

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 VETERINARY MEDICINE  
VIA VIDEOCONFERENCE**

TIME: 10:37 A.M.

PENNSYLVANIA DEPARTMENT OF STATE

November 13, 2020

1                   State Board of Veterinary Medicine  
2                                   November 13, 2020

3  
4  
5 BOARD MEMBERS:  
6

7 Andrew Nebzydoski, V.M.D., Chair  
8 Theodore Stauffer, Executive Secretary, Bureau of  
9 Professional and Occupational Affairs, on behalf of  
10 K. Kalonji Johnson, Commissioner, Bureau of  
11 Professional and Occupational Affairs  
12 Joseph S. Bender D.V.M.  
13 Anjilla Cooley, D.V.M.  
14 Apryle Horbal, V.M.D.  
15 Valerie Kehoe, C.V.T.  
16  
17

18 BUREAU PERSONNEL:  
19

20 Thomas M. Davis, Esquire, Board Counsel  
21 Carolyn A. DeLaurentis, Deputy Chief Counsel,  
22 Prosecution Division  
23 Paul J. Jarabeck, Esquire, Board Prosecutor  
24 Christopher K. McNally, Esquire, Board Prosecutor  
25 Tim Henderson, Board Prosecutor  
26 Christopher K. McNally, Esquire, Board Prosecutor  
27 Michelle Roberts, Board Administrator  
28  
29

30 ALSO PRESENT:  
31

32 Jennifer A. Keeler, CAE, Executive Director,  
33 Pennsylvania Veterinary Medical Association  
34 Christian A. Kerstetter, Esquire, Law Office of  
35 Theodore J. Krol & Christian A. Kerstetter  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

1 \*\*\*

2 State Board of Veterinary Medicine

3 November 13, 2020

4 \*\*\*

5 [Pursuant to Section 708(a)(5) of the Sunshine Act, at  
6 9:00 a.m. the Board entered into executive session  
7 with Thomas M. Davis, Esquire, Board Counsel, for the  
8 purpose of conducting quasi-judicial deliberations and  
9 to receive advice from counsel on the matters upon  
10 which the Board would vote later. The Board returned  
11 to open session at 10:30 a.m.]

12 \*\*\*

13 The regularly scheduled meeting of the State  
14 Board of Veterinary Medicine was held on Friday,  
15 November 13, 2020. Andrew Nebzydoski, V.M.D., Chair,  
16 called the meeting to order at 10:37 a.m.

17 \*\*\*

18 Roll Call

19 [A roll call of Board members was taken by Mr. Davis.]

20 \*\*\*

21 [Thomas M. Davis, Esquire, Board Counsel, noted the  
22 meeting was being recorded, and those who remained on  
23 the line were giving their consent to being recorded.]

24 \*\*\*

25 Approval of minutes of the September 25, 2020 meeting

1 CHAIR NEBZYDOSKI:

2 Our first item that we need to discuss  
3 are the minutes. Does anybody have  
4 anything they would like to say about  
5 that before we ask for someone to make a  
6 motion to approve them?

7 Do we have a motion?

8 DR. HORBAL:

9 I make a motion.

10 DR. BENDER:

11 Second.

12 MR. DAVIS:

13 The vote to accept the minutes.

14

15 Dr. Bender, aye; Dr. Cooley, aye; Dr.

16 Horbal, aye; Ms. Kehoe, aye; Dr.

17 Nebzydoski, aye.

18 [The motion carried. Mr. Stauffer abstained from  
19 voting on the motion.]

20

\*\*\*

21 Report of Prosecutorial Division

22 [Paul J. Jarabeck, Esquire, Board Prosecutor, on  
23 behalf of Julia A. Feld-Caralle, Esquire, Board  
24 Prosecutor, presented the Consent Agreement for Case  
25 No. 19-57-008329.]

1 Christian A. Kerstetter, Esquire, Law Office of  
2 Theodore J. Krol & Christian A. Kerstetter, counsel  
3 for the respondent, was also present for the  
4 discussion.]

5

\*\*\*

6 MR. DAVIS:

7

8

9

For the record, Dr. Apryle Horbal has  
recused herself from this matter and all  
discussions based on that.

