

MINUTES

INDIANA BOARD OF CHIROPRACTIC EXAMINERS

JUNE 28, 2018

I. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Dr. Bernzott called the meeting to order at 9:00 a.m. at the Indiana Government Center South, 302 West Washington Street, Conference Center Room 2, Indianapolis, Indiana, and declared a quorum in accordance with Indiana Code § 15-5-1.1-6(c).

Board Members Present:

John Bernzott, D.C.
Marian Klaes, D.C.
Derek Dyer, D.C.
Diane Vuotto, D.C.
Michael Phelps, D.C.

Board Members Not Present:

David Davis, D.C. (Chairman)
Vacant, Consumer Member

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Heather Hollcraft, Assistant Board Director, Professional Licensing Agency
Christine Monte, Deputy Attorney General, Office of the Attorney General

II. ADOPTION OF AGENDA AS AMENDED

A motion was made and seconded to adopt the agenda, as amended.

DYER/KLAES
Motion carried 5-0-0

III. ADOPTION OF THE MINUTES FROM THE FEBRUARY 15, 2018 AND APRIL 12, 2018 MEETINGS OF THE BOARD

Adoption of the minutes from the February 15, 2018 and April 12, 2018 meetings of the Board was tabled until the next meeting of the Board.

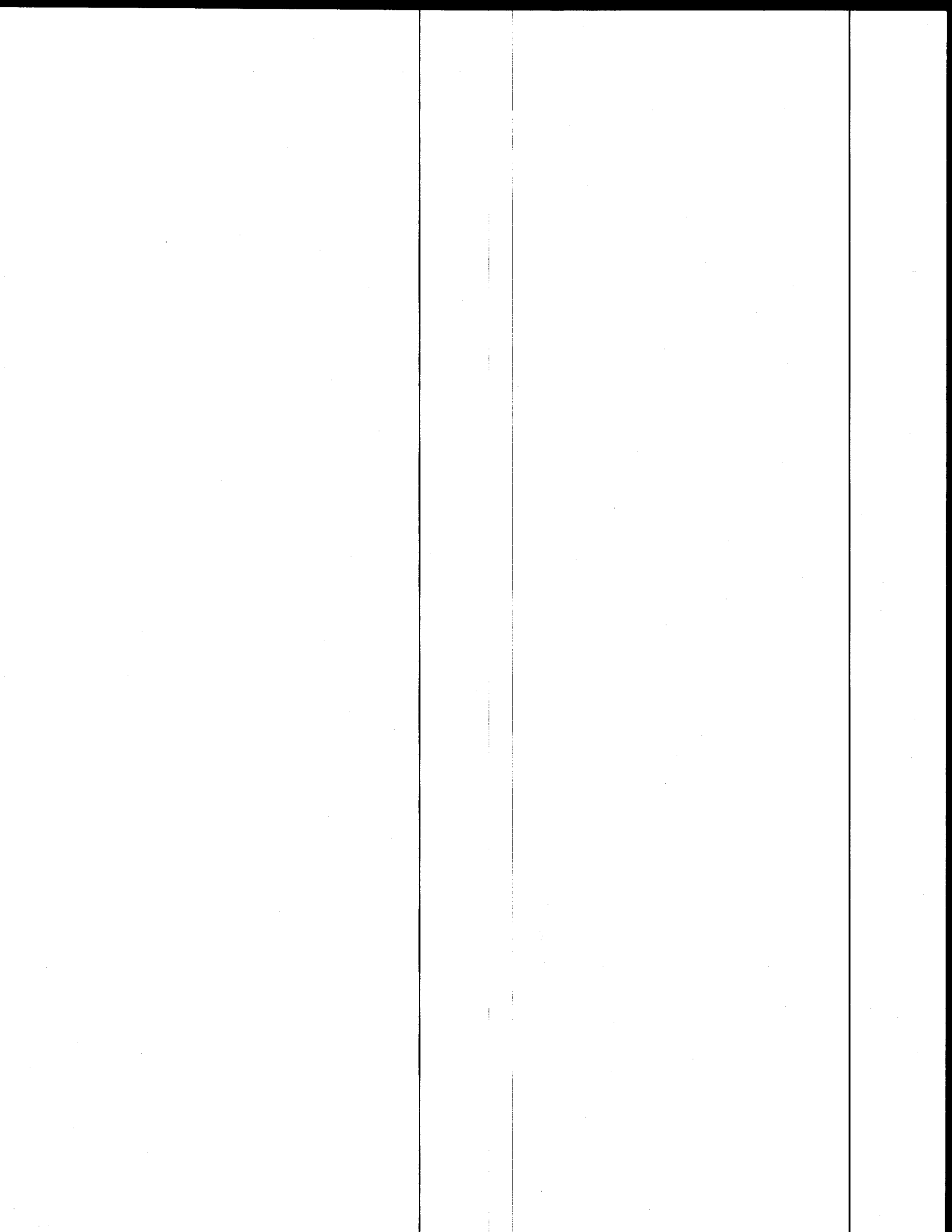
IV. PERSONAL APPEARANCES

A. PROBATIONARY

There were no probationary appearances before the Board.

