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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 CHIROPRACTIC

TIME: 9:02 A.M.

PENNSYLVANIA DEPARTMENT OF STATE
Board Room B
One Penn Center
2601 North Third Street
Harrisburg, Pennsylvania 17110

March 21, 2019

State Board of Chiropractic

March 21, 2019

BOARD MEMBERS:

- J. Gerard Halloran, D.C., Chair
- Kalonji Johnson, Acting Commissioner, Bureau of Professional and Occupational Affairs
- John E. McCarrin, D.C., Secretary
- William D. Aukerman, D.C.
- Michael S. Swank, D.C.
- Nikole N. Brock, Deputy Attorney General, Consumer Protection
- Miriam Merry Woods, Public Member

BUREAU PERSONNEL:

- Kenneth J. Suter, Esquire, Board Counsel
- Paul J. Jarabeck, Esquire, Senior Prosecutor in Charge
- Kimberly A. Adams, Esquire, Board Prosecution Liaison
- David Schertz, Esquire, Board Prosecutor
- Elizabeth Wecker, Board Administrator
- Kimberly Adams, Chief of Fiscal Management, Bureau of Finance and Operations
- Shannon Boop, Fiscal Management Specialist, Bureau of Finance and Operations

ALSO PRESENT:

- Edward L. Nielsen, MHS, Executive Vice President, Pennsylvania Chiropractic Association
- John Wanner, CAE, Chiropractor Fellowship of Pennsylvania

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1 ***

2 State Board of Chiropractic

3 March 21, 2019

4 ***

5 The regularly scheduled meeting of the State
6 Board of Chiropractic was held on Thursday, March 21,
7 2019.

8 ***

9 Official Call to Order

10 [J. Gerard Halloran, D.C., Chair, called the meeting
11 to order at 9:02 a.m.

12 Chair Halloran introduced Mr. Ken Suter as the
13 new Board counsel.]

14 ***

15 Approval of Minutes of the January 17, 2019 meeting

16 CHAIR HALLORAN:

17 The first item on the agenda would be
18 looking at the draft minutes of January
19 17, 2019. Has everybody had a chance to
20 look those over, and are there any
21 corrections?

22 Could I have a motion from the
23 Board to accept the Board minutes of
24 January 17, 2019?

25 MS. WOODS:

1 Motion to accept the Board minutes.

2 CHAIR HALLORAN:

3 Is there a second?

4 DR. AUKERMAN:

5 I'll make a motion to second.

6 CHAIR HALLORAN:

7 All in favor, say aye.

8 [The motion carried unanimously.]

9

10 Appointment - Bureau of Finance and Operations Annual
11 Budget Presentation

12 [Kimberly Adams, Chief of Fiscal Management, Bureau of
13 Finance and Operations, introduced herself, and
14 Shannon Boop, Fiscal Management Specialist 1.

15 Ms. Adams addressed licensee population from a
16 revenue standpoint. She noted the current licensee
17 count for FY 2018-2019 at 3,959, with a recent
18 addition of 8 licensees. She commented that the
19 licensee count had decreased by 144 over FY 2014-2015
20 and then FY 2016-2017.

21 Chair Halloran questioned whether there were any
22 statistics concerning the decline. Ms. Adams will
23 provide that information at a later time.

24 Ms. Adams stated 96.8% of revenue was from
25 renewals and applications. She reviewed the current

1 biennial total.

2 Ms. Adams reviewed the categorical breakdown of
3 administrative and legal expenses for FY 2016-17 and
4 FY 2017-18, FY 2018-2019 budget, and the FY 2018-2019
5 expenses. She noted an increase in expenses. She
6 stated expenses are incurred from direct-based cost,
7 timesheet-based charges, and licensee-based charges.

8 Ms. Adams addressed revenues and expenses from FY
9 2016-2017, FY 2017-2018, and FY 2018-2019. She noted
10 that expenses are over revenue. She also noted a
11 decrease in the licensee trend, but the Board appears
12 to be financially acceptable.