10

11

12

13

14

Based on the Board's discussions in  
executive session, I believe the chair  
would accept a motion to approve the  
Consent Agreement in the following  
matter: Case No. 19-57-008329.

15 CHAIR NEBZYDOSKI:

16

17

Do we have anyone out there to make a  
motion?

18 MS. KEHOE:

19

I'll make a motion.

20 DR. COOLEY:

21

Second.

22 MR. DAVIS:

23

24

Roll call.

25

Dr. Bender, aye; Dr. Cooley, aye; Ms.



1 Dr. Bender, aye; Dr. Cooley, aye; Dr.  
2 Horbal, aye; Ms. Kehoe, aye; Dr.  
3 Nebzydoski, aye; Mr. Stauffer, aye.

4 [The motion carried unanimously. That is Case No. 20-  
5 57-008660.]

6 \*\*\*

7 MR. DAVIS:

8 For the record, the CVT's name has been  
9 withheld because this person is entering  
10 into the voluntary recovery program.  
11 This person's participation in the  
12 program will remain confidential  
13 provided that he or she abides by the  
14 terms and conditions of the program.

15 \*\*\*

16 MR. DAVIS:

17 Moving on to No. 6 on the agenda. This  
18 is something the Board discussed at  
19 length during executive session, so I  
20 will simply read a statement.

21 Based on the Board's discussion in  
22 executive session, I believe the chair  
23 would accept a motion to adopt as final  
24 the draft Adjudication and Order in the  
25 following matter: Commonwealth BPOA v.

1                    Maria McElwee, D.C., Case No. 17-57-  
2                    01301.

3                    Do we have a motion?

4 DR. HORBAL:

5                    I will make a motion.

6 MS. KEHOE:

7                    I will second.

8 MR. DAVIS:

9                    Roll call vote.

10

11                    Dr. Bender, aye; Dr. Cooley, aye; Dr.  
12                    Horbal, aye; Ms. Kehoe, aye; Dr.  
13                    Nebzydoski, aye; Mr. Stauffer, aye.

14 [The motion carried unanimously.]

15                    \*\*\*

16 Report of Board Chair - No Report

17                    \*\*\*

18 Act 53 of 2020 List of Relevant Crimes Presentation  
19 [Cynthia K. Montgomery, Esquire, Deputy Chief  
20 Counsel/Regulatory Counsel, Department of State,  
21 announced Commissioner Johnson was unable to attend  
22 the meeting.

23                    Ms. Montgomery referred to § 3117 of Act 53, where  
24 Commissioner Johnson has the duty to publish the lists  
25 of criminal convictions that may constitute grounds to



1 refuse to issue; suspend; or revoke a license,  
2 certificate, registration, or permit for each  
3 occupation or profession under the respective practice  
4 act.

5 Ms. Montgomery addressed the list of crimes,  
6 noting Board counsel was asked to work with the  
7 prosecution division to curate the list based on Act  
8 53, statutes, and their knowledge or prior Board  
9 history regarding criminal history cases involving  
10 convictions for revocation or suspension. She stated  
11 the list also has to designate crimes directly related  
12 to a profession.

13 Ms. Montgomery stated the list included crimes  
14 under the crimes code, drug act, and crimes of  
15 violence. She addressed crimes of violence, where an  
16 individual convicted of a crime of violence may be  
17 granted a license if at least 3 years from  
18 incarceration or 3 years from imposition of the  
19 sentence have elapsed, the individual has remained  
20 conviction-free, and demonstrates significant  
21 rehabilitation.

22 Ms. Montgomery stated the Board also has to  
23 determine, using factors set forth in the statute,  
24 that the individual does not pose a substantial risk  
25 to the health and safety of the individual's patients,

1 clients, or the public or is a substantial risk of  
2 further criminal conviction.

3 Ms. Montgomery addressed crimes directly related  
4 to profession and provided a definition of "directly  
5 relates." She stated Commissioner Johnson has the  
6 responsibility of publishing a notice of the  
7 availability of the list of crimes deemed to be  
8 directly related to the professions and occupations by  
9 December 27, 2020.

