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FLORIDA | Board of Chiropractic Medicine
Probable Cause Panel

DRAFT MINUTES
March 10, 2015

Conference Call
Department of Health
4042 Bald Cypress Way
Tallahassee, FL 32399



Kevin Fogarty, D.C.
Chair

Joseph Lesho
Program Operations Administrator

Michele L. Jackson
Regulatory Supervisor/Consultant

1 **Conference call started: 12:30 p.m.**

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3 The meeting was called to order by Dr. Fogarty, Chair. Those present for all or part of the meeting included the following:

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5 **MEMBERS PRESENT:**

6 Kevin Fogarty, D.C.
7 Gene Jenkins, D.C.

8
9 **STAFF PRESENT:**

10 Joseph Lesho, Program Operations Administrator
11 Michele L. Jackson, Regulatory Supervisor/Consultant

12
13 **BOARD COUNSEL:**

14 Lawrence Harris, Esq., Assistant Attorney General
15 Office of Attorney General

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17 **PROSECUTION COUNSEL:**

18 Jack Wise, Esq., Assistant General Counsel
19 Department of Health, Office of the General Counsel

20
21 **COURT REPORTER:**

22 Court Reporter: For the Record Reporting
23 Phone: (850) 222-5491
24 Contact: Kay Fitchner

25
26 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline. AUDIO from this meeting can be found online: <http://floridaschiropracticmedicine.gov/meeting-information/past-meetings/>*

27 Before the Reconsiderations portion began, Mr. Harris asked the panel members if they received all of the required materials in advance of the meeting. Drs. Fogarty and Jenkins stated yes.

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29 Mr. Harris asked the panel members if they had sufficient time to review the materials. Drs. Fogarty and Jenkins stated yes.

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31 Mr. Harris asked the panel members if they experienced any problems while trying to review the materials. Drs. Fogarty and Jenkins stated no.

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33 Mr. Harris asked the panel members if they felt that there were any circumstances that would disqualify or otherwise make it improper for them to hear and deliberate on any cases on the agenda. Drs. Fogarty and Jenkins stated no.

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35 **Reconsiderations started at 12:40 p.m.**

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37 I. R-01 Timothy Edward Johnson, D.C.

38 Timothy Edward Johnson, D.C. was not present on the conference call, but was represented by Ken Scaz, Esq.

39
40 Mr. Wise presented case number 2014-04421 as a reconsideration of the original Administrative Complaint. The department is requesting that probable cause be found on the Amended Administrative Complaint. Mr. Wise explained that amending the original complaint would be the appropriate action to take and would make the case easier to litigate. The department's recommendation is to drop Count III, and make changes to the facts in support of Counts I and II.

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42 Dr. Jenkins stated that the initial complaint was a 2001 case, which was amended on February 2012 to provide an extension of the PRN contract. He inquired as to who made the choice of the Sante' Center for Healing.

43
44 Mr. Scaz stated that PRN directed Dr. Johnson to be evaluated by that facility. The facility reported that Dr. Johnson failed a polygraph examination which was received by PRN on January 28, 2014. The facility also determined that Dr. Johnson was unable to practice with reasonable skill and safety. Based upon this documentation, an emergency restriction was placed on his license.

1 Mr. Wise stated that the department feels that the Amended Administrative Complaint is sufficient and for that reason
2 requests the panel find probable cause. He also stated that there were two (2) reasons for amending the Administrative
3 Complaint, which were Impairment and violating the original Administrative Complaint.
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5 Drs. Jenkins and Fogarty stated that they felt that there is sufficient evidence to find Probable Cause.
6

7 **Board action:** Motion to find Probable Cause on Counts I and II of the Amended Administrative Complaint was made by
8 Dr. Jenkins, seconded by Dr. Fogarty.

9 Vote : 2 yeas / 0 opposed, motion carried.
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11 Mr. Scaz stated that on behalf of Dr. Johnson, this was an isolated incident in 2001, not with a patient, and that Dr. Johnson
12 has complied and is still complying with PRN. He also stated that a former Board Member, Dr. Wellikoff, was Dr.
13 Johnson's monitor for several years and had no issues.
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16 **Reconsideration concluded at 1:20p.m.**
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19 The public portion of the meeting was adjourned at 1:20 p.m.