B. RENEWAL

1. Gary Edward Buchanan, D.C., License No. 08000701A



Dr. Buchanan appeared before the Board, as requested, regarding his application for the renewal of his chiropractic license. Dr. Buchanan answered affirmatively to the question on the renewal that asks "Since you last renewed, and except for minor violations of traffic laws resulting in fines and arrests or convictions that have been expunged by a court, have you been arrested, entered into a diversion agreement, been convicted of, pled guilty to, or pled *nolo contendere* to any offense, misdemeanor, or felony in any state?" Dr. Buchanan explained that on September 14, 2017, he was arrested and charged with Public Indecency. On or around April 5, 2018, Dr. Buchanan was sentenced to one hundred eighty (180) days of probation, forty (40) hours of community service, and 1,809 days in jail, suspended. Dr. Buchanan stated his probation is slated to end in September 2018. The Board stated that this is not the first time Dr. Buchanan has had to appear before them.

Board action: A motion was made and seconded to grant the renewal of Dr. Buchanan's chiropractic license and to file a Complaint with the Office of the Attorney General for further investigation of this matter.

VUOTTO/PHELPS

Motion carried 4-0-0

*Dr. Klaes recused herself from this appearance

C. REINSTATEMENT

There were no reinstatement appearances before the Board.

D. APPLICATION

1. Kendrick Morris, D.C.

Dr. Morris did not appear before the Board, as requested. Dr. Morris will be rescheduled to appear at the next meeting of the Board.

2. Antonio R. Franco, D.C.

Dr. Franco appeared before the Board, as requested, regarding his application for chiropractic licensure by examination. Dr. Franco did not answer affirmatively to any questions on the application for licensure. However, there was a record found on his criminal background check. Dr. Franco explained that in 2011, he was arrested and charged with Public Intoxication in Kosciusko County, Indiana. Dr. Franco stated that on September 15, 2011, he was placed on a Pre-Trial Diversion Agreement. Dr. Franco completed all requirements of the agreement and the charge was dismissed on March 14, 2012. Dr. Franco is a 2018 graduate of Palmer College of Chiropractic and plans to practice with his wife, Dr. Rachel Franco, D.C., in Avon, Indiana.

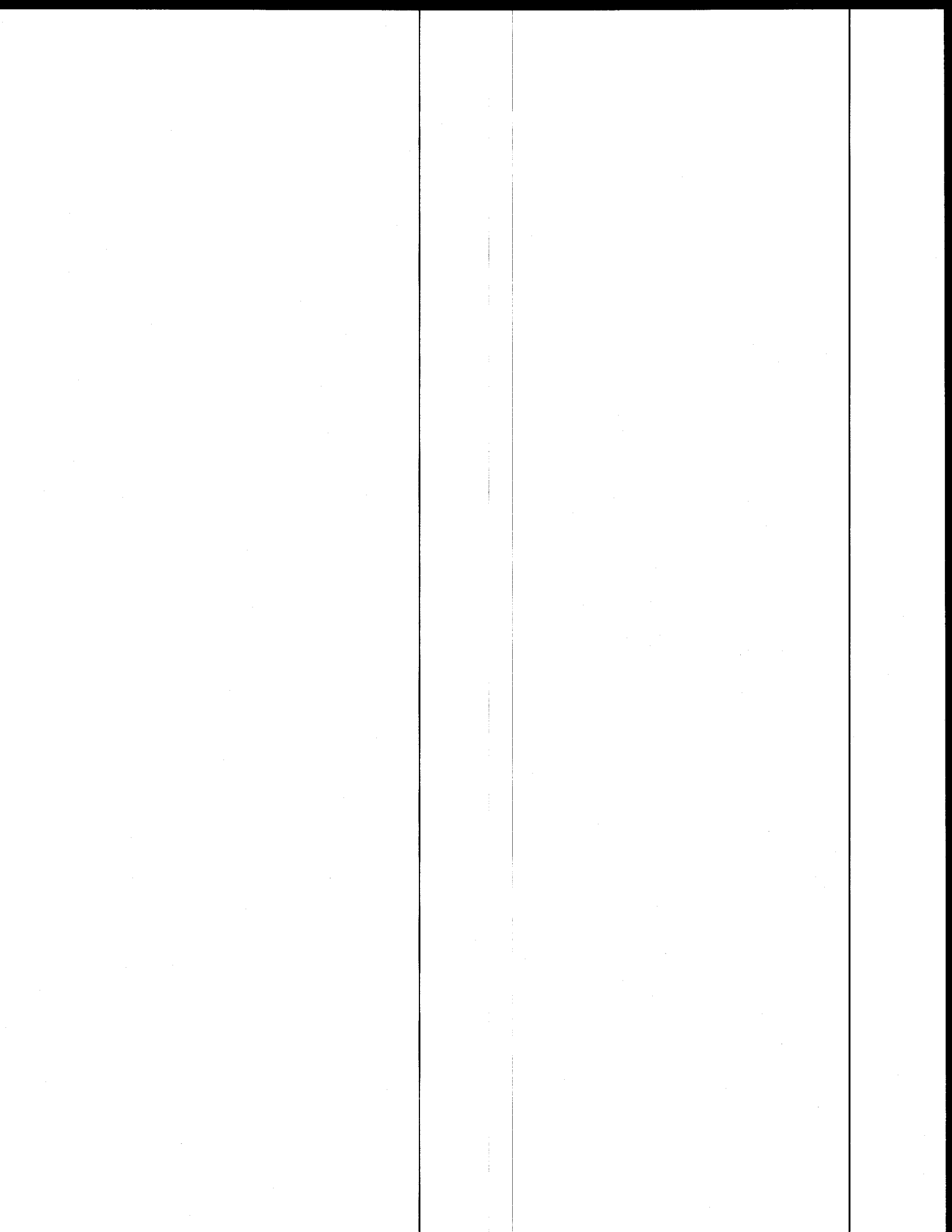
Board action: A motion was made and seconded to grant Dr. Antonio Franco a chiropractic license by examination upon successful completion of the Indiana jurisprudence examination.