13 Mr. Suter questioned whether there was a
14 projection of when the Board may need to address a fee
15 increase, noting his concern of the two-year process
16 after hearing about a vote for an increase that was
17 rescinded. Chair Halloran noted an increase was
18 approved by the Board but rescinded by the Bureau of
19 Professional and Occupational Affairs (BPOA).

20 Ms. Wecker said it was rescinded and that it was
21 decided that the Board would not need an increase at
22 the time.

23 Mr. Suter and Ms. Adams will obtain additional
24 information on the matter in preparation for the next
25 meeting. Ms. Adams noted a fee increase that was

1 approved in 2016 at 35% that had been rescinded
2 because the fee increase was not needed.

3 Ms. Adams provided a breakdown of Board member
4 expenses for FY 2016-2017 and FY 2017-2018, noting the
5 budget for FY 2018-2019. She noted an increase in
6 expenses as of February 27, 2019. She noted that the
7 budget will remain the same for FY 2019-2020. She
8 commented that any excess goes back to the restricted
9 account for the Board's use.

10 Ms. Adams reviewed the expenditure sheet
11 reflecting a pictorial overview of the fluctuation in
12 expenses since 2006.

13 Ms. Adams will return for the next Board meeting
14 on May 16, 2019, to discuss whether the Board would
15 vote to cancel the rescind of the fee increase.]

16 ***

17 Report of Board Prosecution

18 [Paul J. Jarabeck, Esquire, Senior Prosecuting
19 Attorney, presented the VRP Consent Agreement for File
20 No. 18-43-008345.]

21 ***

22 [David J. Schertz, Esquire, Board Prosecutor,
23 presented the Consent Agreement for File No. 13-43-
24 08370.]

25 ***

1 [Kalonji Johnson, Acting Commissioner, Bureau of
2 Professional and Occupational Affairs, entered the
3 meeting at 9:28 a.m.]

4 ***

5 [Kimberly A. Adams, Esquire, Board Prosecution
6 Liaison, presented the Consent Agreement for File No.
7 17-43-01758. Ms. Adams will present the Office of
8 General Counsel's Mediation Program in this case.]

9 ***

10 Report of Acting Commissioner

11 [Kalonji Johnson, Acting Commissioner, Bureau of
12 Professional and Occupational Affairs, introduced
13 himself to the Board. Acting Commissioner Johnson
14 announced that former Commissioner Harlow had been
15 promoted to Deputy Secretary of Regulatory Affairs.

16 Acting Commissioner Johnson expressed his
17 eagerness to work with the Board. He discussed his
18 prior role as Policy Director for the Department of
19 State, including shepherding promulgated regulations
20 and working with the Governor's Policy Office on their
21 approval.

22 Acting Commissioner Johnson announced his
23 replacement, Marc Farrell, who has extensive knowledge
24 in the regulatory process.

25 Acting Commissioner Johnson assured the Board

1 that their strategic initiatives would be brought
2 forward and their voices heard.]

3 ***

4 Report of Board Counsel

5 [Kenneth J. Suter, Esquire, Board Counsel, noted three
6 consent agreements for discussion in Executive
7 Session. Mr. Suter addressed the Sports Medicine
8 Licensure Clarity Act. He participated in a legal
9 subgroup conference call of the Federation of
10 Chiropractic Licensing Boards concerning the
11 interpretation of this act.

12 Mr. Suter explained that the act permits the
13 practice of a physician, chiropractor, or athletic
14 trainer who travels with a sports team from their
15 licensed home state to another state where they are
16 not licensed. He commented that enforcement was still
17 not clear. He will be attending the next group
18 meeting in Mission Bay, along with Chair Halloran and
19 Dr. Aukerman.

20 Chair Halloran noted that the National
21 Chiropractic Mutual Insurance Company (NCMIC) sent
22 several chiropractors, who will be protecting team
23 chiropractors according to the new federal Sports
24 Medicine Licensure Clarity Act. He explained that
25 under this new law, malpractice coverage and the

1 individual's state license follow them to team events
2 in other states.

3 Chair Halloran commented that rules apply to
4 sanctioned professional, Olympic, high school, and
5 college teams. He explained the NCMIC process
6 concerning preregistration as a team member that
7 allows NCMIC to verify membership with the team
8 through documentation for protection. He noted the
9 individual must register with their malpractice
10 carrier.