10 Ms. Montgomery referred to § 3115 regarding  
11 preliminary determination, where an individual may  
12 want to enter the veterinary medicine profession or  
13 become a certified veterinary technician and could ask  
14 for a preliminary determination as to whether their  
15 criminal history would pose an impediment to  
16 licensure.

17 Ms. Montgomery stated preliminary determinations  
18 are to be done by counsel based on the list adopted by  
19 the Board. She noted the list could also be used for  
20 determining whether to grant a license to an applicant  
21 and for determining discipline of current licensees.  
22 She noted the list is also going to be part of a best  
23 practices guide to provide information to applicants  
24 and licensees explaining how boards consider criminal  
25 history information.

1 Ms. Montgomery discussed Commissioner Johnson's  
2 responsibility to promulgate the list as a proposed  
3 rulemaking package within 120 days of the effective  
4 date of the act and then promulgate it as final  
5 rulemaking within 2 years. She mentioned the statute  
6 requires consultation with the Board and business  
7 community with knowledge of the veterinary medicine  
8 profession.

9 Ms. Montgomery noted the list was sent to  
10 interested parties and stakeholders but did not  
11 receive any written comments. She stated Act 53 would  
12 not change how the Board will evaluate criminal  
13 convictions but does set forth the criteria the Board  
14 is to follow.

15 Ms. Montgomery addressed a two-stage process for  
16 analyzing criminal conviction. She noted the first  
17 step is to decide whether the crime is on the list and  
18 directly related by reviewing the schedule of offenses  
19 set forth in § 3117, and if it is, there is the  
20 rebuttable presumption where the individual has to  
21 demonstrate through the criteria in 3113(c) that the  
22 licensees do not pose a risk.

23 Ms. Montgomery emphasized that a crime not on the  
24 list did not mean it could not be considered but had  
25 not been identified as directly related to the

1 profession. She noted the burden would be on  
2 prosecution for crimes not on the list, where the  
3 Board would need an individualized assessment using  
4 criteria set forth in § 3113(c) to determine whether  
5 the individual does pose such a risk or should be  
6 granted a license.

7 Ms. Montgomery stated the big change in Act 53 is  
8 with crimes of violence and for boards that have  
9 automatic suspensions for felony convictions under the  
10 drug act or any kind of prohibition on licensure. She  
11 stated § 3113(f) changes the role, where it only  
12 applies to drug trafficking offenses and more  
13 specifically a violation of 13(a)14, 30, or 37.

14 Ms. Montgomery commented that items on the list  
15 that do not directly relate can be removed and crimes  
16 not on the list could be added. She deferred to Board  
17 counsel with any questions concerning specific items  
18 on the list because he was responsible for curating  
19 the list.

20 Mr. Davis and Ms. Feld-Caralle worked together  
21 formulating the list. He referred to crimes of  
22 violence as they appear under § 3113(e) but did not  
23 intend to have those crimes on the Board's Schedule of  
24 Criminal Convictions. He explained that those crimes  
25 were not put on this list as a way of saying they are

1 directly related to the practice of veterinary  
2 medicine; however, every other listed crime is  
3 directly related to the practice of veterinary  
4 medicine.

5 Mr. Davis explained that he put those on the  
6 bottom of the list to note a separate section of the  
7 act under which those crimes would make it difficult  
8 for someone with that particular conviction to become  
9 a veterinarian or a certified veterinary technician  
10 (CVT) in the commonwealth. He noted also working on  
11 the list with Board prosecution.

12 Mr. Jarabeck, on behalf of Ms. Feld-Caralle,  
13 noted discussion where there may be an additional  
14 issue that should be listed under the drug act with  
15 regard to misbranding of drugs under Title 35 P.S.  
16 § 780-113(a)(1) and (2). He recommended adding this  
17 section to the list of crimes based upon the  
18 veterinarian's coverage under the drug act and their  
19 ability to prescribe and provide.

20 Mr. Jarabeck addressed Title 18 Crime Code § 4904  
21 regarding unsworn falsification to authorities. He  
22 noted this to be on regular Board-based documents and  
23 suggested including the code on the list as well.

24 Mr. Davis agreed with Mr. Jarabeck but suggested  
25 including everything under § 780-113, which would be

1 all prohibited acts under the drug act. He noted it  
2 would not be a permanent bar to being a veterinarian  
3 but would move the burden to the individual to show  
4 evidence of rehabilitation as specified by the factors  
5 listed in the act.

