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1	COMMONWEALTH OF PENNSYLVANIA	
2	DEPARTMENT OF STATE	
3	BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS	
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6	<u>FINAL MINUTES</u>	
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8	MEETING OF:	
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10	STATE BOARD OF CHIROPRACTIC	
11	VIA VIDEOCONFERENCE	
12		
13	TIME: 10:32 A.M.	
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15	PENNSYLVANIA DEPARTMENT OF STATE	
16		
17	September 23, 2021	
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2 1 State Board of Chiropractic 2 3 September 23, 2021 4 5 6 BOARD MEMBERS: 7 8 Joseph Gerard Halloran, D.C., Chair 9 K. Kalonji Johnson, Commissioner, Bureau of 10 Professional and Occupational Affairs 11 William D. Aukerman, D.C. 12 Kelsie Coats, Consumer Protection Member 13 John E. McCarrin, D.C. 14 Michael S. Swank, D.C. 15 Miriam Merry Woods, Public Member - Absent 16 17 BUREAU PERSONNEL: 18 19 Nicole L. VanOrder, Esquire, Board Counsel 20 Carole Clarke Smith, Esquire, Senior Board Counsel 21 Carolyn DeLaurentis, Deputy Chief Counsel, Prosecution 22 Division 23 Colby B. Widdowson, Esquire, Board Prosecution Liaison 24 Paul J. Jarabeck, Esquire, Board Prosecutor 25 David N. Smith, Esquire, Board Prosecutor 26 Heather J. McCarthy, Esquire, Board Prosecutor Peter D. Kovach, Esquire, Board Prosecutor 27 28 Garrett A. Rine, Esquire, Board Prosecutor 29 Michelle Roberts, Acting Board Administrator 30 Sarah McNeill, Board Administrator 31 Marc Farrell, Deputy Policy Director, Department of 32 State 33 34 35 ALSO PRESENT: 36 37 Jen Smeltz, Republican Executive Director, Senate Consumer Protection & Professional Licensure 38 39 Committee 40 Nicole Sidle, Republican Executive Director, House 41 Professional Licensure Committee 42 Ted Mowatt, CAE, Vice President, Wanner Associates 43 Chris Young, D.C., Secretary, Pennsylvania 44 Chiropractic Association 45 Andrew Heck, D.C., Pennsylvania Chiropractic 46 Association 47 Mary Rutkowski, D.C., Pennsylvania Chiropractic 48 Association 49

State Board of Chiropractic 3 September 23, 2021 6 ALSO PRESENT: (cont.) James J. Kutz, Esquire, Post & Schell, P.C. Kerry E. Maloney, Esquire, Post & Schell, P.C. Jason B. Martin, Esquire, Pennsylvania Chiropractic Association Christopher D. Cianci, D.C., Pennsylvania Chiropractic Association Edward L. Nielsen, MHS, Executive Vice President, Pennsylvania Chiropractic Association

4 * * * 1 2 State Board of Chiropractic September 23, 2021 3 * * * 4 5 [Pursuant to Section 708(a)(5) of the Sunshine Act, 6 the Board entered into Executive Session with Nicole 7 L. VanOrder, Esquire, Board Counsel, to have attorney-8 client consultations and for the purpose of conducting quasi-judicial deliberations. The Board returned to 9 10 open session at 10:30 a.m.] * * * 11 12 Official Call to Order 13 [Joseph Gerard Halloran, D.C., Chair, called the 14 meeting to order at 10:32 a.m.] * * * 15 16 Meeting Instructions 17 [Nicole L. VanOrder, Esquire, Board Counsel, noted the 18 meeting was being recorded, and those who continue to 19 participate were giving their consent to be recorded. 20 Ms. VanOrder also noted the Board entered into 21 Executive Session prior to the start of the meeting to 22 have attorney-client consultations and for the purpose 23 of conducting quasi-judicial deliberations regarding 2.4 items 2 through 6 on the agenda.] * * * 25