11 Chair Halloran emphasized that this coverage
12 limits the individual to being only a team doctor and
13 does not permit treatment of anyone other than a team
14 member. Individuals must register with their
15 malpractice carrier and provide them team information.

16 Mr. Suter addressed House Bill 15 regarding
17 telemedicine with expectations of passage in this
18 legislative session. He noted telemedicine to be
19 broad in terms of who can practice telemedicine, but
20 there are specific details in terms of requirements.
21 He stated each respective licensing Board was required
22 to pass regulations within a 24-month period if the
23 bill passes.

24 Acting Commissioner Johnson commented that the bill is
25 nearly identical to the previous bill that was

1 introduced last session, except for the types of
2 health care practitioners included in the legislation.
3 The expanded list of health care practitioners
4 correlates with the Health Care Facilities Act.

5 Mr. Suter discussed House Bill 517 regarding
6 delegation to supportive personnel that requires the
7 chiropractor to be on the premises for supervision.
8 He discussed delegating an activity or duty to
9 unlicensed supportive personnel who are not qualified
10 through their training and education to perform the
11 activity and failing to exercise direct on premises
12 supervision of the unlicensed personnel.

13 Dr. McCarrin noted the need to be
14 cautious with the language, specifically to clarify
15 the interpretation by insurance companies.

16 Edward L. Nielsen, MHS, Executive Vice President,
17 Pennsylvania Chiropractic Association, addressed House
18 Bill 517 introduced by Representative Stephen Barrar
19 being circulated in the House Professional Licensure
20 Committee. He also noted a companion bill that
21 Senator David Argall was circulating for co-
22 sponsorship. He stated the Pennsylvania Chiropractic
23 Association (PCA) had taken a three-prong approach by
24 supporting the state Board in delegation and
25 supporting Representative Barrar's and Senator

1 Argall's bipartisan approach to gain support.

2 Mr. Nielsen discussed the importance to know
3 whether the Board had ever had an issue of sanctioning
4 or otherwise adjudicating against a doctor of
5 chiropractic for a problem resulting from the
6 delegation of unlicensed personnel, which would help
7 the case weigh delegation legislation and regulations.

8 Acting Commissioner Johnson discussed the
9 regulatory process through the General Assembly and
10 the Independent Regulatory Review Commission (IRRC).

11 Acting Commissioner Johnson commented that the
12 three-prong approach was excellent in getting a jump
13 start on the regulations by concurrently contacting
14 the assembly members to ensure that the bill moves out
15 of the committee, and gets exposed in both chambers.
16 As soon as that bill is passed, there would no longer
17 be the 12-month gap.

18 Acting Commissioner Johnson commented that the
19 individuals following the legislative track would have
20 the ability to comment publicly on the regulatory
21 provisions. The public comment period would also be
22 used to ensure the legislation and re-regulation are
23 in sync.]

24 ***

25 Report of Board Chairman

1 [J. Gerard Halloran, D.C., Chair, welcomed Ken Suter
2 as the new Board counsel.

3 Chair Halloran requested more time from state
4 associations, attorneys, and individual chiropractors
5 for the Chiropractic State Board to analyze the best
6 way forward regarding animal chiropractic, which will
7 be discussed further in executive session.

8 Chair Halloran noted several Board members have
9 been contacted by fellow chiropractors concerning the
10 processing of fellow chiropractors who are in the news
11 for violations of law. He stated the Board must be
12 careful about these issues, noting that this will be
13 discussed with Board counsel to quantify the
14 procedures needed to act in a responsible manner that
15 would not prejudice any future deliberations.

16 Chair Halloran noted Dr. McCarrin's suggestion to
17 have a membership committee to review candidates who
18 want to sit on the state Board, which will also be
19 discussed during executive session to ensure no
20 interference with the Governor's Office in choosing
21 candidates for the state Board.

22 Chair Halloran stated the National Board of
23 Chiropractic Examiners Meeting requested that a member
24 of the Board attend the June 21-22, 2019 meeting in
25 Greeley, CO, which will be discussed further in New

1 Business. He noted Dr. Khouri and Dr. McConnell's
2 help with the May meeting since they are not currently
3 members of the Board and should have no problems with
4 reimbursement requirements from the National Board of
5 Chiropractic Examiners.