6 Mr. Davis stated the practice of veterinary  
7 medicine is so intrinsically linked with the use and  
8 distribution of drugs that any drug crime under § 780-  
9 113 would directly relate to the practice of  
10 veterinary medicine because of the definition of  
11 "directly relates."

12 Mr. McNally disagreed slightly with Mr. Davis on  
13 the point of adding all drug act violations. He  
14 stated simple possession and possession of drug  
15 paraphernalia are common convictions and would find it  
16 difficult to articulate a relationship between that  
17 type of offense and the practice of veterinary  
18 medicine. He stated there are other drug act  
19 violations that may be related to the practice of  
20 veterinary medicine within Section 13, but there are a  
21 number of misdemeanor violations.

22 Mr. Davis pointed out that § 780-113(a)(16)  
23 concerning possession and § 780-113(a)(32) concerning  
24 paraphernalia are on the list but agreeing with Mr.  
25 McNally would be deleting two sections from the list

1 presented to the Board.

2 Chair Nebzydoski noted not being sure the Board  
3 would want to remove those from the list even if it  
4 seems like the crime would not affect an individual  
5 because a character flaw is something the Board may  
6 need to know before granting someone a license.

7 Mr. Davis explained that individuals would need  
8 to prove they are no longer a danger and show evidence  
9 of rehabilitation if the crimes are kept on the list.  
10 He also noted it could be any controlled substance and  
11 read § 780-113(a)(16), where it does not specify the  
12 drug and is typically used for the less harmful- and  
13 addicting-type substances. He also referred to  
14 § 780-113(a)(32), where it could be anything as long  
15 as it is drug paraphernalia.

16 Mr. Jarabeck addressed factors that could be  
17 looked at, including time elapses from the conviction  
18 and access to records to show the individual placed  
19 the Board on notice of that conviction whenever they  
20 applied for licensure or reinstatement. He commented  
21 that it is the Board's discretion whether an  
22 individual is to be evaluated by Professional Health  
23 Monitoring Programs (PHMP) as another element to  
24 determine if they suffer from impairment and believed  
25 the Board always has the ability to decide.

1 Ms. Montgomery emphasized that a crime not being  
2 on the list did not mean it would not come before the  
3 Board. She stated the purpose behind Act 53 is  
4 transparency for individuals who may intend to seek a  
5 license and want to know upfront what crimes the Board  
6 believed were directly related to the profession and  
7 to provide the kind of information an individual would  
8 need to present at a hearing. She mentioned that it  
9 is still discretionary and the Board's decision after  
10 reviewing factors in § 3113 other than the crimes of  
11 violence required by statute.

12 Ms. Montgomery referred to § 3113(e) regarding  
13 acts of violence, where the individual has the  
14 responsibility to demonstrate to the Board that they  
15 do not pose a significant risk to patients, clients,  
16 or the public or a significant risk of further  
17 criminal conviction.

18 Dr. Bender noted being in favor of keeping most  
19 of the things on the list, especially if the idea for  
20 both the public and the defendant is transparency.

21 Mr. Davis explained that Act 53 is still in the  
22 early stages and all of § 780-113 could be left on the  
23 list. He informed the Board that they could wait for  
24 comments once it goes to the *Pennsylvania Bulletin*.  
25 He mentioned taking minor sections off at a later date



1 and comparing the list to other medical-related boards  
2 throughout the Bureau of Professional and Occupational  
3 Affairs (BPOA) to see what they typically have done.

4 Mr. Davis requested comments from Board members  
5 concerning the addition or removal of drug crimes, and  
6 the Board agreed to leave all of the drug crimes on  
7 the list.

8 Ms. Montgomery noted Commissioner Johnson's  
9 responsibility to consult with members of the business  
10 community with knowledge of the profession and  
11 received no response after asking audience members for  
12 comments.]

13 \*\*\*

14 MR. DAVIS:

15 I believe the Board chair would accept a  
16 motion to approve the Act 53 Schedule of  
17 Criminal Convictions as presented but  
18 with two amendments.

