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**FLORIDA** | Board of Chiropractic Medicine  
Probable Cause Panel

DRAFT MINUTES  
February 10, 2015

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



Danita Heagy, D.C.  
**Chair**

Adrienne Rodgers, BSN, JD  
**Executive Director**

Joseph Lesho  
**Program Operations Administrator**

1 **Conference call started: 1:06 p.m.**

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

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5 **MEMBERS PRESENT:**

6 Danita Heagy, D.C.  
7 Gene Jenkins, D.C.

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9 **STAFF PRESENT:**

10 Adrienne Rodgers, BSN, JD, Executive Director  
11 Joseph Lesho, Program Operations Administrator  
12 Michele Jackson, Regulatory Supervisor/Consultant

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14 **BOARD COUNSEL:**

15 Deborah Loucks, Esq., Assistant Attorney General  
16 Office of Attorney General

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18 **PROSECUTION COUNSEL:**

19 Sharmin Hibbert, Esq., Assistant General Counsel  
20 Christopher Dierlam, Esq., Assistant General Counsel  
21 Department of Health, Office of the General Counsel

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23 **COURT REPORTER:**

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

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28 *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/>*

29 Before the Reconsiderations portion began, Ms. Loucks asked the panel members if they received all of the required materials in advance of the meeting. Drs. Heagy and Jenkins stated yes.

30 Ms. Loucks asked the panel members if they had sufficient time to review the materials. Drs. Heagy and Jenkins stated yes.

31 Ms. Loucks asked the panel members if they experienced any problems while trying to review the materials. Drs. Heagy and Jenkins stated no.

32 Ms. Loucks 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. Dr. Heagy stated no. Dr. Jenkins explained that he is involved in a possible civil case concerning Dr. Merritt. He stated that he doesn't feel like he would need to recuse himself, but felt that it was something he should disclose. Mr. Dierlam agreed the matter should not cause a conflict. Ms. Hibbert asked for the opinion of board counsel. Ms. Loucks stated that recusal is up to the individual panel members.

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42 **Reconsiderations started at 1:12 p.m.**

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44 I. R-01 Richard William Merritt, D.C.

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46 Richard William Merritt, D.C. was present on the conference call, and was represented by Michael D'Lugo, Esq.

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48 Mr. Dierlam presented case number 2011-12719 as a reconsideration of the original Administrative Complaint. The department is requesting that probable cause be found on the Amended Administrative Complaint. The original complaint was made by Allstate insurance, alleging that Dr. Merritt improperly billed PIP for injuries not related to treatment for a very minor accident. Dr. Merritt billed the patient's PIP carrier even though patient made it clear that he was not injured in the accident, pre-existing injuries were not aggravated in any way, and there was no notation of any aggravation in the patient's records. The department feels that the Amended Administrative Complaint and its new counts more accurately allege the statutes that Dr. Merritt violated, and for that reason the department requests the board find probable cause.

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56 Dr. Merritt stated that he believes Dr. Jenkins is totally incapable of being impartial, and that he will protest the hearing if Dr. Jenkins is allowed to continue. He continued on to state that he does not feel that the Probable Cause Panel meetings are a valid form of hearing, and that they violate the rules of due process.

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2 Ms. Loucks reiterated that recusal is up to the individual panel member, and that the decision to continue would be Dr.  
3 Jenkins' to make.  
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5 Dr. Jenkins did not want to comment on the validity of the hearing, but stated that he will do what is in the best interest of  
6 the department. He feels he can be unbiased, but will recuse himself if it is in the department's best interest.

7 Ms. Hibbert agreed with board counsel, and said there was no lack in confidence in Dr. Jenkins' ability to be unbiased.  
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9 Dr. Merritt asked for the advice of his attorney, who stated he believed that Dr. Jenkins could remain unbiased. Dr. Merritt  
10 then agreed to take part in the hearing.  
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12 Dr. Heagy stated that she does not agree with the opinion of the department's expert regarding record keeping.  
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14 Dr. Jenkins stated that after reviewing the records, he believes that there is probable cause.  
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16 Dr. Heagy stated she agrees that there is probable cause, but not on all counts.  
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18 Ms. Loucks informed everyone that the board does not have to find probable cause on all counts.  
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20 Dr. Merritt asked Ms. Loucks to review all of the counts. Ms. Loucks deferred to prosecution.  
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22 Mr. Dierlam stated that the reason for the reconsideration was to address the counts based on record-keeping, breach of  
23 standard of care, and exploitation. The amended administrative complaint addresses the same actions as the original  
24 administrative complaint, but in the amended version, the department identified different statutory violations for which they  
25 wished to prosecute compared to the original administrative complaint.  
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27 Dr. Heagy believes there is probable cause for record-keeping, but not for the breach of standard of care, and not for  
28 exploitation.  
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30 Dr. Merritt requested to hear the basis for counts two and three. Mr. Dierlam stated that the department believes Dr. Merritt  
31 improperly billed the PIP carrier, and that the new charges more accurately reflect what had taken place. Dr. Merritt  
32 questioned why that would be considered a standard of care violation, and Mr. Dierlam stated that misleading and billing  
33 PIP for injuries that existed prior to the patient's accident constitutes a breach of the standard of care.  
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35 Dr. Heagy stated that she doesn't believe that the standard of care was breached.  
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37 Dr. Jenkins agreed that a breach of the standard of care would be a tough call.  
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39 Dr. Heagy motioned to find probable cause on count one for record-keeping.  
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41 Dr. Merritt asked for the opinion of board counsel, who stated that the decision is up to the panel.  
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43 Dr. Heagy reiterated her motion. Dr. Jenkins seconded the motion. The motion carried unanimously.  
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45 **Board action:** Motion to find probable cause on count one of the administrative complaint was made by Dr. Heagy,  
46 seconded by Dr. Jenkins.

47 Vote: 2 yeas / 0 opposed; motion carried.  
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50 **Reconsiderations concluded at 1:33 p.m.**  
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52 The public portion of the meeting was adjourned at 1:33 p.m.  
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