

FLORIDA | Board of Chiropractic Medicine

MINUTES
June 6, 2014

Orlando, Florida



Kevin Fogarty, D.C., F.I.C.A.(hon)
Chair

Kenneth Dougherty, D.C.
Vice-Chair

Adrienne Rodgers, BSN, JD
Executive Director

Sharon Guilford, CPM
Program Operations Administrator

1 The meeting was called to order by Dr. Fogarty, Chair, at approximately ____:00 a.m. Those present for all or part of the meeting
2 included the following:
3

4 **General Board Business started: ____ a.m.**
5

6 **MEMBERS PRESENT:**

7 ____ Kevin Fogarty, D.C., F.I.C.A.(hon), Chair
8 ____ Kenneth Dougherty, D.C.
9 ____ Christopher Fox, D.C.
10 ____ Danita Heagy, D.C.
11 ____ Julie Hunt, D.C.
12 ____ David Colter
13 ____ Ruth Pelaez
14
15

STAFF PRESENT:

____ Adrienne Rodgers, Executive Director
____ Sharon Guilford, Program Operations Administrator
____ Michele Jackson, Regulatory Supervisor/Consultant
____ Towanda Burett, Compliance Officer

16 **BOARD COUNSEL:**

17 ____ Deborah Bartholow Loucks, Assistant Attorney General
18 Office of Attorney General
19

20 **PROSECUTION COUNSEL:**

21 ____ Tari Rossitto-Van Winkle, Assistant General Counsel
22 ____ Sharmin Hibbert, Assistant General Counsel and Section Manager
23 Department of Health, Office of the General Counsel
24

25 **COURT REPORTER:**

26 Official Court Reporting
27 (954) 467-8204
28

29 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline. AUDIO from
30 this meeting can be found online:*

31 <http://floridaschiropracticmedicine.gov/meeting-information/>
32
33

34 **General Board Business started at ____ a.m.**
35

36 **I. ELECTION OF VICE-CHAIR**
37

38 **General Board Business ended at ____ a.m.**

39 **Discipline started at _____ a.m.**
40

41 **II. FINAL ORDER ACTIONS**
42

43 **1. Motion for Hearing Not Involving Disputed Issues of Material Fact and Final Order**

44 a. Harry K. Voyages, D.C. – Case Number 10-24023

45 Dr. Fox is recused due to participation on the probable cause panel.
46

47 An administrative complaint filed on December 9, 2013, alleged violation of ss. 456.072(1)(w) and (x), F.S., by failure to
48 timely provide updated practitioner profiling information and failure to report conviction for DUI.
49

50 The Department of Health’s Motion for Hearing Not Involving Disputed Issues of Material Fact and for Final Order was
51 presented to the Board.
52

53
54 Motion to accept the findings of fact as stated in the Administrative Complaint was made by _____, second
55 by _____.
56

57 Vote: ____ yeas / ____ opposed; motion ____ carried ____ failed
58

1
2 Motion that findings of fact support the violation of the Practice Act as charged in the administrative complaint made by
3 _____, second by _____.
4

5 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed
6
7

8 Motion that the Board accept into evidence the investigative file for purposes of determining penalty and the opportunity to
9 make a penalty recommendation made by _____, second by _____.
10

11 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

12 Motion to find the Respondent in violation of Florida Statutes as charged in the administrative complaint made by
13 _____, second by _____.
14

15 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed
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17 Discussion
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25 Department recommendation for discipline: Fine in the amount of \$2,000 payable monthly in the amount of \$166.67;
26 suspension until Respondent is evaluated by PRN and complies with all recommendations; 3 hours risk management and 2
27 hours laws and rules; 16 hours community service; update practitioner profile; notify Board of new address of record.
28

29 Motion to impose discipline ___ as recommended by the Department ___ other _____,
30 made by _____, second by _____.
31

32 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed
33
34

35 Department recommendation: Costs in the amount of \$529.93 be paid by Respondent.
36

37 Following discussion, the following action was taken by the Board:

38 Motion to assess costs in the amount of \$ _____ payable within ___ days of the date of the Final Order made by
39 _____, second by _____.
40

41 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed
42

43 **2. Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material**
44 **Fact.**

45 a. Ibenick Paul, C.C.P.A. – Case Number 13-04199

46 Dr. Heagy is recused due to participation on the probable cause panel.
47

48 An administrative complaint filed on February 7, 2014, alleged violation of ss. 456.072(1)(I), (II), and (x), F.S., by entering
49 a no contest plea on charges of preparing or presenting fraudulent claims and failure to report the plea to the Board.
50

51 The Department of Health's Motion Motion for Determination of Waiver and for Final Order by Hearing Not Involving
52 Disputed Issues of Material Fact was presented to the Board.
53

54 Motion that the Respondent was properly served made by _____, second by _____.
55

56 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed
57

58 Motion that Respondent failed to make an election of rights made by _____, second by _____.

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Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

Motion to accept the findings of fact as stated in the Administrative Complaint was made by _____, second by _____.

Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

Motion that findings of fact support the violation of the Practice Act as charged in the administrative complaint made by _____, second by _____.

Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

Motion that the Board accept into evidence the investigative file for purposes of determining penalty and the opportunity to make a penalty recommendation made by _____, second by _____.

Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

Motion to find the Respondent in violation of Florida Statutes as charged in the administrative complaint made by _____, second by _____.

Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

Discussion

Department recommendation for discipline: Revocation of license.

Motion to impose discipline ___ as recommended by the Department ___ other _____, made by _____, second by _____.

Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

Department recommendation: Waive costs.

Following discussion, the following action was taken by the Board:

Motion to ___ waive ___ assess costs in the amount of \$_____ payable within ___ days of the date of the Final Order made by _____, second by _____.

Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

b. Richard T. Pfaff, D.C. – Case Number 13-10836
Continued to next meeting at request of Respondent’s counsel

c. Motions for Final Order by Settlement Agreement
a. Joseph S. Balen, D.C. – case number 13-02397 Fox
Dr. Fox is recused due to participation on the probable cause panel.

1 Ms. Rossitto-Van Winkle informed the board that the respondent violated section 460.413(1)(ff), F.S. and/or Rule 64B2-
2 17.0021, F.A.C. and that the count for was dismissed
3

4 Ms. Rossitto-Van Winkle advised the board that the settlement agreement contained the following provisions:

- 5 • appearance
- 6 • letter of concern
- 7 • dismiss section Count One re: violation of section 460.413(1)(v), F.S.
- 8 • administrative fine of \$1,000.00 payable within one year of the filing of the Final Order
- 9 • reimbursement of costs in the amount of \$2,048.15 payable within one year of the filing of the Final Order
- 10 • continuing education - two (2) hours in ethics and boundaries within 13 months of the filing of the Final Order
- 11 • National Ethics and Boundaries examination within 18 months of the filing of the Final Order

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14 Discussion:

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20 Motion to ___ adopt ___ reject the settlement agreement made by _____, second by _____.

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22 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

23
24 Motion to make counter offer made by _____, second by _____.

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26 Terms of counter offer:

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30 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

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33 b. Judith C, McKenzie, D.C. – case number 12-01747

34 No one recused due to participation on the probable cause panel.

35
36 Ms. Rossitto-Van Winkle informed the board that the respondent violated section 460.413(1)(j), F.S. and section
37 460.413(1)(k), F.S.

38
39 Ms. Rossitto-Van Winkle advised the board that the settlement agreement contained the following provisions:

- 40 • appearance
- 41 • reprimand
- 42 • administrative fine of \$2,000.00 payable in the amount of \$42.00 over 48 months from the date of the filing of the Final
43 Order
- 44 • reimbursement of costs in the amount of \$_____ payable in equal monthly installments over 48 months from
45 the date of the filing of the Final Order
- 46 • practice restriction to not purchase, assume any ownership in, or incorporate any business that does, or will, own,
47 operate, or control a Health Care Clinic regulated under Florida law
- 48 • practice restriction from applying for Certificate of Exemption required under Florida law
- 49 • only work as an unincorporated sole proprietor, employee or independent contractor
- 50 • Florida Laws and Rule examination within one year of the filing of the Final Order

51
52
53 Discussion:

1 Motion to ___ adopt ___ reject the settlement agreement made by _____, second by _____.

2
3 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

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6 Motion to make counter offer made by _____, second by _____.

7 Terms of counter offer:

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11 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

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14 c. Mindy B. Senter, D.C. – case number 12-12038

15 No one recused due to participation on the probable cause panel.

16
17 Ms. Rossitto-Van Winkle informed the board that the respondent violated section 460.413(1)(m), section 460.413(1)(r) and
18 section 460.413(1)(u), F.S.

19
20 Ms. Rossitto-Van Winkle advised the board that the settlement agreement contained the following provisions:

- 21 • appearance
- 22 • letter of concern
- 23 • dismiss section Count IV re: violation of section 460.413(1)(k), F.S. and dismiss section Count V re: violation of section
24 460.413(1)(ee), F.S.
- 25 • administrative fine of \$2,500.00 payable in 24 equal monthly payments within one year of the filing of the Final Order
- 26 • reimbursement of costs in the amount of \$6,663.22 payable in 36 equal monthly installment within one year of the filing
27 of the Final Order
- 28 • Board acceptance of six hours continuing education in recordkeeping, documentation and coding
- 29 • CME in ethics and boundaries within one year of the filing of the Final Order
- 30 • submission of affidavit regarding review of laws and rules governing the practice of chiropractic medicine
- 31 • one year probation with monitoring, standard conditions

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33 Discussion:

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39 Motion to ___ adopt ___ reject the settlement agreement made by _____, second by _____.