6 Chair Halloran, Dr. Aukerman, and Mr. Suter were
7 approved to represent the Chiropractic State Board at
8 the Annual Federation of Chiropractic Licensing Boards
9 Annual Educational Congress Meeting in Mission Hills,
10 CA, from May 1-5, 2019.

11 Chair Halloran addressed the Sports Medicine
12 Licensure Act that was federally passed and applies to
13 individuals being a registered team doctor as a
14 chiropractor or any profession from the professional
15 ranks down to the high school ranks. He provided an
16 overview of team doctor coverage areas. He commented
17 that the state that would determine the scope of
18 practice would be the state in which the practice was
19 taking place.

20 Chair Halloran noted that team doctors who want
21 the coverage must register with NCMIC and must have
22 documentation from the team that the individual is
23 team doctor, which takes care of license requirements
24 under the federal law.

25 Dr. McCarrin questioned whether a chiropractor

1 can serve on a high school team as a team physician in
2 Pennsylvania.

3 Chair Halloran explained that the Pennsylvania
4 Interscholastic Athletic Association (PIAA) will not
5 allow this practice, which is a whole other issue. He
6 stated, under the Sports Medicine Licensure Clarity
7 Act, the state law allows an individual to be a team
8 physician for any high school, but that individual may
9 not be a sanctioned team physician under PIAA because
10 of an exclusion for chiropractors.

11 Mr. Suter noted a discussion with lawyers
12 representing other licensing Boards who agreed that it
13 was not entirely clear which state would be enforcing
14 this when an individual was in the other state, if it
15 would be the home state or the state the individual
16 was in.

17 Chair Halloran commented that some of these
18 issues will hopefully be clarified at the Annual FCLB
19 Educational Congress Meeting.

20 Chair Halloran thanked chiropractors for their
21 support of the Pennsylvania State Board of
22 Chiropractic's effort to get sensible treatment
23 regulations accepted. He also thanked PCA for their
24 support.

25 Chair Halloran stated the Board will maintain

1 relevant training surrounding the opioid issue.

2 Chair Halloran reminded Board members of annual
3 financial statements and information technology (IT)
4 acceptable use policies and to update state email and
5 password.

6 Chair Halloran reviewed correspondence concerning
7 the association between utilization of chiropractic
8 services for treatment of low back pain and use of
9 prescription opioids. He noted the Board's commitment
10 to the opioid problem. He noted problems that hurt
11 patient care and the importance of finding ways to
12 have chiropractic care get included in chronic low
13 back issues to help mitigate this problem to increase
14 patient access to hands-on physical medicine.

15 Mr. Nielsen noted material concerning the concept
16 of conservative care first (CCF) from the Foundation
17 for Chiropractic Progress, which is the marketing arm
18 of the profession nationally.

19 Mr. Nielsen noted communication with Dr. Levine
20 and later possibly the inspector general in terms of
21 insurance company practice that relates to
22 conservative care first.

23 Dr. McCarrin suggested PCA reach out to the
24 medical malpractice insurance companies to conduct
25 lectures for primary care doctors regarding opioid use

1 and alternative health care to bridge the gap with the
2 opioid condition and the relationship with the
3 American Medical Association (AMA) and other groups.

4 Mr. Nielsen stated PCA will be extending an
5 invitation to the president of the Pennsylvania
6 Medical Society Liability Insurance Company (PMSLIC)
7 to speak to the Board.

8 Chair Halloran reiterated the Chiropractic
9 Board's commitment to the opioid issue with continued
10 training and relevant facts to bring to forth.]

11 ***

12 Report of Regulatory Counsel - No Report

13 [Kalonji Johnson, Acting Commissioner, Bureau of
14 Professional and Occupational Affairs, updated the
15 Board regarding the delegation regulation, noting
16 Cynthia Montgomery, Senior Counsel in Charge, was
17 reviewing the regulation and awaiting departmental
18 legal review.]

