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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 VETERINARY MEDICINE
VIA VIDEOCONFERENCE**

TIME: 10:31 A.M.

PENNSYLVANIA DEPARTMENT OF STATE

September 17, 2021

State Board of Veterinary Medicine
September 17, 2021

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BOARD MEMBERS:

- Thomas Garg, V.M.D., Chairman
- K. Kalonji Johnson, Commissioner, Bureau of Professional and Occupational Affairs
- Joseph S. Bender D.V.M.
- Anjilla Cooley, D.V.M. - Absent
- Apryle Horbal, V.M.D.
- Valerie Kehoe, C.V.T.
- Andrew Nebzydoski, V.M.D., Secretary

BUREAU PERSONNEL:

- Thomas M. Davis, Esquire, Board Counsel
- Paul J. Jarabeck, Esquire, Board Prosecutor
- Michelle Roberts, Board Administrator

1 ***

2 State Board of Veterinary Medicine

3 September 17, 2021

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 will later vote. 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 September 17, 2021. Thomas Garg, V.M.D., Chairman,
16 called the meeting to order at 10:31 a.m.

17 ***

18 ***

19 Roll Call

20 [A roll call of Board members was taken by Chair
21 Garg.]

22 ***

23 [Thomas M. Davis, Esquire, Board Counsel, noted the
24 meeting was being recorded, and those who continued to
25 participate were giving their consent to be recorded.]

1 Mr. Davis also informed everyone that the Board
2 met in Executive Session prior to this meeting for the
3 purpose of conducting quasi-judicial deliberations and
4 to receive advice of counsel.]

5

6 Approval of minutes of the July 23, 2021 meeting

7 CHAIR GARG:

8 The first item on our agenda for today
9 is review of the minutes from the last
10 meeting.

11 Did anybody have any concerns
12 regarding those minutes?

13 Would somebody like to make a
14 motion to accept the minutes?

15 DR. NEBZYDOSKI:

16 I'll make that motion.

17 MS. KEHOE:

18 I second it.

19 CHAIR GARG:

20 Any further discussion? All in favor of
21 accepting the minutes? I will read
22 roll.

23

24 Commissioner Johnson, aye; Dr. Bender,
25 aye; Dr. Horbal, aye; Ms. Kehoe, aye;

1 Dr. Nebzydoski, aye; Dr. Garg, aye.

2 [The motion carried unanimously.]

3 ***

4 Report of Prosecutorial Division

5 [Paul J. Jarabeck, Esquire, Board Prosecutor, on
6 behalf of Julia A. Feld-Caralle, Esquire, Board
7 Prosecution Liaison, presented the Consent Agreement
8 for Case No. 20-57-006395.]

9 ***

10 [Paul J. Jarabeck, Esquire, Board Prosecutor,
11 presented the Consent Agreement for Case No. 21-57-
12 008273.]

13 ***

14 [Thomas M. Davis, Esquire, Board Counsel, asked Board
15 members whether anyone wished to reenter Executive
16 Session to further discuss any of the consent
17 agreements that were presented.]

18 MR. DAVIS:

19 For number 2 on the agenda, based on the
20 Board's discussions in Executive
21 Session, I believe the Chair would
22 accept a motion to approve the Consent
23 Agreement in the following matter: Case
24 No. 20-57-006395.

25 For the record, Dr. Nebzydoski is

1 recused from this.

2 CHAIR GARG:

3 Would somebody like to make the motion?

4 DR. BENDER:

5 I can make the motion.

6 MS. KEHOE:

7 I'll second the motion.

8 CHAIR GARG:

9 Any further discussion? I will call
10 roll.

11

12 Commissioner Johnson, aye; Dr. Bender,
13 aye; Dr. Horbal, aye; Ms. Kehoe, aye;
14 Dr. Nebzydoski, recuse; Dr. Garg, aye.

15 [The motion carried. Dr. Nebzydoski recused himself
16 from deliberations and voting on the motion. For the
17 record, Case No. 20-57-006395 is Commonwealth BPOA v.
18 Henry Joseph Nebzydoski, D.V.M.]