VUOTTO/KLAES

Motion carried 5-0-0

V. ADMINISTRATIVE HEARING

- A. State of Indiana v. Ronald G. Sheppard, D.C., License No. 08000647A**
Administrative Cause No. 2018 IBCE 0003



Re: Administrative Complaint

Participating Present:

Respondent was present, and represented by Benjamin Strahm, Attorney, for Mark Sullivan
Jessica Krug, Deputy Attorney General for the State of Indiana
Linda Bour, Court Reporter, Alliance Court Reporting

Participating Board Members:

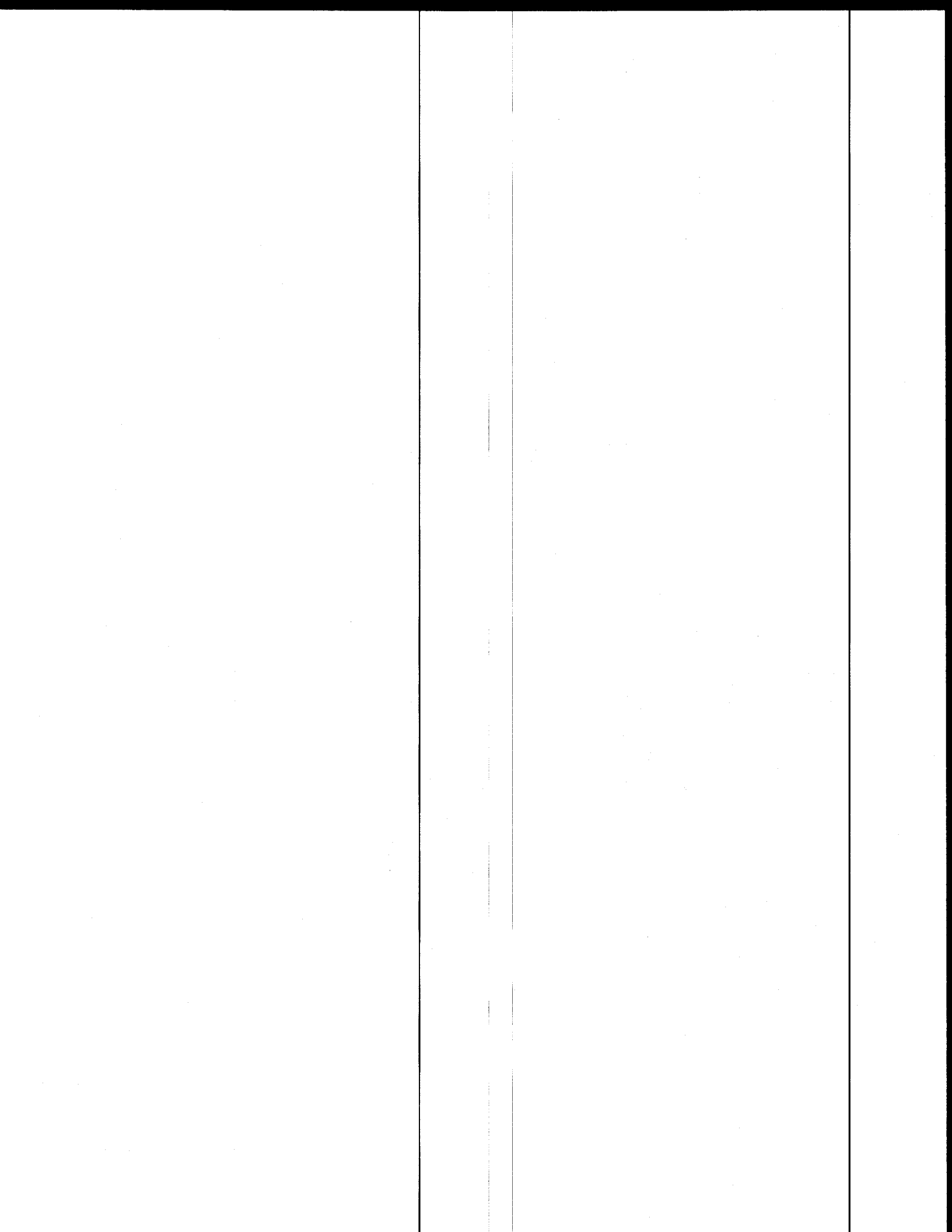
Dr. Bernzott, D.C. (Hearing Officer)
Dr. Klaes, D.C.
Dr. Dyer, D.C.
Dr. Vuotto, D.C.
Dr. Phelps, D.C.

Ms. Krug made a motion to request the recusal of Dr. Bernzott from this hearing, pursuant to Ind. Code 25-1-7-9, as he had previously participated in settlement negotiations previous to this hearing. Board counsel, Christine Monte stated she feels Ind. Code 25-1-7-9 does not apply in this matter. Dr. Bernzott stated that he can be unbiased in this matter. Ms. Monte recommended he not recuse himself in this matter.

Board action: A motion was made and seconded to deny the State's Motion requesting Dr. Bernzott recuse himself from this matter.