Introduction of Board Members/Attendees 1 2 [Ms. VanOrder requested an introduction of Board 3 members and attendees.] * * * 4 5 Adoption of the Agenda 6 CHAIR HALLORAN: 7 We need to make a motion to adopt the 8 posted agenda for this Chiropractic 9 Board Meeting of September 23, 2021. 10 I make a motion to adopt this 11 agenda. Do I have a second? 12 DR. AUKERMAN: I'll second it. 13 CHAIR HALLORAN: 14 15 We could do this by acclamation. All in 16 favor, say aye. Does anybody have any nays or objections to adopting this 17 18 agenda? The motion has passed. The 19 agenda is adopted. 20 [The motion carried unanimously.] * * * 21 22 Approval of minutes of the July 15, 2021 meeting 23 CHAIR HALLORAN: 24 The next thing we have is Board minutes. 25 [Chair Halloran referred to page 13 line 3 through 12,

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where former Board Counsel Nicole Ehrhart stated, Chiropractors may not delegate active modalities" and believed it is an inaccurate statement. He suggested striking "chiropractors may not delegate active modalities." He noted the modalities Ms. Ehrhart stated, where they could not delegate, in her legal opinion, were not described.

Chair Halloran commented that the only thing they 8 9 knew for sure by a Superior Court decision is that chiropractors cannot, at this point in time in the 10 11 state, delegate therapeutic exercise. He did not want 12 it in the record that they are tactically agreeing to 13 minutes that might not be accurate. He again 14 suggested deleting "chiropractors may not delegate 15 active modalities."

16 Ms. VanOrder confirmed those six words for 17 accuracy.

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Dr. McCarrin suggested making an addendum to the minutes if they cannot take it out of the minutes because it was said. He commented that taking it out makes it subject to taking a lot of things out and asked whether it would be better to just make a correction to the minutes rather than remove something like it was never said.

Commissioner Johnson requested the Board return

to Executive Session.] 1 * * * 2 3 [Pursuant to Section 708(a)(5) of the Sunshine Act, 4 at 10:43 a.m., the Board entered into Executive 5 Session with Nicole L. VanOrder, Esquire, Board 6 Counsel, for attorney-client consultation regarding 7 the minutes. The Board returned to open session at 8 10:59 a.m.] 9 * * * 10 Approval of minutes of the July 15, 2021 meeting CHAIR HALLORAN: 11 12 I make a motion that we table approval 13 of the draft minutes of July 15, 2021, 14 for further consideration at the next 15 Board meeting. 16 Does anybody second that motion? MS. COATS: 17 I second that motion. 18 19 CHAIR HALLORAN: 20 We are going to have to have a voice 21 vote for this. 2.2 23 Dr. Halloran, aye; Dr. Swank, aye; John 24 McCarrin, aye; Kelsie Coats, aye; Dr. 25 Aukerman, aye; Commissioner Johnson,

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8 1 aye. 2 [The motion carried unanimously.] 3 * * * 4 Report of Prosecution 5 [Colby B. Widdowson, Esquire, Board Prosecution 6 Liaison, presented the Consent Agreement for Case No. 7 20 - 43 - 001622.8 DR. AUKERMAN: 9 I'd like to make a motion to approve the 10 Consent Agreement and Order at Case No. 20 - 43 - 001622. 11 12 CHAIR HALLORAN: Do I have a second on that? 13 DR. SWANK: 14 15 I second that. 16 CHAIR HALLORAN: 17 There is a motion on the floor to accept 18 the Consent Agreement and Order for Case No. 20-43-001622. We will have to do a 19 20 voice vote on this. 21 22 Dr. Halloran, aye; Dr. Swank, aye; Dr. 23 Aukerman, aye; Commissioner Johnson, 24 aye; Kelsie Coats, aye; John McCarrin, 25 aye.

[The motion carried unanimously. The Respondent's 1 2 name for item 2 is Joel H. Burkett, D.C.] * * * 3 4 [David N. Smith, Esquire, Board Prosecutor, presented 5 the Consent Agreement for Case No. 18-43-007577.] 6 CHAIR HALLORAN: 7 I make a motion to accept the Consent Agreement and Order for Case No. 18-43-8 9 007577. 10 Do I have a second to that motion? 11 DR. MCCARRIN: 12 I second that motion. CHAIR HALLORAN: 13 14 We are going to have to do a voice vote 15 on this. 16 17 Dr. Halloran, aye; Dr. Swank, aye; Dr. 18 Aukerman, aye; Commissioner Johnson, 19 aye; John McCarrin, aye; Kelsie Coats, 20 aye. 21 [The motion carried unanimously. The Respondent's 22 name for item 3 is Thomas Brown, D.C.] 23 * * * 24 [Heather J. McCarthy, Esquire, Board Prosecutor, 25 presented the Consent Agreement for Case No. 21-43-