19

20 MR. DAVIS:

21 Number 3 on the agenda. Based on the
22 Board's discussions in Executive
23 Session, I believe the chair would
24 accept a motion to approve the Consent
25 Agreement in the following matter: Case

1 No. 21-57-008273.

2 DR. HORBAL:

3 I'll make a motion.

4 DR. BENDER:

5 I'll second it.

6 CHAIR GARG:

7 Any further discussion? I will call
8 roll.

9

10 Commissioner Johnson, aye; Dr. Bender,
11 aye; Dr. Horbal, aye; Ms. Kehoe, aye;
12 Dr. Nebzydoski, aye; Dr. Garg, aye.

13 [The motion carried unanimously. For the record, the
14 individual's name has been withheld because he is
15 entering into the Voluntary Recovery Program. His
16 participation in that program will remain confidential
17 provided that he abides by the terms and conditions of
18 the program.]

19 ***

20 Report of Board Chair - No Report

21 ***

22 Report of Commissioner

23 [K. Kalonji Johnson, Commissioner, Bureau of
24 Professional and Occupational Affairs, noted the
25 Governor's emergency declaration will end September

1 30, along with many regulatory suspensions. He
2 informed the Board of the return to in-person meetings
3 beginning October 1, 2021, at Penn Center. He stated
4 that all Commonwealth of Pennsylvania employees are
5 required to wear masks and observe the Centers for
6 Disease Control and Prevention (CDC) guidelines.

7 Commissioner Johnson announced the ban on
8 physical travel has been lifted and requests for
9 regional or national conferences are being accepted.
10 He encouraged Board members to submit paperwork early
11 due to staffing shortages. He mentioned the allowance
12 of two members for physical travel but encouraged
13 virtual attendance. He reminded the Board that a
14 formal motion and vote for travel requests must be on
15 the record as part of the Sunshine Act requirements.

16 Commissioner Johnson announced a new online cost
17 of travel system, noting Ms. Roberts will help
18 shepherd everyone through that system.

19 Chair Garg requested more information regarding
20 in-person rules that apply to the public during the
21 meetings.

22 Commissioner Johnson stated the members of the
23 public will be asked to wear masks and required to
24 observe CDC recommended guidelines with respect to
25 social distancing. He mentioned that some individuals

1 may be relegated to a breakout room depending on the
2 number of public participants, where there would be
3 another board room in the building just watching
4 closed caption television.

5 Dr. Garg asked Commissioner Johnson whether masks
6 would be requested or required for the public.

7 Commissioner Johnson noted ongoing discussion but
8 will advise all Board members when he receives clear
9 guidance.]

10

11 Report of Board Counsel - Regulations

12 [Thomas M. Davis, Esquire, Board Counsel, addressed
13 ongoing regulations regarding euthanasia, Act 41
14 endorsement, CE requirements, and fees. He noted
15 movement with three of the four regulations and
16 working on Act 41. He reported the euthanasia
17 regulation has progressed and should be published as
18 proposed in late September or early October 2021. He
19 mentioned there will be a 30-day comment period once
20 that is posted to the *Pennsylvania Bulletin*, noting
21 there will be directions available on the Bulletin
22 website for those who wish to comment.

23 Mr. Davis addressed proposed regulation 16A-5731
24 regarding veterinarian continuing education, noting
25 the Board voted to release an exposure draft at its

1 July meeting and the exposure draft was sent out on
2 August 9, 2021. One comment was received; it was from
3 the Pennsylvania Veterinary Medical Association
4 (PVMA).

5 Chair Garg referred to a letter received from
6 PVMA, dated September 8, expressing support for the
7 continuing education changes. He stated PVMA also
8 made several suggestions, including increasing the
9 amount of required CE for both veterinarians and
10 veterinary technicians and considering allocation of
11 those increased hours toward specific topics that are
12 different from those currently accepted.

13 Chair Garg commented that, to his understanding,
14 the Board does not have the authority to change the
15 number of biennial hours of CE required for renewal
16 because the act specifically lists the number of
17 continuing education hours required for renewal. He
18 explained that the act does not say, "at minimum," or
19 at least." Instead, the act specifically says,
20 veterinarians are required to complete 30 hours of
21 continuing education for biennial renewal.