19 The Board is of the opinion that  
20 Title 18 Pa.C.S. § 4904, as well as all  
21 prohibited acts enumerated in § 780-113  
22 of the drug act, are directly related to  
23 the practice of veterinary medicine and,  
24 as such, will be so designated in the  
25 schedule of criminal convictions under

1 § 3117(a)(1) of Act 53.

2 Do we have a motion?

3 DR. BENDER:

4 I'll make a motion to accept.

5 MR. DAVIS:

6 Second?

7 MS. KEHOE:

8 I'll second.

9 MR. DAVIS:

10 We are going to do a roll call vote.

11

12 Dr. Bender, aye; Dr. Cooley, aye; Dr.

13 Horbal, aye; Ms. Kehoe, aye; Dr.

14 Nebzydoski, aye; Mr. Stauffer, aye.

15 [The motion carried unanimously.]

16

\*\*\*

17 [Ms. Montgomery thanked the Board on behalf of

18 Commissioner Johnson. She stated the list will be

19 published at the end of the year and promulgated as

20 proposed rulemaking.]

21

\*\*\*

22 Report of Board Counsel (cont.)

23 [Thomas M. Davis, Esquire, Board Counsel, provided a

24 regulatory status report for the Board's review. He

25 stated 16A-5726 regarding euthanasia is currently

1 being reviewed by regulatory counsel. He also noted  
2 he is working on the Regulatory Analysis Form (RAF)  
3 for 16A-5730 regarding Act 41 licensure by  
4 endorsement. He mentioned receiving suggestions from  
5 the Office of General Counsel (OGC), which would  
6 streamline the processes, and believed the regulation  
7 should start moving in the near future.]

8 \*\*\*

9 Miscellaneous

10 [Andrew Nebzydoski, V.M.D., Chairman, noted the  
11 proposed 2021 Board meeting dates.

12 Ms. Roberts informed Board members of conflicts  
13 with other boards concerning meeting dates and  
14 suggested changing January 15 to January 22, July 16  
15 to July 23, and November 19 to November 12. The Board  
16 approved the January 22, 2021 meeting date, and Ms.  
17 Roberts will provide Mr. Stauffer with an email noting  
18 that change.

19 Ms. Roberts informed the Board that the final  
20 renewal date is November 30 and alerted Board members  
21 to social media posts in the next two weeks reminding  
22 veterinarians and veterinary technicians to renew.

23 Ms. Roberts stated there are 5,600 licensed  
24 veterinarians and about 3,000 veterinary technicians  
25 with 65% of veterinarians and 55% of veterinary

1 technicians completing renewal as of yesterday.

2 Mr. Davis requested representatives from  
3 professional organizations to also get the word out  
4 regarding renewals.

5 Jennifer A. Keeler, CAE, Executive Director,  
6 Pennsylvania Veterinary Medical Association, commented  
7 that the Pennsylvania Veterinary Medical Association  
8 is promoting renewals and will continue to do so.

9 Ms. Roberts noted 2021 meeting dates are  
10 currently scheduled for January 22, March 19, May 21,  
11 July 23, September 17, and November 12.]

12 \*\*\*

13 CHAIR NEBZYDOSKI:

14 I look forward to someone making a  
15 motion to adjourn.

16 DR. HORBAL:

17 I'll make that motion to adjourn.

18 DR. COOLEY:

19 Second.

20 CHAIR NEBZYDOSKI:

21 Thanks everybody.

22 [The motion carried unanimously.]

23 \*\*\*

24 [There being no further business, the State Board of  
25 Veterinary Medicine Meeting adjourned at 12 p.m.]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

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



Derek Richmond,  
Minute Clerk  
Sargent's Court Reporting  
Service, Inc.

STATE BOARD OF VETERINARY MEDICINE  
REFERENCE INDEX

November 13, 2020

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

TIME	AGENDA
9:00	Executive Session
10:30	Return to Open Session
10:37	Official Call to Order
10:38	Roll Call
10:40	Approval of Minutes
10:41	Report of Prosecutorial Division
10:49	Report of Board Counsel
11:02	Appointment - Act 53 of 2020 List of Relevant Crimes Presentation
11:42	Report of Board Counsel (Continued)
11:50	Miscellaneous
12:00	Adjournment