State Board of Occupational Therapy Education and Licensure December 5, 2019

BOARD MEMBERS:

Kerri L. Hample, OTD, OTR/L, Chairperson
K. Kalonji Johnson, Acting Commissioner, Bureau of
 Professional and Occupational Affairs
Joanne M. Baird, Ph.D., OTR/L, Vice Chair
Carolyn M. Gatty, MS, OTR/L, Secretary
Christine L. Hischmann, MS, OTR/L, FAOTA
Edward J. Mihelcic, Ph.D., OTR/L

BUREAU PERSONNEL:

Prosecution Division

Nicole L. VanOrder, Esquire, Board/Regulatory Counsel Paul J. Jarabeck, Esquire, Board Prosecution Liaison David Smith, Esquire, Board Prosecutor Christina Townley, Acting Board Administrator Lisa M. Burns, Acting Division Chief, Health Licensing Division, Department of State Carolyn A. DeLaurentis, Esquire, Deputy Chief Counsel,

Andrew LaFratte, MPA, Department of State

ALSO PRESENT:

Christine Daeschner, OTR/L, Legislative Chair, Pennsylvania Occupational Therapy Association

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2 State Board of Occupational Therapy

3 Education and Licensure

December 5, 2019

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The regularly scheduled meeting of the State

Board of Occupational Therapy Education and Licensure

was held on Thursday, December 5, 2019.

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

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13 [Kerri L. Hample, OTD, OTR/L, Chairperson, officially 14 called the meeting to order at 10:04 a.m.]

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Introduction of Board Members, Staff, and Audience
[Kerri L. Hample, OTD, OTR/L, Chairperson, requested
Board members, staff, and audience introduce

19 themselves.

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21 Approval of minutes of the September 5, 2019 meeting 22 CHAIRPERSON HAMPLE:

The first thing we are going to do is our minutes from the September 5 meeting.

25 meeting

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   [The Board discussed corrections to the minutes.]
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   CHAIRPERSON HAMPLE:
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                  Motion to approve the minutes as
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                  amended.
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   MS. GATTY:
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                  So moved.
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   DR. MIHELCIC:
                  Second?
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   CHAIRPERSON HAMPLE:
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                  All those in favor? Any abstentions,
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                  recusals?
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   [The motion carried unanimously.]
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   [Lisa M. Burns, Acting Division Chief, Health
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   Licensing Division, Department of State, entered the
   meeting at 10:08 a.m. during review of the minutes.]
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   Appointment - Carolyn A. DeLaurentis, Esquire, Deputy
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     Chief Counsel, Prosecution Division Presentation
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   [Carolyn A. DeLaurentis, Esquire, Deputy Chief
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   Counsel, Prosecution Division, introduced herself and
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   provided a brief summary of her professional
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   background. Ms. DeLaurentis commended senior
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   prosecutors and attorneys.
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        Ms. DeLaurentis provided information for the
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Pennsylvania State Board of Occupational Therapy

Education and Licensure for FY 2018-2019, noting that

74 cases were opened with 76 open cases as of July 1,

2019.

Ms. DeLaurentis noted 10 warning letters, 2 suspensions, and 1 probation were issued.

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Ms. DeLaurentis stated the prosecution division, in general, for FY 2018-2019 had 69 immediate temporary suspensions. She noted 11,359 open cases as of July 1, 2019. She 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 cases the last fiscal year.

Ms. DeLaurentis discussed the Office of General Counsel's Mediation Program, which is available to anyone who has a case pending at no cost to the respondent or the Board. She stated the case essentially goes before a neutral third-party attorney to assist with reaching a resolution. She mentioned that it had been successful thus far in a handful of cases. She noted the consent agreement will note the matter settled as a result of mediation.

Ms. DeLaurentis addressed the Pennsylvania

Justice Network (JNET) system ran by Governor Wolf's

Office of Administration, which is a criminal justice

1 databank for the Commonwealth. She commented that the

2 department licenses over 1 million licensees and now

3 has the ability to receive alerts on all licensees.

4 | She noted the increase in cases to be due to the

5 Pennsylvania Licensing System (PALS) and JNET and

6 provided the website pals.pa.gov for anyone who would

7 need to file a complaint.

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Ms. Gatty questioned how peer professionals compare in terms of cases.

Mr. Jarabeck commented that occupational therapy (OT) is very similar to speech-language pathology with a limited amount in terms of numbers. He noted that an influx of numbers comes from JNET as well as from the audit with the failure to provide potential malpractice information.

