting that 14,030 cases were opened, which was an increase from 12,604 the prior year. She also noted 13,270 closed files the last fiscal year.
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5 Ms. DeLaurentis thanked Mr. Batson for his 6 quidance on cases.

Ms. DeLaurentis discussed the Office of General Counsel's Mediation Program, which is available at no cost to the respondent or the Board. She stated the consent agreements will reflect whether the cases were a result of mediation.]

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13 [K. Kalonji Johnson, Acting Commissioner, Bureau of
14 Professional and Occupational Affairs, reentered the
15 meeting at 9:45 a.m.]

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[Ms. DeLaurentis addressed the Pennsylvania Justice Network (JNET), where the prosecution division receives an alert when licensees from any of the Boards or Commissions are charged with a crime.

Ms. Baughman requested Ms. DeLaurentis discuss the Pennsylvania Licensing System (PALS) regarding anonymity of complaints.

Ms. DeLaurentis explained that individuals who submit a complaint and wish to remain anonymous could

write "anonymous" in place of their name. She noted that all complaints are investigated, even if they are received from anonymous sources or based on hearsay.

Chair Caufman questioned whether there were enough prosecutors for massage therapy cases.

Ms. DeLaurentis commented that there are enough prosecutors for the massage therapy cases, noting Mr. Batson as the liaison. She mentioned being down a couple of prosecutors in the division right now but is hopeful to be fully staffed in the next couple of months.]

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13 Report of Acting Commissioner

[K. Kalonji Johnson, Acting Commissioner, Bureau of Professional and Occupational Affairs, informed the Board that Governor Wolf signed House Bill 1172, which

17 is now Act 41 and being called the enhanced

18 endorsement legislation. He stated the bill is

19 intended to provide the process of licensure by

20 endorsement for all of the Boards and Commissions

21 under the Department of State. He stated the bill

22 also allows for provisional licensure, should the

23 Board choose to grant provisional licenses. He

24 commented that the Board has the authority to grant a

25 provisional license that allows individuals to work

while completing certain requirements for licensure. 1

Acting Commissioner Johnson mentioned that Act 41 is similar to a temporary license permit. He stated the Board is required under Act 41 to promulgate regulations, which detail the substantial equivalency. He noted that the Board also has the discretion to determine competency.

Acting Commissioner Johnson stated individuals who are eligible under Act 41 need to be actively licensed and absent of any discipline or any convictions related to the profession.

Acting Commissioner Johnson noted working closely with administration and information technology (IT) staff to create functionality with PALS to allow for provisional licensing. He noted the need for the Board to establish substantial equivalency and what the guidelines will be for determining competency.]

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Report of Board Chair - No Report 19

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21 Report of Board Administrator - No Report

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23 Approval of minutes of the June 11, 2019 meeting CHAIR CAUFMAN:

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Let's take a look at the agenda for

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approval of the draft minutes from the
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                  June 11, 2019 meeting.
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   [The Board discussed corrections to the minutes.]
   CHAIR CAUFMAN:
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                  Other than that, any additions or
                  corrections? I need a motion to accept
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                  the minutes as presented.
   MS. PORAMBO:
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                  I make a motion.
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   CHAIR CAUFMAN:
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                  Nancy.
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   DR. WALLER:
                  Second.
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   CHAIR CAUFMAN:
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                  Ellyn Jo seconds. All those in favor?
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                  All those opposed? Any abstentions?
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   [The motion carried unanimously.]
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   Report of Board Regulatory Counsel
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   [Thomas M. Davis, Esquire, Board Regulatory Counsel,
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   addressed Act 41, noting the importance of Board
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   discussion regarding language defining "substantially
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   similar" so the applications subcommittee has
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   something to go on when the regulations are put in
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   place. He reviewed the conditions an applicant must
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satisfy before the Board issues a license.

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Mr. Davis commented that Pennsylvania requires 600 hours of education, where some other states only require 500. He questioned whether the 500 hours would be substantially equivalent to the Board's 600 hours if the Board receives an application from an individual in one of those states requiring 500 hours and meets the second requirement, which is having experience in a profession or occupation for at least two of the five years preceding the date of the application.