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10 010481.] 1 2 DR. SWANK: 3 I make a motion to accept the Consent 4 Agreement for Case No. 21-43-010481. 5 CHAIR HALLORAN: 6 Do I have a second on that? 7 MS. COATS: 8 Second. 9 CHAIR HALLORAN: 10 I have a motion on the floor for Case 11 No. 21-43-010481 to accept that Consent 12 Order and grant it for this case. Ι would need a voice vote for that. 13 14 15 Dr. Halloran, aye; Dr. Swank, aye; Dr. Aukerman, aye; Kelsie Coats, aye; John 16 McCarrin, aye; Commissioner Johnson, 17 18 aye. 19 [The motion carried unanimously. The Respondent's 20 name for this matter is Shawn Allen Murray, D.C.] * * * 21 22 Report of Commissioner 23 [K. Kalonji Johnson, Commissioner, Bureau of 24 Professional and Occupational Affairs, noted September 25 30 marks the expiration of the emergency declaration

1 and many of the regulatory suspensions associated with 2 that, including the virtual platform. He stated all 3 boards and commissions will be returning to Penn 4 Center on October 1 due to that physical presence 5 requirement being reinstated.

6 Commissioner Johnson noted all Commonwealth of 7 Pennsylvania employees are required to wear masks and 8 members of the public will be encouraged to wear 9 masks, along with observing social distancing. He 10 mentioned that communications will be going out to 11 Board members later this week or early next week with 12 regard to those policies and guidances.

Commissioner Johnson stated the prohibition on physical travel was lifted a month ago, and physical travel requests are now being accepted but encouraged Board members to consider virtual attendance for regional and national conventions.

Commissioner Johnson informed Board members of 18 19 amendments to the Sunshine Act, which changed the way 20 approvals are processed. He noted the Commonwealth of 21 Pennsylvania has moved to an online approval process 2.2 for travel requests and encouraged Board members to 23 communicate through the Board administrator or Board 24 counsel as soon as possible when being made aware of 25 the conventions.

Commissioner Johnson stated travel requests 1 2 cannot be approved until they have been formally voted 3 on and finalized in the Board meeting and advised 4 everyone to make travel arrangements early due to 5 staffing shortages nationally. 6 Chair Halloran asked Commissioner Johnson whether 7 Board members would be able to receive written travel 8 request procedures. 9 Commissioner Johnson stated the department is 10 working with all of the Board administrators to make 11 sure links to the new portal are available to 12 everyone.] 13 * * * 14 Report of Board Counsel 15 [Nicole L. VanOrder, Esquire, Board Counsel, noted 16 agenda items 5 and 6 for discussion with counsel 17 present for the respondent in item 6. She mentioned 18 there is a special meeting at 1:00 this afternoon to 19 discuss the delegation to supportive personnel, noting 20 three comments were received and will be discussed at 21 that meeting.] 2.2 MS. VANORDER: 23 The first item I would like to discuss 24 is Case No. 20-43-009659, Samuel Joseph, 25 D.C., item 5 on the agenda.

13 I believe the Board has a motion on 1 2 that item. 3 CHAIR HALLORAN: This is Case No. 20-43-009659. I am 4 5 going to make a motion for a final 6 approval and issue an order for a Final 7 Adjudication and Order in this case. 8 MS. VANORDER: 9 I believe it was a motion to approve and 10 issue the Final Adjudication and Order 11 in Case No. 20-43-009659, Samuel Joseph, 12 D.C. CHAIR HALLORAN: 13 14 That is my motion. Thank you for the 15 assistance. Do I have a second on that? 16 DR. SWANK: 17 Second. CHAIR HALLORAN: 18 There is a motion on the floor for Case 19 No. 20-43-009659 to issue a Final 20 21 Adjudication and Order in this case, and 2.2 it's been seconded by Dr. Swank. Can I 23 have a voice vote on this? 24 25 Dr. Halloran, aye; Dr. Swank, aye; Dr.