Mr. Jarabeck stated much time was spent reaching out to people to find additional facts before moving on cases, which causes the files to be open for a longer period of time. He noted that PT has a few more cases than what is seen for OT and speech.

Chairperson Hample mentioned that occupational therapy's malpractice rules are a little different than comparison license holders and questioned what happens after an individual receives a letter.

Mr. Jarabeck explained that the OT Board has

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disciplined an individual based on this issue, noting
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   that the Board had substantially more questions about
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   discipline on the failure to maintain malpractice than
   on the actual crime and whether the Board was being
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   too harsh. He again mentioned that this was why it
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   was part of the process to dig through cases and
   obtain additional information from individuals to make
   a determination of what can be done.]
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   Report of Board Prosecution
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   [David Smith, Esquire, Board Prosecutor, presented the
   Consent Agreement for File No. 19-67-000058.]
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   Report of Board/Regulatory Counsel
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   [Nicole L. VanOrder, Esquire, Board Counsel, noted
   Board Counsel's report on matters 3 through 6 for
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   discussion during Executive Session.
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        Ms. VanOrder referred to the proposed annex for
   16A-6712 regarding educational programs. She noted
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   prior discussion regarding the comments to delete the
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   section that refers to the specific fieldwork
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   requirement. She further explained that this is
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   language contained in the act, so deleting it from the
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   regulation may cause confusing and unnecessary
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   challenges during the regulatory review process.
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Ms. VanOrder proposed taking the second exposure draft and addressing the comments, wrapping that in with the rulemaking for Act 41, and preparing something to bring back for the next meeting.

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Ms. VanOrder addressed Act 41, stating the Board wanted the requirement to be the National Board for Certification in Occupational Therapy (NBCOT). She also mentioned prior discussion regarding the visa requirement, informing the Board that additional research showed that there are still a subset of people who are not covered by visa requirement and need to have a way to come in through Act 41.

Ms. VanOrder noted the prongs of the Act 41 analysis, including substantial equivalence and the competency bucket. She explained that the substantial equivalency prong compares the law, and the competency evaluates the individual. She noted prior discussion with the Board and additional research and conversations with regulatory counsel and will provide a draft at the next meeting with NBCOT in the competency bucket and two of five years if that is the direction of the Board.

Ms. VanOrder mentioned initial conversations with regulatory counsel, where it was determined to be inappropriate to require just one exam, but given such

a small subset of people and the particularities of
the exam, it was agreed to move forward with this
package with the additional research and understanding
with it in the competency bucket.

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Ms. VanOrder also addressed a middle-ground approach, which would give more wiggle room by having a test or an equivalent exam as determined and approved by the Board to be sufficient in other country.

Dr. Baird mentioned movement within the profession to think about NBCOT not always being the only entry-level exam and concerns by the state to be very careful about abrogating their responsibility as a Board to a third party. She noted being in favor of having the middle ground having Ms. VanOrder draft that language.

Ms. VanOrder questioned whether the Board would like to make a motion to have her draft language consistent with conversations regarding Act 41 and the educational annex.

Chairperson Hample noted her concerns regarding combining the rules, especially the educational package that the Board had been discussing for almost a year.

Ms. VanOrder will obtain clarification regarding

the most expedient route for the educational regulatory package and pursue that course in accordance with the board's desires.

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Ms. VanOrder mentioned another option would be moving forward with the educational piece as published as proposed with additional documentation prepared for the next agenda for the Board's review. She will meet with regulatory counsel to confirm the most expeditious route for the educational piece, whether combined or separate.

Ms. VanOrder referred to § 42.15(a)(2) regarding an application for a temporary license, where it was brought to her attention by Board administration and the director of the Health Law division that there is a portion of the regulation that does not make sense. She pointed out the language was written at a time when the test was given twice a year.

Ms. VanOrder stated the test can be taken daily now and questioned whether it was the Board's intention to only give them one more day to retake the test where it says next scheduled date. She also noted the reading of the language from information received from NBCOT implied the next scheduled date was the next day.

Chairperson Hample explained that individuals

have to wait 45 days for new eligibility following failure. She stated once the individual receives new eligibility that they have 90 days to sit within that window. She mentioned that those who fail to sit within that within that window would have to apply for new

Ms. Townley explained that there were many people reaching out and questioning the language concerning the next schedule date and the time requirements.

Chairperson Hample suggested that NBCOT may be a good resource for those questions.]

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eligibility.

13 [K. Kalonji Johnson, Acting Commissioner, Bureau of 14 Professional and Occupational Affairs, entered the 15 meeting at 10:55 a.m.]