Mr. Davis noted that step one would be to determine whether or not 500 hours would be substantially similar. He stated if the Board does not think it is substantially equivalent, then there would be the possibility of a provisional license.

Acting Commissioner Johnson commented that Act 41 goes into effect August 29, 2019, and applicants will be applying who will be reviewed on a case-by-case basis.

Chair Caufman noted the importance of getting Ms. Porambo and Ms. Niner some assistance regarding quidelines.

Marc Farrell, Deputy Policy Director, Department of State, noted substantial equivalency to be an

1 analysis done apart from the applicant's
2 qualifications and more of the other state compared to

3 our state's requirements. He noted that competency is

4 where the Board can get into the applicant's

5 qualifications, and if the Board is going to make a

6 determination that 500 is not enough, that will be the

7 case then for every applicant from that state.

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Acting Commissioner Johnson addressed promulgating regulations and setting a standard for substantial equivalency to streamline the process through the applications subcommittee.

Ms. Porambo did not see a problem with anatomy, physiology, or pathology but does see issues with how long a person has been practicing and experience.

Mr. Davis noted the process to be more of a checklist, looking at what the state requires and focusing on whether or not the Board believes 500 hours to be substantially equivalent and move onto whether or not they meet the two-year requirement.

Dr. Waller suggested looking at what those 500 hours encompass, noting that there could be states that say 600 hours but it is all online.

Mr. Davis suggested looking at the hours, the number itself and see how that breaks down state by state and possibly putting it in the regulations. He

- noted that currently it is just a guideline for the applications subcommittee for the stopgap measure until regulations are in place.
- 4 Mr. Davis suggested further discussion over the 5 next couple of Board meetings.
- Ms. Niner wanted clarification regarding ignoring the online education portion of 500 hours.
 - Mr. Davis suggested what Ms. Niner previously noted regarding education, where it needs to be a minimum of 500 hours in person.

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- Chair Caufman noted enabling administration and the subcommittee to go forward at this point.
 - Mr. Davis addressed the provisional license process. He commented that individuals who the applications subcommittee approve due to meeting the requirements of substantially similar and have at least two years of experience and a clean criminal background check would be allowed an encumbered license.
 - Mr. Davis commented that individuals not meeting the requirements gives the applications subcommittee the ability to say go ahead and issue them a provisional license, but the individual must complete the Pennsylvania requirements within the next year to receive a true license. He noted that a provisional

license will expire if the individual is unable to do those requirements within the set time.

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Acting Commissioner Johnson stated a provisional license is treated like any other license, where an individual would be subject to discipline if they were to practice one day beyond the expiration of the provisional license.

Mr. Davis suggested individuals who are granted provisional licenses should be required to meet the Commonwealth standards, and the Board agreed.

Mr. Davis suggested allowing the applications subcommittee to direct Board counsel to handle this issue outside of the Board meetings and draft orders in relation to these provisional licenses, and the Board agreed. Should the applications committee suggest that a provisional license should be awarded in any case, Mr. Davis will draft a Board Order based on the specifications of the applications committee.

Mr. Davis questioned whether the Board wants provisional denials to go before one member of the applications subcommittee or before both the primary and the secondary and then the Board.

Chair Caufman suggested two members for provisional denials for protection of the person.

Ms. Niner noted Ms. Porambo as the Education

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Review Committee member and Chair Caufman as the backup.
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Mr. Davis explained that the Board would see more applications if only one person suggested a provisional denial. He noted that only if both agree there should be a provisional denial, then it would go before the Board for a vote. He stated there will not be a single provisional denial issued unless there is a Board vote involved, and the Board agreed.

Mr. Davis suggests states requiring 500 in-person education hours to have requirements substantially equivalent to that of the Commonwealth, and the Board agreed.]

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15 [The Board recessed from 10:31 a.m. until 10:39 a.m.]

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17 Report of Board Regulatory Counsel (Continued)

18 [Thomas M. Davis, Esquire, Board Regulatory Counsel,

19 addressed proposed regulation 16A-725 known as the

20 General Revisions regulation. He noted prior

21 discussion the English language requirement and

22 professional dress requirement.