19 ***

20 Report of Board Administrator

21 [Elizabeth Wecker, Board Administrator, announced that
22 Michelle Roberts will be her replacement at the
23 meetings during her maternity leave.]

24 ***

25 Review of Applications - No Report

1 ***

2 Old Business

3 [J. Gerard Halloran, D.C., Chair, noted the petition
4 for amendment of regulations regarding animal
5 chiropractic.

6 Mr. Suter noted this to be a sensitive matter and
7 cautioned the Board to not discuss specific cases.

8 Chair Halloran suggested tabling this issue for
9 advice from Board Counsel during executive session and
10 to allow more time for a decision in the future.]

11 ***

12 New Business

13 [J. Gerard Halloran, D.C., Chair, addressed the
14 request to have one Board member attend the National
15 Board of Chiropractic Examiners Meeting June 21-22,
16 2019, in Greeley, CO. Chair Halloran discussed the
17 differences in the rules of the Federation of
18 Chiropractic Licensing Boards (FCLB), which are
19 consistent with state rules, and NBCE.]

20 ***

21 CHAIR HALLORAN:

22 We need a to vote on trying to send me
23 to the National Board of Chiropractic
24 Examiners Meeting in Greeley, CO, June
25 21-22, 2019.

1 DR. MCCARRIN:

2 I'll motion.

3 CHAIR HALLORAN:

4 Anybody second that?

5 DR. AUKERMAN:

6 I'll second it.

7 CHAIR HALLORAN:

8 All in favor?

9 [The motion carried unanimously.]

10 ***

11 New Business (Continued)

12 [J. Gerard Halloran, D.C., Chair, addressed
13 cannabidiol (CBD) oil, noting that it is legal for
14 chiropractors to utilize in their office if it is a
15 hemp-based product but not cannabis. Even a trace of
16 cannabis would violate the Federal rule.

17 Chair Halloran noted a discussion at a prior
18 Board meeting concerning information from the
19 Federation of Chiropractic Licensing Boards that CBD
20 oil from pure hemp was not a violation. but CBD oil
21 with either a mixture or from cannabis was a violation
22 of the Federal law. He also noted several calls from
23 individuals on the matter.

24 Mr. Suter also noted the receipt of calls and
25 will seek direction from his superiors as to what can

1 be done since the Board has not ruled on this.

2 Mr. Nielsen commented that PCA concurs with the
3 analysis of hemp only. He addressed another issue
4 concerning the threshold of the tetrahydrocannabinol
5 (THC) level in oils, where 3% of THC or less is
6 acceptable according to the federal and/or state
7 government. He noted confusion in terms of
8 understanding hemp versus cannabis and the THC
9 percentage.]

10 ***

11 [The Board recessed from 11 a.m. until 11:05 a.m.]

12 ***

13 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
14 11:05 a.m. the Board entered into Executive Session
15 with Kenneth J. Suter, Esquire, Board Counsel, for
16 receipt of legal advice and the purpose of conducting
17 quasi-judicial deliberations. The Board returned to
18 open session at 12:35 p.m.]

19 ***

20 [Kalonji Johnson, Acting Commissioner, Bureau of
21 Professional and Occupational Affairs, exited the
22 meeting at 12:35 p.m.]

23 ***

24 MOTIONS

25 CHAIR HALLORAN:

1 We just completed executive session for
2 the issue of deliberating quasi-judicial
3 issues and specifically to get the
4 advice of Board counsel on these issues.

5 We are going to work on File No.
6 18-43-008345.

7 DR. MCCARRIN:

8 I make a motion to approve the Consent
9 Agreement for File No. 18-43-08345.

10 CHAIR HALLORAN:

11 Do I have a second?

12 DR. AUKERMAN:

13 I'll second.

14 CHAIR HALLORAN:

15 I think we should do a voice vote on
16 this.

17

18 J. Gerard Halloran, aye; Michael S.
19 Swank, aye; William D. Aukerman, aye;
20 Nikole N. Brock, aye; John E. McCarrin,
21 aye; and Miriam Merry Woods, aye;

22 [The motion carried unanimously.]