22 Mr. Davis commented that the Board was created
23 via the Veterinary Medicine Practice Act, on top of
24 which that same act specifically says veterinarians
25 must complete 30 clock hours biennially, and certified

1 veterinary technician (CVTs) must complete 16 clock
2 hours biennially. He also noted the act does not say
3 "at least 30 hours" or "at least 16 hours" or anything
4 of that nature and suggested the Board keep those
5 hours at 30 and 16 based upon the plain language of
6 the statute.

7 Chair Garg noted two other matters incorporated
8 into the PVMA letter, one related to the Veterinary
9 Nurse Initiative and the other related to telehealth.

10 Chair Garg stated telehealth was a very relevant
11 issue at the moment and is something that is likely to
12 be placed on the Board's agenda in the near future.

13 Chair Garg commented that in order to comply with
14 the Sunshine Act, the Veterinary Nurse Initiative and
15 telehealth, to his understanding, would need to be on
16 the agenda to give people who are interested in these
17 matters the opportunity to know they are going to be
18 discussed.

19 Mr. Davis explained that the Sunshine Act has
20 been amended to suggest that the Board should not be
21 conducting any kind of Board business unless that
22 specific topic was listed on the Board's agenda giving
23 the public notice that the Board would be discussing
24 or acting upon that particular topic.

25 Mr. Davis noted receiving PVMA's comment on

1 September 8 via email, and suggested he was able to
2 add the letter to the agenda because the Board's
3 agenda already listed the the CE and fee regulations
4 as topics of discussion. He suggested not broadening
5 the topics of discussion beyond CE and fees in light
6 of the amendment to the Sunshine Act.

7 Mr. Davis explained that he received a chat
8 notification asking that the Board discuss broadening
9 the approved continuing education topics, which was
10 something also mentioned in the PVMA's letter. He
11 mentioned that the statute itself says no credit shall
12 be given for any course in office management or
13 practice building and he believes there is language in
14 the act which says continuing education programs must
15 be specifically related to the practice of veterinary
16 medicine, so the Board does not have a lot of leeway
17 to broaden the scope of continuing education programs.

18
19 Chair Garg commented that it was also his
20 understanding that the act defines the allowable
21 content. He noted the PVMA or any other organization
22 may submit an application to the Board requesting its
23 approval of continuing education programs. He noted
24 that individual programs will be approved as long as
25 they meet the requirements of the act and regulations.

1

2 Mr. Davis informed the Board that he would
3 continue working on the CE regulation as currently
4 drafted and create a Regulatory Analysis Form (RAF)
5 and preamble to be brought before the Board for
6 additional review and a vote.

7

8 Mr. Davis addressed 16A-573, the Board's proposed
9 fee regulation, noting prior tabling because of a new
10 template requirement. He informed the Board that the
11 new Annex was uploaded to the Board's agenda. He
12 explained that application fees are based entirely on
13 what it currently costs to process an application, and
14 a renewal fee is where the Board obtains the money it
15 needs to run day-to-day activities.

15

16 Mr. Davis commented that the Board utilizes the
17 Bureau of Finance and Operations (BFO) reports in
18 order to determine the appropriate fees. He noted the
19 report from BFO showed what the financial future looks
20 like in three separate possible scenarios: if no
21 change is made to any fees; if the Board increased
22 only application fees; or if the Board increased
23 application fees and it simultaneously increased
24 biennial renewal fees by 8.5 percent.

24

25 Mr. Davis noted he drafted the proposed Annex in
accordance with the third option, which is essentially

1 the most drastic but would quickly and easily get the
2 Board to where it needs to be.

3 Dr. Nebzydoski commented that he would like to be
4 provided with more information with regard to the
5 number of complaints because he would like to know why
6 Board expenditures are increasing.

7 Dr. Nebzydoski referred to the fee report form
8 related to the Application for Continuing Education
9 Program, where a Board member review is \$26 for a
10 quarter of an hour, questioning where BFO came up with
11 that figure and noting the importance of being honest
12 about the fees.