1 Aukerman, aye; Kelsie Coats, aye; John 2 McCarrin, aye; Commissioner Johnson, 3 aye. 4 [The motion carried unanimously.] * * * 5 6 [Nicole L. VanOrder, Esquire, Board Counsel, informed 7 the Board that counsel is present for item 6 if the Board had any questions before they make their motion. 8 Peter D. Kovach, Esquire, Board Prosecutor, noted 9 a deadline for filing the motion, stating it is the 10 11 suggestion of the Commonwealth of Pennsylvania that the matter proceed and the Board vote on its 12 deliberation.] 13 14 James Kutz, Esquire, Post & Schell, P.C., counsel 15 for the respondent, was present and participated in 16 the discussion.] CHAIR HALLORAN: 17 18 I am going to make a motion to table any 19 further discussion on Case No. 18-43-20 011786. We will not let this drag out. 21 We will deal with it at the next Board 2.2 meeting. Because there are more issues 23 coming to the Board on both sides on 24 this particular case, the Board believes 25 that it would be best for us to table

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15 and consider everything. 1 2 I just made a motion that I am 3 going to table this. Do I have a second to that? 4 MS. COATS: 5 6 I second. 7 CHAIR HALLORAN: 8 Let's do this by voice vote. 9 10 Dr. Halloran, aye; Dr. Swank, aye; Dr. 11 Aukerman, aye; Kelsie Coats, aye; John 12 McCarrin, aye; Commissioner Johnson, 13 aye. 14 [The motion carried unanimously.] * * * 15 [Nicole L. VanOrder, Esquire, Board Counsel, addressed 16 17 the special meeting at 1:00 this afternoon. She noted 18 a separate agenda for the special meeting. She stated 19 the Insurance Federation of Pennsylvania, Chiropractic 20 Fellowship of America, and the Pennsylvania 21 Chiropractic Association have submitted comments. She 22 discussed the structure set around the meeting, 23 including an opportunity for Board members to ask any 24 additional questions that arise during that meeting.] * * * 25

1 Report of Board Chair

2 [J. Gerard Halloran, D.C., Chair, thanked Miriam Woods 3 for her service to the Board.

Chair Halloran commented that there will be one
chiropractor and two public member openings when Ms.
Woods has finished her time on the Board and asked
Commissioner Johnson for an update concerning Board
membership.

9 Commissioner Johnson stated the administration 10 was working diligently on improving the prospects for 11 professional members. He noted public membership is 12 always challenge across all boards and commissions but 13 is optimistic that as everything returns to a 14 semblance of normalcy, they will be able to better 15 incentivize more opportunities for public members.

Commissioner Johnson stated the General Assembly does not have a lot of voting days within the next few weeks but are committed to confirming any names that come over from administration.

20 Chair Halloran addressed an article from the 21 Cleveland Clinic, dated March 15, 2021, where 22 epidemiologic research showed that smokers are nearly 23 three times as likely to get lower back pain. He 24 stated 18 percent of the people in this country are 25 smokers, and smokers make up more than 50 percent of

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1 patients who seek care from all practitioners for low 2 back pain treatment and are prone to chronic pain 3 syndromes. He commented that all professions, 4 chiropractic included, should work toward recommending 5 smoking cessation to their patients.

6 Chair Halloran announced Senate Bill 554 was 7 signed into law as Act 65 of 2021 and is now in 8 effect. He stated Board members and interested parties to Pennsylvania state board meeting must list 9 10 business on the published agenda that will or may be 11 discussed at the Pennsylvania state board meeting due 12 to the Sunshine Act. He noted it does not apply to 13 Executive Session or working meetings of Pennsylvania 14 state boards.

15 Chair Halloran commented that a change to the 16 agenda to add an item of agency business can still 17 occur during a public meeting of Pennsylvania state 18 boards for urgent matters as long as the reason or 19 reasons for change in the meeting agenda is announced 20 at the public meeting and agreed upon by the majority 21 of the voting individuals.