KLAES/VUOTTO
Motion carried 5-0-0

Case Summary: On or around February 22, 2018, the State filed an Administrative Complaint alleging Respondent has violated Ind. Code 25-1-9-4(a)(1)(B) in that Respondent has engaged in fraud or material deception in the course of professional services or activities; has violated Ind. Code 25-1-9-4(a)(1)(D) in that Respondent has been convicted of a crime or assessed a civil penalty involving fraudulent billing practices, included fraud under (i) Medicaid (42 USC 1396 et seq.); (ii) Medicare (42 USC 1395 et seq.); (iii) the children's health insurance program under Ind. Code 12-17.6; or (iv) insurance claims; and has violated Ind. Code 25-1-9-4(a)(2)(B) in that Respondent has been convicted of a crime that is harmful to the public. The State entered Exhibit 1, a copy of indictment; and Exhibit 2, a copy of the sentencing in Respondent's criminal matter. The State called Dr. Sheppard as a witness. The State entered Exhibit 3, a copy of the Final Order Accepting Proposed Findings of Fact, Conclusions of Law, and Order file stamped August 24, 2016. When asked by Ms. Krug if he has personal friendships with many of the Board members, Respondent indicated "yes". Mr. Strahm objected to Ms. Krug's line of questions regarding his personal knowledge of the Board, as it has already been established previously that he knows the board members personally and none of them recused themselves from this hearing. Respondent testified that he was sentenced to six (6) months of work release that will end August 14, 2018; six (6) months of home detention allowing him to go to work; pay a \$25,000.00 fine; and is required to maintain employment. Respondent stated that he is currently working in Dr. Joseph Kunzer's office in Cicero, Indiana. Respondent also stated that he is excluded from Medicaid and Medicare for five (5) years and cannot work in any practice that accepts Medicaid or Medicare under that exclusion. Ms. Krug, in her closing argument, stated that they do not feel probation is enough and feels Respondent will continue to not play by the rules that govern the practice of chiropractic medicine. Mr. Strahm stated that Respondent does not feel he has violated Count I, but does agree to the stipulated facts in Counts II and III. Mr. Strahm stated that due to the conditions placed on Respondent by the court, he requests the



Board to not revoke Respondent's chiropractic license, but to assess discipline they feel is appropriate.

Mitigating factor(s) of Count I: The Board discussed that they feel the evidence provided clearly shows Respondent is in violation of Ind. Code 25-1-9-4(a)(1)(B) in that Respondent has engaged in fraud or material deception in the course of professional services or activities as evidenced by Respondent's action in obtaining patients, connecting with other doctors, prescribing medications, and receiving a kick-back from the pharmacies all under the Medicaid/Medicare programs and his patient's private insurance.

Board action: A motion was made and seconded to find Dr. Sheppard guilty of the violation as found in Count I.

KLAES/PHELPS
Motion carried 5-0-0

Mitigating factor(s) in Count II: The Board discussed that they feel the evidence provided clearly shows Respondent is in violation of Ind. Code Ind. Code 25-1-9-4(a)(1)(D) in that Respondent has been convicted of a crime or assessed a civil penalty involving fraudulent billing practices, included fraud under (i) Medicaid (42 USC 1396 et seq.); (ii) Medicare (42 USC 1395 et seq.); (iii) the children's health insurance program under Ind. Code 12-17.6; or (iv) insurance claims as evidenced by Respondent's admission of guilt of Count II.

Board action: A motion was made and seconded to find Dr. Sheppard guilty of the violation as found in Count II.

VUOTTO/PHELPS
Motion carried 5-0-0

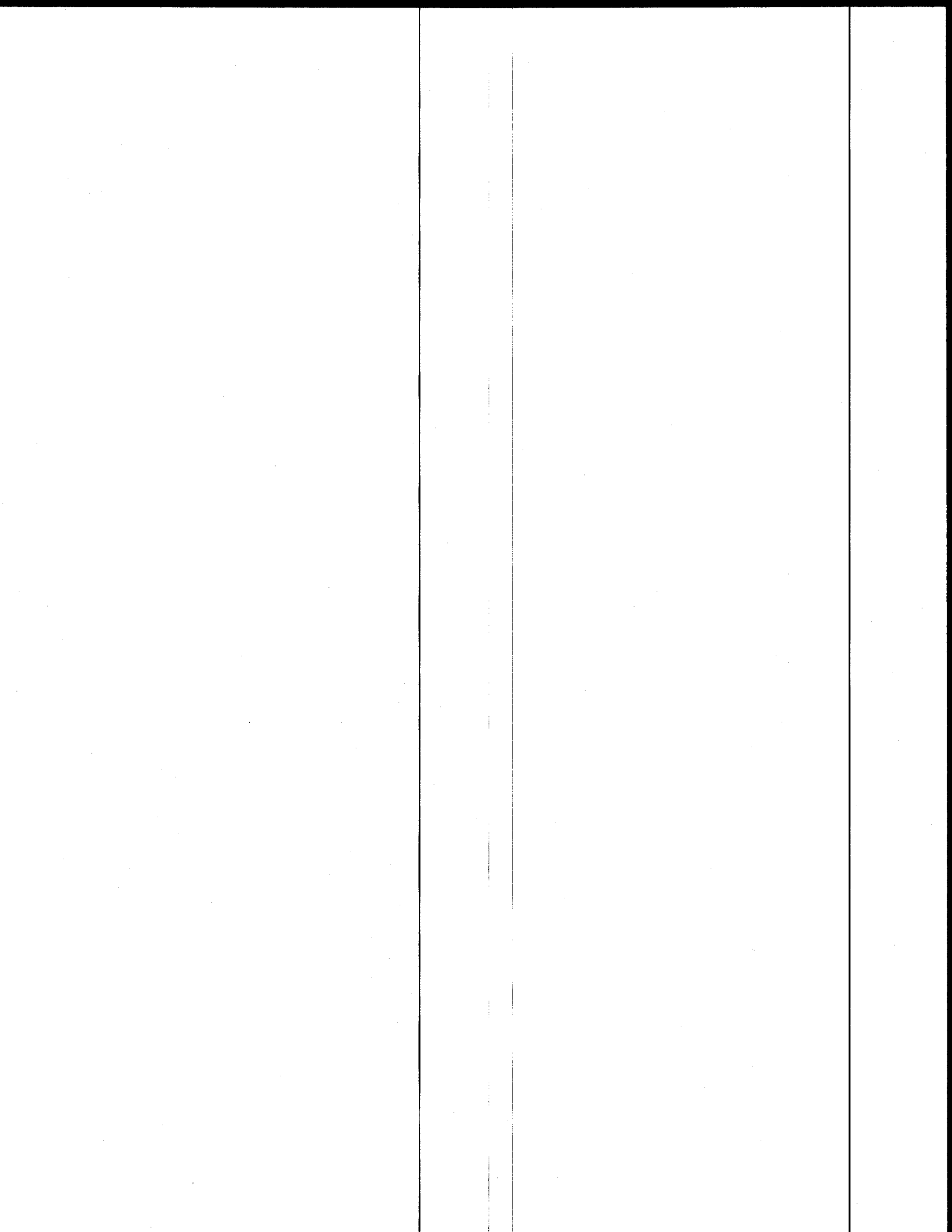
Mitigating factor(s) in Count III: The Board discussed that they feel the evidence provided clearly shows Respondent is in violation of Ind. Code Ind. 25-1-9-4(a)(2)(B) in that Respondent has been convicted of a crime that is harmful to the public as evidenced by Respondent's harming the public financially due to his action of accepting money from patients for medications prescribed by Respondent.

