

DEPARTMENT OF HEALTH
BOARD OF CHIROPRACTIC MEDICINE
ORDER FACT SHEET
(For use by Board Counsel and Board Staff)

Order # 07-1174 FOT
Date Order Filed 6/19/07

- 1) Respondent's/Petitioner's/Applicant's Name: Manuel Carril, D.C.
- 2) License Number: CH 6221 3) Profession Type: Chiropractic Physician
- 4) Type of Order: Discipline Licensure Declaratory Statement
- 5) DOH Case Number 2006-28448 6) DOAH Case Number _____
- 7) File Number 5138
- 8) Statutory reference for Violations/Reasons for Denial: § 460.413(1)(d), FS; § 460.413(1)(cc), FS; § 460.413(1)(e), FS
- 9) Violation Codes: 22, 24, 15
- 10) Penalties Imposed: Letter of Concern; \$3,500 fine; \$477.98 costs; 4 hours CE (2 hours in laws and rules)
- 11) Closure Code: 4050
- 12) Exhibits to be Attached to Final Order: (3)
 - a) Administrative Complaint
 - b) Consent Agreement/Stipulation
 - c) Recommended Order Check
 - Exceptions: Petitioner's Check Respondent's Check
 - d) Motions (specify) Motion for final order, Motion to Assess Costs
 - e) Other (specify) _____
- 13) Special Handling Instructions _____
- 14) Fact Sheet Prepared By: Deborah B. Loucks
- 15) Codes Added to Fact Sheet By: DL
- 16) Exhibits Attached to Order By: SC

75

Final Order No. DOH-07-1174-FOI-MOA
FILED DATE - 10/19/07
Department of Health
By: Silvia M. Howell
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF CHIROPRACTIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2006-28448

License No.: CH 6221

MANUEL CARRIL, D.C.,

Respondent.

_____ /

FINAL ORDER

THIS MATTER came before the Board of Chiropractic Medicine (hereinafter "the Board") at a duly noticed public meeting on June 8, 2007, in Ft. Lauderdale, Florida, for a hearing not involving disputed issues of material fact pursuant to Respondent's completion of an Election of Rights form requesting a hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes. Petitioner filed an Administrative Complaint seeking disciplinary action against Respondent's license to practice as a chiropractic physician. A copy of the Administrative Complaint is attached to and made a part of this Final Order.

Petitioner was represented by Tobey Schultz, Assistant General Counsel, with the Department of Health. Respondent was present.

The prosecuting attorney offered the investigative file into evidence to prove the facts as alleged in the Administrative Complaint. The investigative file was received into evidence and the Board finds that the uncontested facts adequately support the

allegations. After a complete review of the record in this matter, including consideration of the Administrative Complaint, any written evidence or testimony, and any mitigating or aggravating circumstances, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. The allegations of fact set forth in the Administrative Complaint are approved, adopted, and incorporated herein by reference as the findings of fact of the Board.

2. There is competent, substantial evidence to support the Board's findings and conclusions.

CONCLUSIONS OF LAW

1. The conclusions of law alleged and set forth in the Administrative Complaint are approved and adopted and incorporated herein by reference as the conclusions of law of the Board.

2. The violations set forth in the Administrative Complaint warrant disciplinary action by the Board.

3. Based upon the Findings of Fact, the Board concludes that the licensee violated: Section 460.413(1)(d), Florida Statutes; Section 460.413(1)(cc), Florida Statutes; and Section 460.413(1)(e), Florida Statutes.

4. The Board is empowered by Sections 460.413(2) and 456.072(2), Florida Statutes, to impose a penalty against the licensee. Therefore it is

ORDERED AND ADJUDGED that:

1. **Letter of Concern**. Respondent shall receive a Letter of Concern from the Board.

2. **Administrative Fine**. Respondent must pay an administrative fine of **three thousand five hundred dollars (\$3, 500.00)**, payable within **one (1) year** of the filing date of this Final Order.

3. **Continuing Education**. Within **one (1) year** of the filing date of this Final Order, Respondent shall complete **four (4) hours** of additional continuing education offered by the Florida Chiropractic Association or the Florida Chiropractic Society. These hours shall be in addition to the hours required for license renewal. At least **two (2)** of the additional hours shall pertain to the laws and rules regulating the practice of chiropractic medicine in the State of Florida. Within **ten (10) days** of completion of the course(s) and/or receipt of the certificate(s) of completion, Respondent shall mail a copy of the continuing education certificate(s) of completion to the Board of Chiropractic Medicine Compliance Officer.

4. **Compliance Address**. The address for submission of monetary payments (including fine & costs) and continuing education completion documents is: DOH/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, attn: Board of Chiropractic Medicine Compliance Officer.

RULING ON MOTION TO ASSESS COSTS

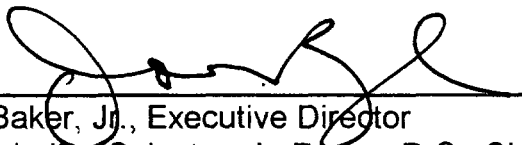
The Board reviewed Petitioner's Motion to Assess Costs. Respondent did not file any objections to Petitioner's Motion. Petitioner's Motion is granted and the Board imposes the costs associated with this case in the amount of **four hundred seventy-**

seven dollars and ninety-eight cents (\$477.98), to be paid within one (1) year of the filing date of this Final Order.