13 Dr. Horbal supported Dr. Nebzydoski's comments
14 and is also stated she was concerned of the lack of
15 reporting or transparency that is being given to the
16 Board members themselves regarding these fees and
17 where they are spent. She requested more detailed
18 information from the prosecution section and the
19 Bureau of Enforcement and Investigation (BEI) and to
20 understand where the money is being spent.

21 Dr. Nebzydoski stated he would like to know how
22 the amount was calculated by the number of cases and
23 he explained that investigative fees are never
24 itemized on the individual cases. He also noted the
25 Board does not know how many complaints are received a

1 year, and none of it is on the paperwork to justify
2 the dollar amount.

3 Dr. Horbal requested more information regarding
4 how many cases are opened and investigated and she
5 noted concern with the cost of investigation with
6 regard to some of the quality of the work being
7 produced. She reported the Board has noticed some
8 trends that are making them concerned about where
9 Board and taxpayer dollars are being spent and want to
10 make sure they are truly going to protecting the
11 public and protecting the veterinarians and everyone
12 else involved appropriately.

13 Commissioner Johnson commented that the Board
14 receive an annual report from prosecution that
15 explains the number of cases with a high-level
16 breakdown of the dispositions and is given the chance
17 to ask questions at those particular presentations.

18 Dr. Horbal stated the prosecution representative
19 is often unsure of how to answer the Board's
20 questions.

21 Commissioner Johnson commented that the Board has
22 an obligation to remain dispassionate and objective.
23 He suggested that how professional Board members
24 perceive the quantification of cost involved in
25 discipline of other professional Board members creates

1 the appearance of a conflict of interest or bias.

2 Dr. Nebzydoski stated there was no bias in
3 knowing how the numbers were produced. He mentioned
4 that it is hard for the Board in good conscience to
5 vote to raise fees unless the need to do so can be
6 proven. He noted seeing Consent Agreements presented
7 to the Board that were rejected as too lenient or too
8 harsh, and in some cases when the proposed Consent
9 agreement was presented once again the investigative
10 fee was changed to a lower fee, which does not make
11 sense.

12 Mr. Davis commented that the annual BFO report
13 discusses the overall cost of prosecution. He echoed
14 Commissioner Johnson's statement, noting the
15 presentation from prosecution a little while ago,
16 where the Prosecution Division Chief told the Board
17 how many cases were brought in and how many were
18 processed. He suggested having prosecution come back
19 to discuss that at greater length before revisiting
20 the proposed fee increase and suggested that the fee
21 increase regulation be tabled.

22 Dr. Horbal noted that providing more detail would
23 be much appreciated in moving forward.

24 Mr. Jarabeck stated there will still be
25 investigative costs and expert costs related to

1 complaints that never make it to the Board, where an
2 expert may find that there is no violation of a
3 standard of care or a process where no formal
4 prosecution is conducted.

5 Mr. Jarabeck mentioned that if the Board is
6 making a statement saying they want absolute
7 investigative costs and that is what the Board moves
8 forward asking for so be it, but whenever there is a
9 hearing, an itemized grouping of cost is available
10 because it is presented as a petition.

11 Dr. Nebzydoski referred to the line-item entitled
12 "enforcement and investigation" at \$300,000 in the
13 2013-2014 and \$318,000 anticipated for 2021, which is
14 not changing a great deal. He noted the "Legal
15 Prosecution" line item increase from \$27,000 in 2013-
16 2014 which increases to more than \$500,000 in
17 anticipated expenses for FY 2020-2021, questioning how
18 they justify that change. He requested more
19 information as to why the prosecution fee is changing
20 that much and the investigative fees are virtually
21 static.

22 Mr. Jarabeck stated the prosecution has to engage
23 experts in order to have a fair and accurate review of
24 the case, which greatly increases cost.

25 Dr. Horbal asked Mr. Jarabeck whether the Board

1 could see a breakdown of the cost of expert testimony,
2 expert witnesses, and court fees.