Board action: A motion was made and seconded to find Dr. Sheppard guilty of the violation as found in Count III.

VUOTTO/KLAES
Motion carried 5-0-0

Board action: A motion was made and seconded to place Dr. Sheppard's chiropractic license on Indefinite Suspension for a period of no less than six (6) months with the ability to petition for reinstatement of his license on Indefinite Probation with terms and conditions that may include, but are not limited to:

- Failure to comply with the requirement of probation may subject Respondent to a show cause hearing before the Board and the imposition of further sanctions.
- Respondent must comply with all laws and rules regulating the practice of chiropractic as well as the general statutory provisions which apply to all the health professions.
- Respondent shall keep the Board apprised of her current residential address, telephone number, and email address, place of employment, employment address, employment telephone number, and name of supervisor.



- Respondent shall keep the Board apprised of his criminal probation and report the termination of criminal probation once it occurs.
- Respondent shall cause his employer to submit employer reports.
- Respondent shall submit to the Board personal written reports.
- Respondent shall personal appear before the Board, with the frequency determined at the reinstatement hearing.
- Respondent shall pay costs for this proceeding.
- Respondent shall pay a fee of five dollars (\$5.00) to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund.

KLAES/DYER
Motion carried 5-0-0

B. State of Indiana v. Lon Arden Kaminsky, D.C., License No. 08001061A
Administrative Cause No. 2017 IBCE 0005
Re: Extension of Summary Suspension

Parties Present:

Respondent was not present, nor represented by Counsel
Ryan Eldridge, Deputy Attorney General for the State of Indiana
Timothy Weber, Deputy Attorney General for the State of Indiana
Linda Bour, Court Reporter, Alliance Court Reporting

Participating Board Members:

Dr. Bernzott, DC (Hearing Officer)
Dr. Klaes, DC
Dr. Dyer, DC
Dr. Vuotto, DC
Dr. Phelps, DC

Case Summary: On or around April 17, 2017, the Board Summarily Suspended Respondent's chiropractic license. Respondent is currently incarcerated and did not appear today. The State asks that the Board issue a Notice of Proposed Default in this matter.

Board action: A motion was made and seconded grant the State's request in issuing a Notice of Proposed Default in the matter of Dr. Kaminski's chiropractic license.