40
41 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

42
43 Motion to make counter offer made by _____, second by _____.

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45 Terms of counter offer:

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49 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

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52 **III. PROSECUTION REPORT**

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54 **Discipline ended at _____ a.m.**

55 **General Board Business started at _____ a.m.**

56
57 **I. APPROVAL OF PREVIOUS MEETING’S MINUTES OF THE BOARD OF CHIROPRACTIC MEDICINE**

1 April 4, 2014 – Full Board Meeting

2
3 Minutes of the April 4, 2014 General Business Meeting were reviewed.
4 _____ noted the following corrections to the minutes:

5 Page __, line __
6 Page __, line __
7

8
9
10 _____ noted the following correction(s) to the minutes:
11 _____
12 _____
13

14 Motion to accept the minutes __ [as amended] was made by _____ and seconded by _____

15
16 Vote __ ayes/ __ opposed; motion __ carried __ failed
17

18 **Section I General Board Business ended at ____ a.m.**

19 **Section II General Board Business began at ____ a.m.**
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21 **II. PETITION FOR VARIANCE/WAIVER**

22 1. Petition for Variance/Waiver by Robert F. DeMaria, D.C., DABCO

23 Petitioner DeMaria __ was __ was not present and __ was __ was not represented by counsel. Other representative:
24 _____
25

26 Petitioner requested a variance and waiver from Rule 64B2-13.004, F.A.C. Petitioner does not practice in the State of Florida
27 and holds an inactive license. Petitioner needs 8 Florida approved CEUs to be eligible for renewal of his Florida license. He
28 received 20 hours of continuing education units by attending the State of Ohio OSCA meetings in 2013 and 2014, which are
29 not Board approved.
30

31 Discussion:
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36 Action Taken: _____ made a motion to __ grant __ deny the Petition for Variance/Waiver of Rule 64B2-13.004,
37 F.A.C., based upon _____ and finds that Petitioner __ has __ has not demonstrated that
38 the purpose of the underlying statute has been achieved by other means and application of a rule would create a substantial
39 hardship or would violate principles of fairness. _____ seconded and the motion __ carried __ failed
40

41 Vote: __ yeas / __ opposed
42

43 **Section II General Board Business ended at ____ a.m.**

44 **Section III General Board Business began at ____ a.m.**
45
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47 **III. APPLICANTS PRESENTED FOR BOARD REVIEW**

48 1. Esther Jimenez, D.C. –

49 Dr. Jimenez __ was __ was not present and __ was __ was not represented by counsel. Other representative:
50 _____
51

52 Ms. Loucks stated that the application was before the Board due to a report from the National Practitioner Data Base showing
53 action taken against Dr. Jimenez as a result of failing to comply with a corrective action plan, failing to meet contractual
54 obligations, participation requirements or credentialing standards as reported by the entity.
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56 Discussion:

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6 Motion to ___ approve ___ deny the application for licensure as a chiropractic physician made by _____,
7 second by _____.

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9 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed

10 2. Alejandro Serrano, D.C.

11 Dr. Serrano ___ was ___ was not present and ___ was ___ was not represented by counsel. Other representative:
12 _____.

13
14 Ms. Loucks stated that the application was before the Board due to Dr. Serrano answering “yes” to applications questions
15 regarding criminal and disciplinary history.

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17 Discussion:
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23 Motion to ___ approve ___ deny the application for licensure as a chiropractic physician made by _____,
24 second by _____.

25
26 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed
27
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29 3. Michael J. St. Louis, D.C.

30 Dr. St. Louis ___ was ___ was not present and ___ was ___ was not represented by counsel. Other representative:
31 _____.

32
33 Ms. Loucks stated that the application was before the Board due to Dr. St. Louis answering “yes” to applications questions
34 regarding criminal history and a pending criminal action.

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36 Discussion:
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42 Motion to ___ approve ___ deny the application for licensure as a chiropractic physician made by _____,
43 second by _____.

44
45 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed
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48 4. Juan Castaneda, R.C.A.

49 Mr. Castaneda ___ was ___ was not present and ___ was ___ was not represented by counsel. Other representative:
50 _____.

51
52 Ms. Loucks stated that the application was before the Board due to Mr. Castaneda answering “yes” to application question 3
53 regarding criminal history.

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55 Discussion:
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3 Motion to ___ approve ___ deny the application for licensure as a registered chiropractic assistant made by
4 _____, second by _____.

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6 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed
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10 5. Amy Thomas, R.C.A.

11 Ms. Thomas ___ was ___ was not present and ___ was ___ was not represented by counsel. Other representative:
12 _____.