23 Mr. Davis sent an internal memo for review by the 24 Governor's Policy Office and received a reply stating,

25 | "Please be advised that any rulemaking package

presented to the Governor's Policy Office (GPO) for
review will not be approved if it includes provisions
related to either imposing English language
proficiency requirements or establishing dress code
standards." He commented that he would make the
appropriate revisions to proposed regulation 16A-725.

Mr. Davis suggested the Board should move forward with the proposed regulation after the revisions are made, stating that the English language requirement and professional dress requirement could be revisited in the future, should the Board believe it to be appropriate. Mr. Davis suggested releasing an exposure draft that goes to interested parties and stakeholders if the Board decides to move forward with the regulation minus those two sections. He noted that after comments are received from those professional organizations and stakeholders, their comments would be discussed in a Board meeting before the public and the proposed regulation could be revised as the Board sees fit. Afterward, a draft would be printed in the PA Bulletin for the general public to review, giving the licensure base and general public the ability to comment at that time.]

25 MR. DAVIS:

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The reason I state it as such is because I got information from the Policy Office several weeks ago that the English language requirement would probably be disputed. If you notice, on your agenda, the annex posted to the current agenda does not have the English language requirement in it. It does still have the professional dress language and to refresh your recollection on that, the regulation that is currently on the books says a massage therapist shall be clean, fully clothed, and professional in dress and appearance.

As the proposed regulation currently reads, a massage therapist must, "be clean, fully clothed, and professional in dress and appearance.

I believe the Chair would accept a motion authorizing counsel to delete the disputed professional dress language and release an exposure draft of proposed regulation 16A-725, otherwise known as the general revisions.

The reason I state it as such is because I got information from the

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Massage therapists wearing bathing 1 attire, lingerie, or any clothing that 2 3 is transparent or translucent will not 4 be considered to be professional in 5 dress and appearance. A massage 6 therapist shall wash the massage therapist's hands immediately before and after massaging each client." What I am 9 suggesting is that at the request of the 10 Governor's Policy Office we delete the 11 following sentence: "Massage therapists 12 wearing bathing attire, lingerie, or any 1.3 clothing that is transparent or translucent will not be considered to be 14 15 professional in dress and appearance." 16 17 CHAIR CAUFMAN: 18 The Chair will accept a motion from the 19 floor that gives Tom the ability to 2.0 continue forward and do what he needs to 2.1 do. 2.2 Do we give him permission to do 2.3 that? 2.4 MS. PORAMBO:

I make a motion.

1 CHAIR CAUFMAN:

2 Nancy makes a motion.

3 DR. WALLER:

4 I second.

5 CHAIR CAUFMAN:

6 Ellyn Jo seconds. All those in favor?

7 [The Board discussed the motion.]

8 CHAIR CAUFMAN:

9 Ellyn Jo seconds. All those in favor?

10 All those opposed? Any abstentions?

11 [The motion carried unanimously.]

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13 [Carol J. Niner, Board Administrator, questioned

14 whether the Board still required education from an

15 accredited program for Act 41 for the 500 hours,

16 substantially equivalent.

17 Mr. Davis commented that the Board does not

18 currently require that applicants complete a program

19 at accredited schools, as they may also attend PA

20 private licensed schools or equivalent as determined

21 by the Board. He noted that under Act 41 the Board

22 has to find out whether or not the state in which the

23 applicant is currently licensed requires applicants to

24 graduate from accredited colleges or universities,

25 private licensed schools, etc.