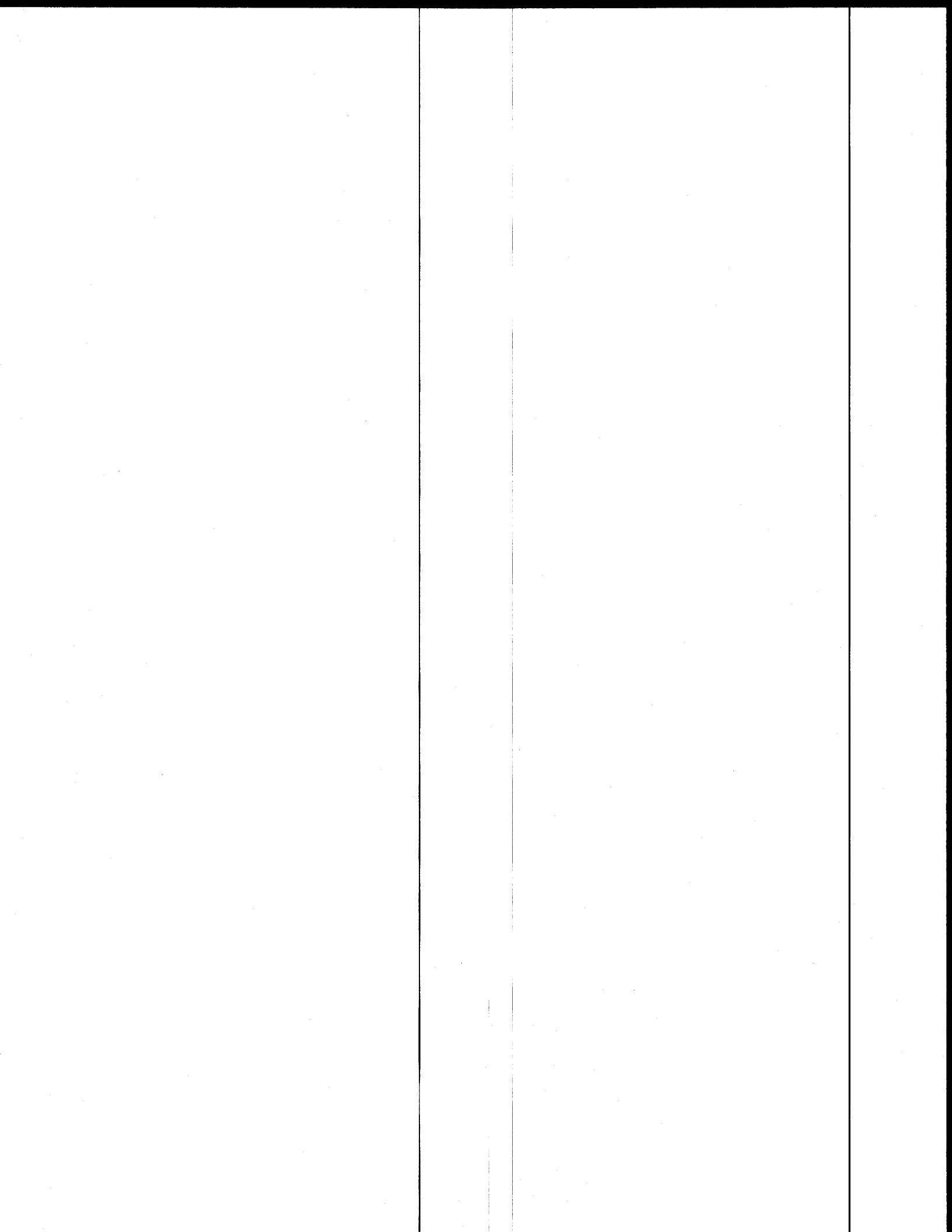
KLAES/VUOTTO
Motion carried 5-0-0

Parties Present:

Respondent was not present, nor represented by Counsel
Ryan Eldridge, Deputy Attorney General for the State of Indiana
Timothy Weber, Deputy Attorney General for the State of Indiana
Linda Bour, Court Reporter, Alliance Court Reporting

Participating Board Members:

Dr. Bernzott, DC (Hearing Officer)
Dr. Klaes, DC
Dr. Dyer, DC
Dr. Vuotto, DC
Dr. Phelps, DC



Case Summary: On or around April 17, 2017, the Board Summarily Suspended Respondent's chiropractic license. Respondent is currently incarcerated and did not appear today. The State asks that the Board issue an Extension of the Summary Suspension in this matter.

Board action: A motion was made and seconded grant the State's request in extending the Summary Suspension an additional ninety (90) days in the matter of Dr. Kaminski's chiropractic license.

VUOTTO/DYER
Motion carried 5-0-0

C. State of Indiana v. Peggy Ann Grabinski-Solano, D.C., License No. 08001248A
Administrative Cause No. 2017 IBCE 0007
Re: Administrative Complaint

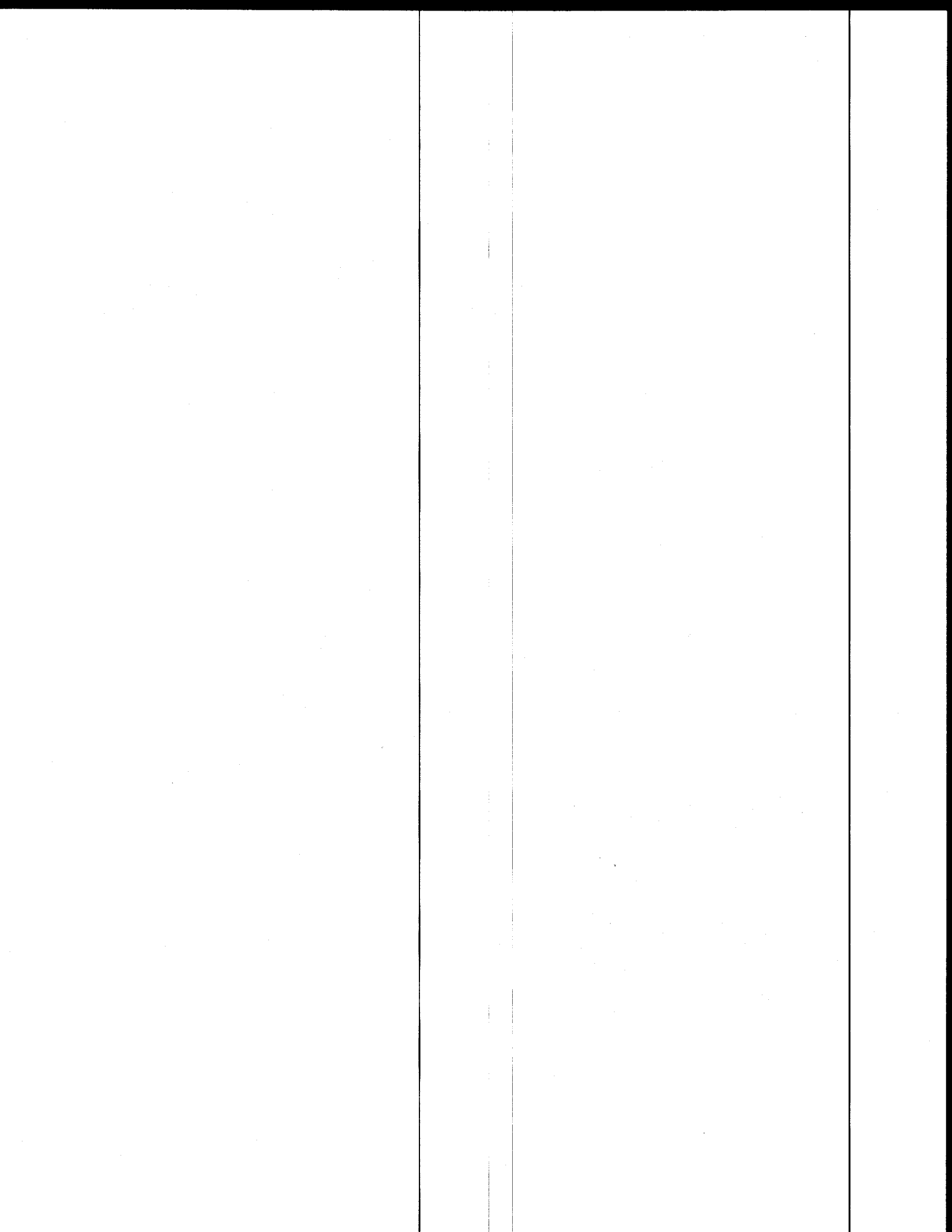
Parties Present:

Respondent was not present, but represented by Sherry Fabina-Abney, Attorney
Timothy Weber, Deputy Attorney General for the State of Indiana
Linda Bour, Court Reporter, Alliance Court Reporting

Participating Board Members:

Dr. Bernzott, DC (Hearing Officer)
Dr. Klaes, DC
Dr. Dyer, DC
Dr. Phelps, DC
Dr. Vuotto, DC

Case Summary: On or around October 12, 2017, the State filed an Administrative Complaint alleging Respondent has violated Ind. Code 25-1-9-4(a)(1)(C) in that Respondent has advertised services in a false or misleading manner as evidenced by her conduct in advertising the NutriMost program as requiring no strenuous dieting when the caloric intake required by the program is less than the minimum, safe caloric intake; has violated Ind. Code 25-1-9-4(a)(1)(C) in that Respondent has advertised services in a false or misleading manner as evidenced by her conduct in advertising the NutriMost program as "doctor supervised" on the radio without identifying herself as a doctor of chiropractic medicine; has violated Ind. Code 25-1-9-4(a)(3) in that Respondent has violated 846 IAC 10302(c), a state regulation pertaining to the practice of chiropractic as evidenced by her conduct in failing to identify herself as a chiropractor on all advertising materials; has violated Ind. Code 25-1-9-4(a)(3) in that Respondent has engaged in false, fraudulent, deceptive, or misleading advertising in violation of 846 IAC 1-3-2(f)(1), a state regulation pertaining to the practice of chiropractic as evidenced by her conduct in advertising the NutriMost program as requiring no strenuous dieting when the caloric intake required by the program is less than the minimum, safe caloric intake; has violated Ind. Code 25-1-9-4 in that Respondent has failed to practice in accordance with the body of scientific systemized knowledge related to the healing arts in violation of 846 IAC 1-3-3(4) as evidenced by her conduct in using the Zyto Hand Cradle to purported assess the factors of fat burning, fat storage, and fat metabolism, including the organs involved, the hormones, neurotransmitters, vitamins, minerals, toxins, heavy metals, parasites, bacteria, viruses, mycoplasma, candida, or biotoxins; has violated Ind. Code 25-1-9-4(a)(3) in that Respondent has failed to practice in accordance with the body of scientific systemized knowledge related to the healing arts, thereby failing to abide by the standards of competent practice in violation of 846 IAC 1-3-3(4), a state regulation pertaining to the practice of chiropractic as evidenced by her conduct in promoting and administering a weight loss program that limits caloric intake to between 500 and 800 calories per day; and has violated Ind. Code 25-1-9-4(a)(4)(A) in that Respondent has continued to practice although she has become unfit to practice due to professional incompetence as evidenced by her



conduct in promoting and administering a weight loss program that limits caloric intake to between 500 and 800 calories per day. The State filed a Proposed Settlement Agreement that would place Respondent's chiropractic license on Indefinite Probation with the following terms and conditions:

- Respondent may petition to have the probation withdraw after one (1) year.
- Upon petitioning for withdrawal, Respondent shall demonstrate compliance with all of the terms of the Assurance for Voluntary Compliance as issued by the Hamilton County Circuit/Superior Court.
- Respondent shall keep the Board abreast of her personal contact information, including her address, telephone number, and email address.
- Respondent shall keep the Board abreast of her employment information, including place of employment and contact information for her supervisor, if applicable.
- Respondent shall submit all of her advertising to the Board in writing for approval prior to publication of the material.
- Respondent shall comply with all terms of the Assurance for Voluntary Compliance.
- Respondent shall complete twenty-four (24) hours of continuing education, twelve (12) of which shall be related to chiropractic advertising requirements in Indiana and twelve (12) of which shall be related to nutrition, submitted to the Board within one (1) year of the Final Order. The continuing education completed must be approved by the Board of Chiropractic Examiners.
- Respondent shall complete fifty (50) hours of community service within one (1) year of the final order. The community service shall be targeted to serve communities of need such as veteran or homeless populations. Proof of completion shall be submitted to the OAG and the IBCE within fifteen (15) days of completion.
- Respondent shall pay a fee of five dollars (\$5.00) to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund.