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[Ms. Townley commented that this came to light when individuals had already taken and failed the exam months ago and administration received notices that their eligibility had expired.

Chairperson Hample commented that individuals whose eligibility expired failed to sit, and those with a temporary license had to reapply.

Ms. VanOrder asked the Board for a motion to instruct her to draft Act 41 regulatory documents and

12 educational documents in accordance with discussions.] 1 2 3 CHAIRPERSON HAMPLE: Could I have a motion to ask Board 4 5 counsel to draft educational 6 requirements and Act 41 requirements as 7 we discussed? MS. HISCHMANN: 9 So moved. 10 CHAIRPERSON HAMPLE: 11 Second? 12 MR. JOHNSON: Second. 13 14 CHAIRPERSON HAMPLE: 15 All in favor? 16 [The motion carried unanimously.] * * * 17 18 [Nicole L. VanOrder, Esquire, Board Counsel, addressed 19 the Clean Slate requirements also on the agenda under 20 miscellaneous. She stated the Bureau of Professional 21 and Occupational Affairs (BPOA) was implementing an 22 internal process, which should prevent any criminal 23 record that was subject to sealing under the Clean 2.4 Slate Act from consideration from reviewing 25 applications with the goal that no crime subject to

limited access under the Clean Slate Act makes it through to Board members for review of an application.

Acting Commissioner Johnson commented that the Board will never see expungable information because it would be treated as if it never existed. He addressed individuals living and practicing in other states, noting that their submission to a Federal Bureau of Investigation (FBI) check in lieu of individual state checks. He also noted that just because a low-level conviction was expunged does not mean it goes away from the FBI's criminal records name check (CRNC).

Acting Commissioner Johnson mentioned that Clean Slate only applies to Pennsylvania convictions, and the individuals who have had a record expunged in another state should submit that state's criminal history versus the FBI check.

Chairperson Hample stated the American
Occupational Therapy Association was actively moving
toward a compact and FBI fingerprinting will have to
be in all of the participating states.

Acting Commissioner Johnson mentioned that no one has really addressed the issue of Clean Slate legislation because Pennsylvania was not the only state that is engaging in Clean Slate, and the Department of Justice's policy on what they will

accept has been very clear from the start.

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Acting Commissioner Johnson noted the need for discussion regarding how the information is reviewed at the federated level, where many of these compacts exist and the organizations that administer these compacts.

Acting Commissioner Johnson addressed fingerprinting in Pennsylvania. He mentioned that state legislature had not essentially enacted legislation that would provide FBI fingerprinting as a means of identification or for the purpose of criminal history checks. He noted when fingerprints are pulled from the federal National Crime Information Center (NCIC) checks, it is the non-fingerprint version. He noted that the Department of Justice has been very vocal about in recent years, stating that it should not qualify as a criminal history background check. He stated the department has lobbied the legislature on many occasions about authorizing that legislation. Hopefully in 2020, the issue will be introduced.

Acting Commissioner Johnson stated the associations that run the compacts are considered private entities and are not states, so there is that hurdle where the DOJ through a policy statement has said they do not view non-fingerprint NCIC checks as

1 valid and will brought up to the legislature once 2 again in January.]

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4 Report of Acting Commissioner

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

6 Professional and Occupational Affairs, praised Board

7 Counsel and Board administration for their work

8 throughout the year.

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Acting Commissioner Johnson addressed improvements to the phone customer service option, where callers now have the ability to leave voicemails. He also noted expanding the self-help functionality in the first quarter of 2020.

Acting Commissioner Johnson stated occupational therapy is scheduled to have their navigator page up the second quarter of 2020. He explained the navigator as a retooling of the website to provide a more user-intuitive experience for folks and provide FAQs and tips on how to move through the process easier.

Acting Commissioner Johnson noted improvements by breaking down the application process into three phases with the hope of solving problems on the front end that results in people calling and asking questions that could have been answered earlier with a

1 | little more education.]

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3 Report of Board Chairperson

4 [Kerri L. Hample, OTD, OTR/L, Chairperson, addressed

5 her attendance at the Pennsylvania Occupational

6 Therapy Association Conference. She mentioned having

7 the opportunity to converse with many license holders

B and students, noting camaraderie among occupational

9 therapists. She noted discussion and concerns

10 regarding the upcoming changes with reimbursement.