Chair Caufman noted her appreciation for the work 1 2 of the administration regarding the confusion with 3 reciprocity for decades.] 4 5 [Pursuant to Section 708(a)(5) of the Sunshine Act, at 6 10:54 a.m. the Board entered into Executive Session with Thomas Davis, Esquire, Board Counsel, for the purpose of conducting quasi-judicial deliberations and to receive advice of Counsel on the matters upon which 10 the Board shall later vote. The Board returned to 11 open session at 12:12 p.m.] * * * 12 13 [K. Kalonji Johnson, Acting Commissioner, Bureau of 14 Professional and Occupational Affairs, exited the 15 meeting during executive session.] * * * 16 17 MOTIONS 18 MR. DAVIS: 19 Pursuant to Section 708(a)(5) of the 2.0 Sunshine Act, the Board met in Executive Session for the purpose of conducting 2.1 2.2 quasi-judicial deliberations and to 2.3 receive advice of Counsel on the matters 2.4 upon which the Board is about to vote. 25 Number 4 on the agenda. Based on

19 the Board's discussions in executive 1 2 session, I believe the Chair would 3 accept a motion authorizing counsel to draft an Adjudication and Order 4 5 consistent with the Board's discussion in the following matter: Application 6 for Licensure as a Massage Therapist of 8 Albert William Bowker Jr., File No. 18-9 72-07407. 10 CHAIR CAUFMAN: 11 From the floor, Nancy? MS. PORAMBO: 12 So moved. 13 CHAIR CAUFMAN: 14 15 Second, please. 16 MS. BAUGHMAN: 17 Second. CHAIR CAUFMAN: 18 Camille seconds. All those in favor? 19 20 All those opposed? Any abstentions? 21 [The motion carried unanimously with Chair Caufman 22 voting in favor as well.] 23 * * * 2.4 MR. DAVIS: 25 Number 5 on the agenda. Based on the

20 Board's discussions in executive 1 2 session, I believe the Chair would 3 accept a motion to adopt as final the 4 proposed Adjudication and Order of the 5 hearing examiner in the following 6 matter: Commonwealth BPOA vs. Julie E. 7 Masters, File No. 17-72-09808. MS. BAUGHMAN: 9 So moved. 10 CHAIR CAUFMAN: 11 Camille, first. MS. PORAMBO: 12 13 Second. CHAIR CAUFMAN: 14 Nancy seconds. All those in favor? All 15 16 those opposed? Any abstentions? [The motion carried unanimously with Chair Caufman 17 18 voting in favor as well.] * * * 19 2.0 MR. DAVIS: 2.1 Number 6 on the agenda. Based on the Board's discussions in executive 2.2 2.3 session, I believe the Chair would 2.4 accept a motion to adopt as final the 25 proposed Adjudication and Order of the

21 hearing examiner in the following 1 2 matter: Application for Massage 3 Therapist Licensure of Yan Li, File No. 18-72-009031. 4 MS. BAUGHMAN: 5 So moved. 6 7 DR. WALLER: Second. 9 CHAIR CAUFMAN: 10 Ellyn Jo seconds. All those in favor? 11 All those opposed? Any abstentions? 12 [The motion carried unanimously with Chair Caufman voting in favor as well.] 13 * * * 14 15 MR. DAVIS: 16 Number 7 on the agenda. Based on the Board's discussions in executive 17 session, I believe the Chair would 18 19 accept a motion to adopt as final the 2.0 proposed Adjudication and Order of the 2.1 hearing examiner in the following 2.2 matter: Application for Massage 2.3 Therapist Licensure of Xingmeng Chen 24 Luse, File No. 18-72-007112. 25 MS. NELSON:

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                  So moved.
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   CHAIR CAUFMAN:
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                  Second?
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   MS. PORAMBO:
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                  Second.
   CHAIR CAUFMAN:
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                  Nancy seconds. All those in favor? All
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                  those opposed? Any abstentions?
   [The motion carried unanimously with Chair Caufman
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   voting in favor as well.]
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   MR. DAVIS:
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                  Number 8 on the agenda. Based on the
                  Board's discussions in executive
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                  session, I believe the Chair would
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                  accept a motion authorizing counsel to
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                  draft an Adjudication and Order
                  consistent with the Board's discussions
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19
                  in the following matter: Commonwealth
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                  BPOA vs. Serguei Vit Bogoutski, LMT,
                  File No. 18-72-011887.
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   MS. BAUGHMAN:
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                  I move.
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   MS. NELSON:
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                  Second.
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1 CHAIR CAUFMAN:

2 Camille first. Jessica seconds. All

3 those in favor? All those opposed?

4 abstentions?