22 Chair Halloran explained that the agency must 23 post the amended agenda on the agency's website and at 24 the agency's principal office on the first business 25 day following the Board meeting. He noted the minutes

will reflect the reason for the addition to the 1 2 agenda, the vote to add an item of business to the 3 agenda, and the disposition of the matter that was 4 added to the agenda. He also stated items placed on 5 the agenda by Board members should be noted 2 weeks or 6 10 business days before to make sure the item is added 7 to the meeting.] 8 * * * 9 Old Business 10 [J. Gerard Halloran, D.C., Chair, requested 11 information on whether the Board is working to draft a 12 regulatory package increasing Board fees consistent with the recommendations from the Bureau of Finance. 13 14 He noted prior Board discussion regarding drafting a 15 regulatory package in concert with the Bureau of Finance concerning fees. He mentioned an increase in 16 17 fees would take time to get through the system, and 18 the Bureau of Finance wants the Board to stay a little 19 ahead of the curve as far as fees. 20 Chair Halloran asked Ms. VanOrder to provide information at the next meeting for discussion. 21 22 Chair Halloran requested information regarding 23 whether the travel proposal has been accepted for he 24 and Dr. Aukerman to attend the Federation of 25 Chiropractic Licensing Boards (FCLB) Meeting October

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1 7-10 in Jersey City, New Jersey.

2 Ms. Roberts explained that the travel proposal 3 has been submitted but has not received a status as of 4 yet.

5 Commissioner Johnson noted that there was a 6 formalized vote, and he approved the proposal. He 7 noted it is moving through the process but will work 8 with Ms. Roberts to find out where it is in the 9 process.

10 Chair Halloran commented that Ms. DeLaurentis 11 reported in the January 21, 2021 meeting that there 12 were 1,223 COVID complaints filed against all doctors 13 of all professions with 32 of those COVID violations 14 being investigated for chiropractors and requested 15 more information concerning how that is being handled.

16 Carolyn A. DeLaurentis, Esquire, Deputy Chief 17 Counsel, Prosecution Division, commented that they 18 have received chiropractic complaints and continue to 19 receive COVID complaints in the prosecution division 20 in general. She noted an uptick in health board 21 complaints but cannot speak to the details of those 22 due to confidentiality.

23 Ms. DeLaurentis explained that counsel could be 24 made aware of anything resulting in public filings or 25 public discipline for any boards interested. She

mentioned filing two orders to show cause in a COVID-1 2 related case for the Cosmetology Board. 3 Chair Halloran asked whether complaints would be 4 handled administratively through the prosecution 5 office and then the Board informed later or will there 6 be something for the Board to do in the future. 7 Ms. DeLaurentis explained that the cases are 8 being handled like any other complaint. She noted 9 they are prioritized because of the sensitive nature 10 and some of them require a very timely response. She 11 mentioned that the staff is continuously looking for 12 complaints with certain trigger words, like COVID or 13 vaccine, and prioritized for review and investigation. Ms. DeLaurentis stated the cases are handled the 14 15 same way as other cases, where they go out to the 16 Bureau of Enforcement and Investigation (BEI), if necessary, and reviewed by prosecutors. 17 She commented 18 that she and the senior prosecutors review almost all 19 of the cases with regard to COVID complaints. She 20 noted cases would come before the Board with a consent agreement or hearing if a case is going to result in a 21 22 publicly filed document and public discipline is 23 requested by the prosecutors. 24 Chair Halloran referred to Act 116 of 2020

25 regarding carryover of CE for the next licensing

period. He asked Commissioner Johnson whether he had 1 2 any recommendations on how they handle carryover 3 continuing education (CE) for that one period. Commissioner Johnson stated the General Assembly 4 5 left that discretion to each board to determine how 6 they want to implement or whether they even want to 7 implement the carryover of CE.] 8 CHATR HALLORAN: 9 I am going to make a motion that we 10 table the discussion on Act 116, 11 carryover of continuing education but 12 put it on the agenda for the next 13 meeting to make sure we go over the 14 issues and vote one way or the other and 15 give our Board administrators time to 16 handle this and not just throw it at 17 them at the last minute. 18 I am making a motion. Does anybody 19 want to second that motion? 20 DR. AUKERMAN: I'll second it. 21 CHAIR HALLORAN: 2.2 23 We will have to have a voice vote for 24 this. We are going to table discussions 25 on Act 116, carryover of CEs for this