Chairperson Hample mentioned concern regarding
behavioral specialist licensure. She also mentioned

13 that some of the changes athletic trainers want to

14 make and language they are proposing is not helpful to

15 occupational therapy. She stated the Pennsylvania

16 Occupational Therapy Association has their lawyers and

17 lobbyists examining that. She mentioned the

18 importance clarifying the scope of practice. She

19 noted there is a good collaboration between the

20 professional association and the Board while

21 maintaining their own separate identities and

22 responsibilities.

23 Acting Commissioner Johnson encouraged the

24 association to reach out to the cosponsors of those

25 bills to educate and inform them of not just impacts

but also to scopes of practice. He discussed applied behavior analyst legislation, noting the submission of a summarized application to the department that had been communicated to the Governor's Office.

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Acting Commissioner Johnson stated there was a multi-prong test when reviewing applications for licensure, and it was his understanding that the legislation was still in committee. He noted that the department does not get asked questions until the legislation had gotten to the point where it was ready to move out of the committee, and the association could discuss the matter with its members.

Dr. Baird addressed her presentation at the conference regarding ethics. She mentioned giving license holders exemplars about modern-day ethics and demonstrating navigation through the website. She noted discussing the Pennsylvania Licensing System (PALS) and reporting to a colleague or employer. She commented that some individuals requested a copy of the presentation afterwards.

Chairperson Hample mentioned some people were shocked to hear the whole idea of moral character being important when people heard about JNET.

Acting Commissioner Johnson stated the threat of action was a deterrent. He noted Senate Bill 637,

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1 | which would update the criminal history record
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- 2 | information to make very clear guidelines about what
- 3 can and cannot be used when determining suitability
- 4 for licensure among other things.
- 5 Chairperson Hample noted the American
- 6 Occupational Therapy Association (AOTA) Conference is
- 7 in March.]
 - * * *
- 9 CHAIRPERSON HAMPLE:
- 10 Could we have a motion to have
- conference fees covered for Joanne and
- 12 Christine to represent us at the
- 13 American OT Association Conference?
- 14 MR. JOHNSON:
- 15 So moved.
- 16 CHAIRPERSON HAMPLE:
- 17 | Second?
- 18 DR. MIHELCIC:
- 19 Second.
- 20 CHAIRPERSON HAMPLE:
- 21 All those in favor?
- 22 [The motion carried unanimously.]
- 23 ***
- 24 [The Board discussed Ms. Custer, noting that she was
- 25 practicing and had fulfilled all of the obligations to

1 have an active license.]

3 Report of Acting Board Administrator

4 [Kerri L. Hample, OTD, OTR/L, Chairperson, welcomed

5 Acting Board Administrator Christina Townley. She

6 noted Dr. Baird and Ms. Hischmann needed to submit

information to Ms. Townley to attend the American

Occupational Therapy Association (AOTA) Conference in

9 March.

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Dr. Baird questioned whether correspondence could be directed to business email rather than state email.

Chairperson Hample expressed concern regarding the state email account through Outlook.

Acting Commissioner Johnson addressed general connectivity issues. He mentioned the transition of Board members from full office suite applications to the email application. He stated the multifactor authentication (MFA) security is a Commonwealth-wide protocol.

Acting Commissioner Johnson offered to have information technology (IT) review the process to set up the MFA protocol to ensure Outlook kiosk had been properly initialized. He stated anything that goes through personal servers or personal email addresses was subject to the Right-to-Know Law because it was

for state business. He noted personal emails can be utilized as long as it was not discussing Board business.

Acting Commissioner Johnson addressed password resets and suggested changing passwords frequently.

Ms. Hischmann questioned whether there is the possibility of teleconferences any time in the near future.

Acting Commissioner Johnson noted teleconferences to be a cost and procurement issue, where it was necessary to have reliable streaming capabilities. He also noted the need for discussion in terms of legal ramifications of doing this remotely as opposed to what the practice acts say where individuals have to be present and the quorum requirement.]

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17 [The Board recessed from 11:45 a.m. until 11:59 a.m.]

19 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
20 12:00 p.m. the Board entered into Executive Session
21 with Nicole L. VanOrder, Esquire, Board Counsel, to
22 have attorney-client consultations and for the purpose
23 of conducting quasi-judicial deliberations. The Board
24 returned to open session at 12:53 p.m.]