3 Dr. Nebzydoski referred to a line itemized for
4 hearing expenses, where he assumed that expert
5 witnesses go under hearing expenses and not legal
6 prosecution but stating he is not sure because the
7 paperwork does not note which fits under which
8 category.

9 Mr. Davis suggested having BFO return to the
10 Board to further explain the report. He commented
11 that he does not know if prosecution can actually
12 provide more information because there are issues
13 related to confidentiality and keeping the wall of
14 separation between the prosecution division and the
15 Board.

16 Dr. Nebzydoski recommended BFO provide bullet
17 points under each cost item with what is included in
18 each one of those items to make the report more
19 tenable.

20 Dr. Horbal commented that the Board does not
21 oppose increasing fees, noting they are responsible
22 for protecting the public and want to make sure the
23 cost and fees are completely transparent but do not
24 feel that it is right now.

25 Mr. Davis tabled the fee regulation and will

1 discuss this issue with a couple of different
2 departments between now and the next Board meeting to
3 see if the Board's concerns can be addressed.]

4 ***

5 Report of Board Counsel - Adjudication and Order

6 MR. DAVIS:

7 Number 7 on the Board's agenda. Based
8 on the Board's discussions in Executive
9 Session, I believe the Chair would
10 accept a motion to approve as final the
11 Draft Adjudication and Order in the
12 following matter: In the Matter of the
13 Petition for Reinstatement of the
14 License to Practice Veterinary Medicine
15 of Leonard Daryl Kreger, D.V.M., Case
16 No. 20-57-014137.

17 CHAIR GARG:

18 Would somebody like to make that motion?

19 DR. NEBZYDOSKI:

20 I'll make the motion.

21 MS. KEHOE:

22 I'll second it.

23 CHAIR GARG:

24 Any further discussion? I'll call roll.

25

1 Commissioner Johnson, aye; Dr. Bender,
2 aye; Dr. Horbal, aye; Ms. Kehoe, aye;
3 Dr. Nebzydoski, aye; Dr. Garg, aye.

4 [The motion carried unanimously.]

5 ***

6 MR. DAVIS:

7 Number 8 on the Board's agenda. Based
8 on the Board's discussions in Executive
9 Session, I believe the Chair would
10 accept a motion authorizing counsel to
11 draft an Adjudication and Order
12 consistent with the Board's discussions
13 in the following matter: Commonwealth
14 BPOA v. Christopher Glenn Korte, D.V.M.,
15 Case No. 17-57-05852.

16 CHAIR GARG:

17 Would somebody like to make that motion?

18 DR. BENDER:

19 I'll make the motion.

20 DR. NEBZYDOSKI:

21 I'll second.

22 CHAIR GARG:

23 Any further discussion? I'll call roll.

24

25 Commissioner Johnson, aye; Dr. Bender,

1 aye; Dr. Horbal, aye; Ms. Kehoe, aye;
2 Dr. Nebzydoski, aye; Dr. Garg, aye.

3 [The motion carried unanimously.]

4 ***

5 Miscellaneous

6 [Thomas Garg, V.M.D., Chair, noted the proposed 2022
7 meeting dates for the Board's review.]

8 ***

9 Adjournment

10 CHAIR GARG:

11 Would anyone like to make a motion to
12 adjourn?

13 DR. NEBZYDOSKI:

14 I would like to make that motion to
15 adjourn.

16 CHAIR GARG:

17 It has been good seeing everybody as
18 usual. Stay safe. I will see you all
19 in person two months from now.

20 ***

21 [There being no further business, the State Board of
22 Veterinary Medicine Meeting adjourned at 11:23 a.m.]

23 ***

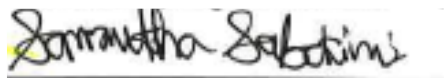
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CERTIFICATE

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.



Samantha Sabatini,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF VETERINARY MEDICINE
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TIME	AGENDA
9:00	Executive Session
10:30	Return to Open Session
10:31	Official Call to Order
10:31	Roll Call
10:33	Approval of Minutes
10:34	Report of Prosecutorial Division
10:45	Report of Commissioner
10:50	Report of Board Counsel
11:22	Miscellaneous
11:23	Adjournment