next licensing period until the next 1 2 Board meeting. We want to put it on the 3 agenda. 4 5 Dr. Halloran, aye; Dr. Swank, aye; Dr. 6 Aukerman, aye; Kelsie Coats, aye; John 7 McCarrin, aye; Commissioner Johnson, 8 aye. 9 [The motion carried unanimously.] * * * 10 11 Miscellaneous 12 [Michelle Roberts, Board Administrator, apologized for 13 not having the proposed 2022 meeting dates in the 14 folder but offered to email the dates to everyone 15 later today. Ms. Roberts informed the Board of the need to 16 17 select someone to replace Merry Woods for the Probable 18 Cause Screening Committee and a substitute in case 19 that person would not be available. 20 Chair Halloran proposed Kelsie Coats be the 21 probable cause person, along with him as the backup. 2.2 Ms. VanOrder stated the Board does not have many 23 instances where matters are taken before the Probable 24 Cause Screening Committee and provided a summary of 25 the probable cause process.

Chair Halloran commented that a probable cause 1 2 case occurs maybe two to three times a year, where 3 they consider the chiropractor's conduct is so 4 egregious that immediate action needs to be done for 5 the safety of themselves or others. 6 Ms. Coats agreed to be a probable cause member. 7 Chair Halloran asked whether any other chiropractor would want to be the alternate instead of 8 9 him. Mr. McCarrin agree to be the alternate. 10 CHAIR HALLORAN: 11 I make a motion that we appoint Kelsie 12 Coats as our probable cause Board 13 member, and we will also appoint Dr. 14 John McCarrin as or secondary probable 15 cause Board member to only be used in 16 the event that Kelsie Coats cannot be 17 contacted in an emergency situation. 18 Do I have somebody to second that 19 motion? 20 DR. SWANK: 21 I second it. 2.2 CHAIR HALLORAN: 23 Lets' do a voice vote on that. 24 25 Dr. Halloran, aye; Dr. Swank, aye; Dr.

1 Aukerman, aye; Kelsie Coats, aye; John 2 McCarrin, aye; Commissioner Johnson, 3 aye. 4 [The motion carried unanimously.] * * * 5 [J. Gerard Halloran, D.C., Chair, noted the next Board 6 7 of Chiropractic Examiners Meeting is November 10, 8 2021.1 9 * * * 10 Public Comment 11 [Edward L. Nielsen, MHS, Executive Vice President, 12 Pennsylvania Chiropractic Association, asked whether 13 there is going to be an agenda sent out for the 1:00 14 meeting and whether there is a different dial-in 15 number as opposed to the current conference call 16 number. 17 Ms. Roberts noted the dial-in number is the same 18 and will post the agenda on the website within the 19 next few minutes.] 20 * * * 21 Adjournment 2.2 CHAIR HALLORAN: 23 I'm going to entertain a motion for 24 adjournment of this current State Board 25 of Chiropractic Meeting.

25 Do I have a motion for that? 1 2 DR. MCCARRIN: 3 Motion to adjourn. CHAIR HALLORAN: 4 5 Who is going to second it? 6 DR. AUCKERMAN: 7 Second. 8 CHAIR HALLORAN: 9 We can do that by voice acclamation. 10 All in favor of adjourning this current 11 meeting of the Pennsylvania State Board 12 of Chiropractic, say aye. Everybody has 13 acclaimed that. This meeting is 14 adjourned. 15 [The motion carried unanimously.] * * * 16 17 [There being no further business, the State Board of 18 Chiropractic Meeting adjourned at 12:01 p.m.] * * * 19 20 21 22 23 24 25 26

CERTIFICATE I hereby certify that the foregoing summary minutes of the State Board of Chiropractic meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Chiropractic meeting. -Xal Samantha Sabatini, Minute Clerk Sargent's Court Reporting Service, Inc.

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		September 23, 2021	
	TIME	AGENDA	
	9:00 10:30	Executive Session Return to Open Session	
	10:32	Official Call to Order	
	10:33	Adoption of the Agenda	
	10 : 34	Introduction of Board Members/Attendees	
	10:43 10:59	Executive Session Return to Open Session	
	11:01	Approval of Minutes	
	11:02	Report of Prosecution	
	11 : 16	Report of Commissioner	
	11:22	Report of Board Counsel	
	11:33	Report of Board Chair	
30 31	11:40	Old Business	
32 33	11 : 52	Miscellaneous	
34 35	11:59	Public Comment	
36 37	12:01	Adjournment	
38 39			
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