Board action: A motion was made and seconded to accept the Proposed Settlement Agreement as presented by the State in the matter of Dr. Grabinski-Solano's chiropractic license.

PHELPS/KLAES
Motion carried 5-0-0

VI. NOTICE OF PROPOSED DEFAULT

There were no Notices of Proposed Default before the Board.

VII. DISCUSSION

A. Proposed Rule Review

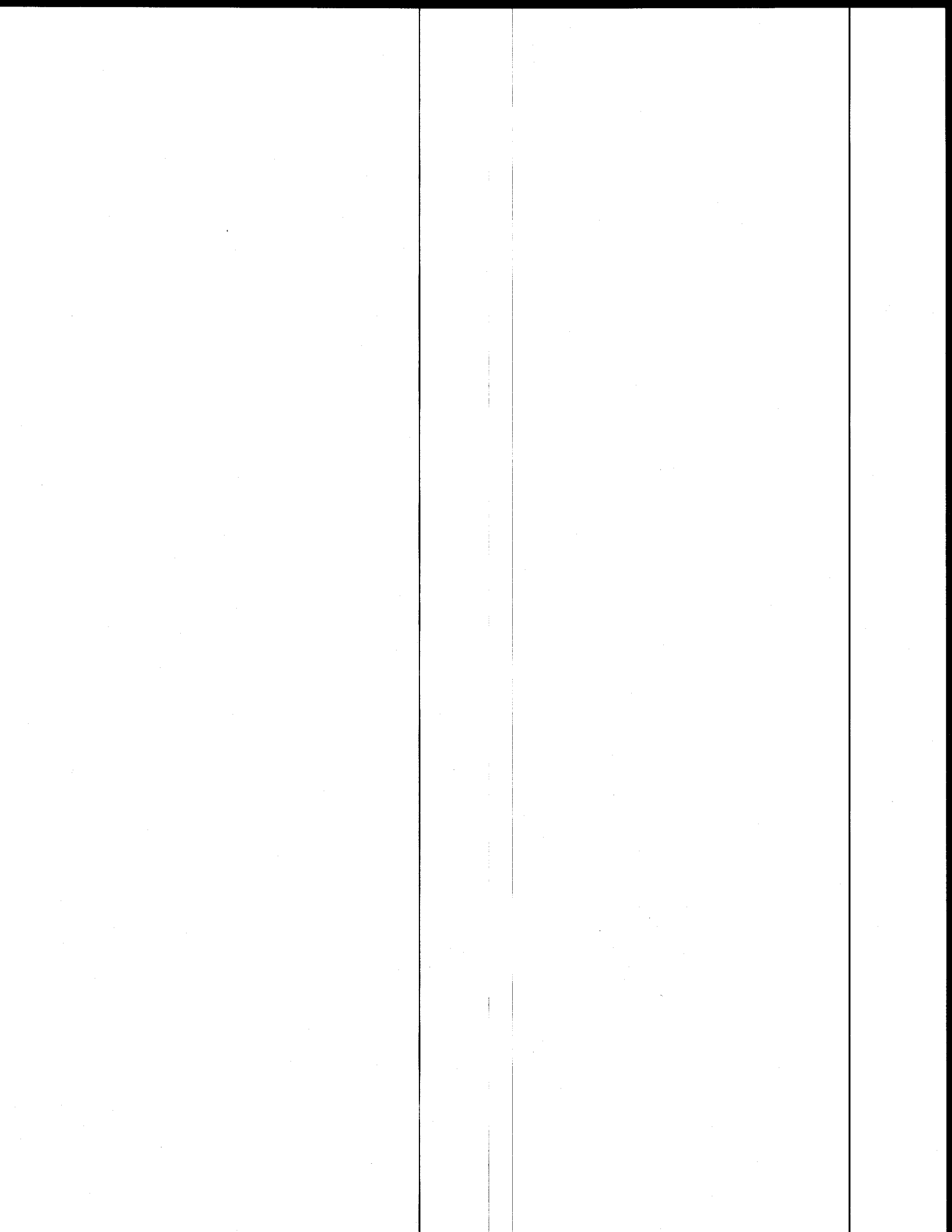
The Board discussed the proposed rule as submitted by Christine Monte, Board legal counsel. The Board gave permission for Ms. Monte to move forward with the rule.

VIII. APPLICATION REVIEW

A. Endorsement Applications

There were no endorsement applications to review.

B. Examination Applications



There were no examination applications to review.

C. Temporary Permits

There were no temporary permits to review.

D. Professional Corporation Applications

There were no professional corporation applications to review.

IX. PROBATIONARY REPORT

There were no probationary reports reviewed by the Board.

X. CONTINUING EDUCATION

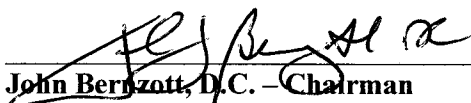
There were no continuing education applications reviewed by the Board.

XI. OLD/NEW BUSINESS

- The Board discussed additional meeting dates to interview license renewal personal appearances. The Board determined they could meet August 2, 2018 at 9:00 a.m. local time.

XII. ADJOURNMENT

There being no further business, and having completed its duties, the meeting of the Indiana Board of Chiropractic Examiners adjourned at 11:45 a.m. by general consensus.



John Bernzott, D.C. - Chairman

10-10-18
Date