23

24 CHAIR HALLORAN:

25 We are on File No. 13-43-08370, Joshua

1 Michael Rosinski, D.C.

2 MS. BROCK:

3 I make a motion to table this pending
4 the receipt of more information to be
5 dealt with at the next Board meeting,
6 which is May 16, 2019.

7 MS. WOODS:

8 Second.

9 CHAIR HALLORAN:

10 Woods, second.

11 [The motion carried unanimously.]

12 ***

13 CHAIR HALLORAN:

14 We are on File No. 17-43-01758, Charles
15 H. Durr, D.C.

16 DR. MCCARRIN:

17 I motion to approve the Consent
18 Agreement, File No. 17-43-01758.

19 DR. SWANK:

20 Second.

21 CHAIR HALLORAN:

22 I think we should have a voice vote on
23 this.

24

25 J. Gerard Halloran, aye; Michael S.

1 Swank, aye; William D. Aukerman, aye;
2 Nikole N. Brock, aye; John E. McCarrin,
3 aye; and Miriam Merry Woods, aye;

4 [The motion carried unanimously.]

5 ***

6 DR. MCCARRIN:

7 I would like to make a motion that the
8 state Board support House Bill 517 and
9 that we direct our Board counsel to
10 draft a letter in that support.

11 MS. WOODS:

12 Second.

13 CHAIR HALLORAN:

14 A voice vote, please.

15
16 J. Gerard Halloran, aye; Michael S.
17 Swank, aye; William D. Aukerman, aye;
18 Nikole N. Brock, aye; John E. McCarrin,
19 aye; and Miriam Merry Woods, aye;

20 [The motion carried unanimously.]

21 ***

22 CHAIR HALLORAN:

23 I would like to make a motion on the
24 petition for amendment of regulations
25 regarding animal chiropractic. I am

1 going to motion that we table any type
2 of consideration for this for the time
3 being.

4 What I want to do is invite the
5 Veterinary Board to have a joint session
6 between the Veterinary Board and the
7 Chiropractic Board on animal
8 chiropractic issues. After we have a
9 joint session and have some discussion
10 between the Boards, we will come back to
11 this petition and make a decision.

12 Do I have a second on that?

13 DR. SWANK:

14 Second.

15 CHAIR HALLORAN:

16 Can we do a voice vote on that?

17

18 J. Gerard Halloran, aye; Michael S.
19 Swank, aye; William D. Aukerman, aye;
20 Nikole N. Brock, aye; John E. McCarrin,
21 aye; and Miriam Merry Woods, aye;

22 [The motion carried unanimously.]

23

24 Adjournment

25 CHAIR HALLORAN:

1 Do I have a motion to adjourn?

2 DR. MCCARRIN:

3 I'll motion.

4 DR. AUKERMAN:

5 Second.

6 CHAIR HALLORAN:

7 Aukerman, second. Voice vote. Capped
8 by acclimation.

9 [The motion carried unanimously.]

10 ***

11 [There being no further business, the State Board of
12 Chiropractic Meeting adjourned at 12:40 p.m.]

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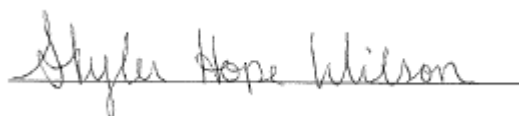
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CERTIFICATE

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.



Skyler Hope Wilson,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF CHIROPRACTIC
REFERENCE INDEX

March 21, 2019

TIME

AGENDA

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6	TIME	AGENDA
7		
8	9:02	Official Call to Order
9		
10	9:03	Approval of Minutes
11		
12	9:04	Appointment - Bureau of Finance and
13		Operations Annual Budget Presentation
14		
15	9:19	Report of Prosecutorial Division
16		
17	9:41	Report of Acting Commissioner
18		
19	9:45	Report Board Counsel
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21	10:08	Report of Board Chairman
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23	10:40	Report of Regulatory Counsel
24		
25	10:42	Report of Board Administrator
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27	10:44	Old Business
28		
29	10:49	New Business
30		
31	11:00	Recess
32	11:05	Return to Open Session
33		
34	11:05	Executive Session
35	12:35	Return to Open Session
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37	12:35	Motions
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39	12:40	Adjournment
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