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14 Ms. Loucks stated that the application was before the Board due to Ms. Thomas answering “yes” to applications questions 5
15 and 11.

16
17 Discussion:
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23 Motion to ___ approve ___ deny the application for licensure as a registered chiropractic assistant made by
24 _____, second by _____.

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26 Vote: ___ yeas / ___ opposed; motion ___ carried ___ failed
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30 **Section III General Board Business ended at ___ a.m.**

31 **Section IV General Board Business began at ___ a.m.**

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33 **IV. RATIFICATION OF LICENSURE**

- 34 1. Chiropractic Physicians
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37 2. Certified Chiropractic Physician Assistants
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40 3. Registered Chiropractic Assistants
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42 **Section IV General Board Business ended at ___ a.m.**

43 **Section V General Board Business began at ___ a.m.**

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45 **V. CHAIR/VICE CHAIR REPORT**

- 46 1. FCLB Report from Annual Meeting 2014
47
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49 2. Future Agenda Items
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52 **Section V General Board Business ended at ___ a.m.**

53 **Section VI General Board Business began at ___ a.m.**

54
55 **VI. EXECUTIVE DIRECTOR’S REPORT**

- 56 1. Annual Delegation of Authority - Ms. Rodgers asked that the Board approve the delegation of authority as presented.

1 Motion to ___ approve ___ amend matrix of delegation as presented in the Board’s package was made by _____ and seconded
2 by _____. Amended to include authority for the board staff to approve applications which have report from National
3 Professional Data Base of adverse action filed against the practitioner by an insurance company for failure to _____.
4 Motion to amend matrix of delegation was made by Dr. Dougherty and seconded by Dr. Haegy.
5

6 Vote: unanimous; motion carried.
7

- 8 2. Renewal Reports – Ms Rodgers stated that the reports were included as information only that would be of interest to the
9 Board members.
10 a. Chiropractic Physicians
11 b. Certified Chiropractic Physician Assistants
12 c. Registered Chiropractic Assistants
13

14 **Section VI General Board Business ended at ____ a.m.**

15 **Section VII General Board Business began at ____ a.m.**
16

17 **VII. DISCUSSION OF HYPERBARIC CHAMBERS**
18

19 Ms Rodgers stated that the additional information received to date regarding the provision of core curriculum training in chiropractic
20 schools for the use of hyperbaric chambers has been provided to the Board members in this meetings package.
21
22

23 **Section VII General Board Business ended at ____ a.m.**

24 **Section VIII General Board Business began at ____ a.m.**
25

26 **VIII. BOARD COUNSEL’S REPORT**

- 27 1. Annual Regulatory Plan

28 Ms. Loucks stated that under Executive Order Number 11-72, each year the various agencies/boards must review existing rules and
29 regulations to determine if there are duplicative or unnecessarily burdensome rules or regulations that should be modified or
30 eliminated. To that end, the Board has been provided a list, called the Annual Regulatory Plan, which shows the rules of this Board
31 that are or may be in need of modification or elimination.
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33 Discussion:
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41 Motion to accept Annual Regulatory Plan ___ [as amended] was made by _____ and seconded by _____
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43 Vote: ___ yeas / ___ opposed ___ unanimous
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- 46 2. Rules Status Report
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55 **Section VIII General Board Business ended at ____ a.m.**

56 **Section IX General Board Business began at ____ a.m.**
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58 **IX. COMMITTEE REPORTS**

1 Budget – Mr. Colter
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5 CCPA – Dr. Heagy
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9 Continuing Education – Dr. Hunt/Heagy
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11 a. CE Broker clarification
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15 b. University of Bridgport 2014 FCPA July
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20 Credentials – Dr. Fogarty
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24 Disciplinary Compliance – Dr. Fogarty (cont.)
25

26 1. Timothy E. Johnson, D.C. – PRN Obligations, Contract and Status
27
28

29 2. David E. Yachter, D.C. – case number 11-10582, request for early termination of probation
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32 3. Catalina Torres, D.C. - case number 08-22113, request for modification of monthly payments
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38 Examination – Dr. Heagy
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42 Healthy Weight – Dr. Hunt
43 Video to be done in Tallahassee
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46 Legislative – Dr. Heagy
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50 Probable Cause – Drs. Dougerty/Fox/Heagy
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54 Rules – Dr. Hunt

55 1. Discussion of Rule 64B2-13.004, F.A.C. – Continuing Education
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3 2. Discussion of Rule 64B2-17.0065, F.A.C. – Minimal Recordkeeping Standards
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9 Unlicensed Activity – Dr. Hunt

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11 **X. ADJOURNMENT**

12
13 **General Board Business concluded at: _____ p.m.**

14 The meeting was adjourned at _____ p.m.