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21 1 MOTIONS 2 MS. VANORDER: 3 Pursuant to Section 708(a)(5) of the 4 Sunshine Act, the Board entered into 5 executive session with Board counsel to 6 have attorney-client consultations and for the purpose of conducting quasi-judicial deliberations regarding 9 items 3 through 6 on the agenda. 10 DR. BAIRD: 11 I move that the Board adopt and issue as 12 its final determination the proposed 1.3 Adjudication and Order issued by the 14 hearing examiner and that Board counsel 15 draft and issue an order to that effect 16 in the following matters: Commonwealth 17 of Pennsylvania Bureau of Professional 18 and Occupational Affairs vs. Tara Marie 19 Dunning, COTA, Case No. 17-67-05113. 2.0 CHAIRPERSON HAMPLE: 2.1 Could I have a second? 2.2 MS. HISCHMANN: 2.3 Second. 2.4 CHAIRPERSON HAMPLE: 25 All in favor?

22 [The motion carried unanimously.] 1 2 3 MS. HISCHMANN: I move that the Board grant the motion 4 5 to Enter Default and Deem Facts Admitted and that Board counsel draft an 6 Adjudication and Order in accordance with the Board's discussion in executive 9 session in the following matter: 10 Commonwealth of Pennsylvania Bureau of 11 Professional and Occupational Affairs 12 vs. Patrick David Hogue, COTA/L, File No. 19-67-009461. 13 14 CHAIRPERSON HAMPLE: 15 Could I have a second? 16 DR. MIHELCIC: 17 Second. CHAIRPERSON HAMPLE: 18 19 All in favor? 20 [The motion carried unanimously.] * * * 21 2.2 DR. BAIRD: 2.3 I move that Board counsel prepare an 2.4 Adjudication and Order consistent with 25 the Board's discussion in executive

session and that the Board grant the 1 2 Motion to Enter Default and Deem Facts 3 Admitted and that Board counsel draft an 4 Adjudication and Order in accordance 5 with the Board's discussions in 6 executive session in the following matter: Commonwealth of Pennsylvania Bureau of Professional and Occupational 9 Affairs vs. Shane K. Thomas, OTA, Case 10 19-67-006483. 11 CHAIRPERSON HAMPLE: 12 Could I have a second? MS. HISCHMANN: 1.3 Second. 14 15 CHAIRPERSON HAMPLE: All in favor? 16 17 [The motion carried unanimously.] * * * 18 19 MS. HISCHMANN: 2.0 I move to adopt the Consent Agreement 2.1 and Order negotiated by the Commonwealth 2.2 prosecuting attorney in settlement of 2.3 the following matter: Commonwealth of 2.4 Pennsylvania Bureau of Professional and 25 Occupational Affairs vs. File No. 19-67-

24 000058. 1 2 CHAIRPERSON HAMPLE: 3 Second? MS. GATTY: 4 5 Second. 6 CHAIRPERSON HAMPLE: All in favor? [The motion carried unanimously. The Respondent's name is Laura Mary Marton, OTR/L.] 10 11 [Christine L. Hischmann, MS, OTR/L, FAOTA, questioned 12 whether there was anyone to take her position on the 13 Board. 14 Chairperson Hample commented that there were 15 people who had expressed interest and names had been 16 submitted, but the climate was not favorable for 17 replacing people.] * * * 18 19 [The Board canceled the next scheduled meeting date on 20 March 5, 2020. The Board discussed proposed dates, 21 including March 10 and March 11, 2020. Ms. Townley 22 will notify members via email.] 2.3 24 Adjournment 25 CHAIRPERSON HAMPLE:

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                   Motion to adjourn.
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   MS. HISCHMANN:
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                   So moved.
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    [There was no second to the motion.]
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   [There being no further business, the State Board of
   Occupational Therapy Education and Licensure Meeting
   adjourned at 1:05 p.m.]
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CERTIFICATE

I hereby certify that the foregoing summary minutes of the State Board of Occupational Therapy Licensure and Education Meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Occupational Therapy Licensure and Education Meeting.

Alicia R. Gascoigne

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE REFERENCE INDEX

December 5, 2019

7		
8 9	TIME	AGENDA
10	10:04	Official Call to Order
11 12 13 14	10:04	<pre>Introduction of Board Members, Staff, and Audience Members</pre>
15 16	10:12	Approval of Minutes
17 18 19 20	10:13	Appointment - Carolyn A. DeLaurentis, Deputy Chief Counsel, Prosecution Division Presentation
21 22	10:30	Report of Board Prosecution
23 24	10:31	Report of Board/Regulatory Counsel
25 26	11:08	Report of Acting Commissioner
27 28	11:13	Report of Board Chairperson
29 30	11:27	Report of Acting Board Administrator
31 32 33	11:45 11:59	Recess Return to Open Session
34 35 36	12:00 12:53	Executive Session Return to Open Session
37 38	12 : 53	Motions
39 40 41	1:05	Adjournment