5 [The motion carried unanimously with Chair Caufman 6 voting in favor as well.]

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8 MR. DAVIS:

Number 10 on the agenda. Based on the
Board's discussions in executive
session, I believe the Chair would

12 accept a motion denying the appeal and

adopting as final the order of the

14 hearing examiner in the following

matter: Citation issued to <u>Jonathan</u>

16 Eugene Deegan, File No. 18-72-006586.

17 MS. PORAMBO:

18 Motion.

19 DR. WALLER:

20 Second.

21 CHAIR CAUFMAN:

Nancy first. Ellyn Jo seconds. All

those in favor? All those opposed? Any

24 abstentions?

25 [The motion carried unanimously with Chair Caufman

24 voting in favor as well.] 1 * * * 2 3 MR. DAVIS: 4 Number 11 on the agenda. Based on the 5 Board's discussions in executive session, I believe the Board would 6 7 entertain a motion to adopt the Consent 8 Agreement at File No. 16-72-10203. 9 MS. NELSON: 10 I move. 11 CHAIR CAUFMAN: Jessica first. 12 MS. BAUGHMAN: 1.3 14 Second. 15 CHAIR CAUFMAN: 16 Camille seconds. All those in favor? All those opposed? Any abstentions? 17 18 [The motion carried unanimously with Chair Caufman 19 voting in favor as well. For the record, that is 20 Commonwealth BPOA vs. Megan Ann Yarnell, LMT.] * * * 21 2.2 MR. DAVIS: 2.3 Number 12 on the agenda. In the matter 2.4 of the Application for Licensure as a 25 Massage Therapist of Yi Gao, based on

25 the Board's discussions in executive 1 2 session, I believe the Chair would 3 accept a motion approving the application. 4 MS. PORAMBO: 5 I motion. 6 7 CHAIR CAUFMAN: Nancy first. 9 DR. WALLER: 10 Second. CHAIR CAUFMAN: 11 12 Ellyn Jo seconds. All those in favor? 13 All those opposed? Any abstentions? 14 [The motion carried unanimously with Chair Caufman 15 voting in favor as well. * * * 16 17 MR. DAVIS: 18 Number 13 on the agenda. In the matter 19 of the Application for Licensure as a 2.0 Massage Therapist of Lillian Kim, based on the Board's discussions in executive 2.1 session, I believe the Chair would 2.2 2.3 accept a motion approving the 24 application. MS. BAUGHMAN: 25

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                  So moved.
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   MS. NELSON:
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                  Second.
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   CHAIR CAUFMAN:
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                  Jessica seconds. All those in favor?
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                  All those opposed? Any abstentions?
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   [The motion carried unanimously with Chair Caufman
   voting in favor as well.]
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   MR. DAVIS:
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                  I will note for No. 9, the application
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                  of Helen Lacey, the applicant has
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                  withdrawn her application.
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   Adjournment
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   CHAIR CAUFMAN:
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                  The 2019 meeting of the State Board of
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                  Massage Therapy is adjourned.
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   [There was no second to the motion.]
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   [There being no further business, the State Board of
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   Massage Therapy Meeting adjourned at 12:18 p.m.]
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1 2		STATE BOARD OF MASSAGE THERAPY REFERENCE INDEX	28
2 3 4 5		August 13, 2019	
6 7	TIME	AGENDA	
8 9 10	9:34	Official Call to Order	
10 11 12	9:34	Introduction of Board Members/Audience	
13 14	9:37	Report of Board Prosecution	
15 16 17 18	9:38	Appointment - Carolyn A. DeLaurentis, Deputy Chief Counsel, Prosecution Division Presentation	
19 20	9:53	Report of Acting Commissioner	
21 22	10:00	Approval of Minutes	
23 24	10:00	Report of Board Regulatory Counsel	
25 26 27	10:31 10:39	Recess Return to Open Session	
28 29 30	10:40	Report of Board Regulatory Counsel (Continued)	
31 32 33	10:54 12:12	Executive Session Return to Open Session	
34	12:05	Motions	
35 36 37 38 39 40 41 42 43 44 45 46 47 48 95 9	12:18	Adjournment	