This order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 18th day of June, 2007.

BOARD OF CHIROPRACTIC MEDICINE


Joe Baker, Jr., Executive Director
on behalf of Salvatore LaRusso, D.C., CHAIR
Florida Board of Chiropractic Medicine

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF THE FILING DATE OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Manuel Carril, D.C., 8726 NW 26th Street, Unit 16, Miami, Florida 33172; and by interoffice mail to Deborah Bartholow Loucks, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; and Tobey Schultz, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265, on

June 19, 2007.

Kellee Davidson

Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF CHIROPRACTIC MEDICINE

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Rae Oneal*
DATE: 4-18-07

DEPARTMENT OF HEALTH,

Petitioner,

Case Number: 2006-28448

vs.

MANUEL CARRIL, D.C.

Respondent.

**PETITIONER'S MOTION FOR FINAL ORDER BY HEARING
NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT**

Petitioner moves the Board of Chiropractic Medicine for a final order by hearing not involving disputed issues of material fact, and in support thereof states:

1. An Administrative Complaint was filed against Respondent on or about January 23, 2007, alleging that Respondent violated Chapter 456 and/or 460 Florida Statutes, as set forth therein.

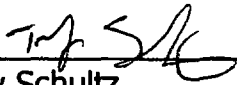
2. Respondent filed an election of rights form requesting an informal hearing not involving disputed issues of material fact before the Board of Chiropractic Medicine. A true and correct copy the election of rights form is attached hereto and incorporated herein as Exhibit A.

3. Respondent, by and through counsel, has been informed by this Motion that the Board will review the investigative file prepared in this matter for the purpose of determining penalty prior to the entry of a Final Order.

00171

WHEREFORE, Petitioner respectfully requests the Board of Chiropractic Medicine to enter a Final Order after allowing the Respondent the opportunity to present oral and or written evidence in mitigation of the charges in the Administrative Complaint.

Respectfully submitted,



Tobey Schultz
Assistant General Counsel
Department of Health
4052 Bald Cypress Way Bin # C-65
Tallahassee, Florida 32399-3265
Florida Bar Number 0542131
(850) 245-4640 ext. 8176

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been provided to: Manuel Carril, D.C., 8726 N.W. 26th Street, Unit 16, Miami, Florida 33172, by regular U.S. Mail this ^{18th} ~~17th~~ day of April 2007.



Tobey Schultz
Assistant General Counsel

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF CHIROPRACTIC MEDICINE

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Rasone*
DATE 4.18.07

DEPARTMENT OF HEALTH,

Petitioner,

Case Number: 2006-28448

vs.

MANUEL CARRIL, D.C.

Respondent.

MOTION TO ASSESS COSTS
IN ACCORDANCE WITH SECTION 456.072(4)

COMES NOW the Department of Health, by and through undersigned counsel, and moves the Board of Chiropractic Medicine ("Board") for the entry of a Final Order assessing costs against the Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2006). As grounds therefore, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board will take up for consideration the above-styled disciplinary action and will enter a Final Order therein.

2. Section 456.072(4), Florida Statutes (2006),¹ states as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, pursuant

¹ Ch. 2003-416, § 19, Laws of Fla., effective September 15, 2003, amended Section 456.072(4), Florida Statutes (2003), to include the underlined language.

to this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is not board, shall assess costs related to the investigation and prosecution of the case. Such costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto. . . .

3. The investigation and prosecution of this case has resulted in costs in the total amount of **four hundred seventy-seven dollars and ninety-eight cents (\$477.98)**, based on the following itemized statement of costs:

Complaint:	\$	29.90
Investigation:	\$	49.83
Legal:	\$	398.25
Expenses:	\$	0.00

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of **four hundred seventy-seven dollars and ninety-eight cents (\$477.98)**, as evidenced in the attached affidavit. (Exhibit A).

4. Should the Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which the objections are made, the Petitioner requests that the Board determine the amount of costs to be assessed based

upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

5. Petitioner requests that the Board grant this motion and assess costs in the amount of **four hundred seventy-seven dollars and ninety-eight cents (\$477.98)**, as supported by competent, substantial evidence. This assessment of costs is in addition to any other discipline imposed by the Board and is in accordance with Section 456.072(4), Florida Statutes (2006).

WHEREFORE, the Department of Health requests that the Board enter a Final Order assessing costs against the Respondent in the amount of **four hundred seventy-seven dollars and ninety-eight cents (\$477.98)**.

DATED this 17th 18th day of April, 2007.

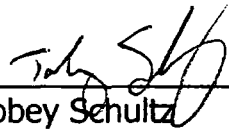
Respectfully submitted,



Tobey Schultz
Assistant General Counsel
Florida Bar Number 0542131
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin # C-65
Tallahassee, Florida 32399-3265
(850) 245-4444 ext. 8176
(850) 245-4681 FAX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been provided to: Manuel Carril, D.C., 1902 North Market Street, Jacksonville, FL 32206, by regular U.S. Mail this ^{18th} ~~17th~~ day of April, 2007.



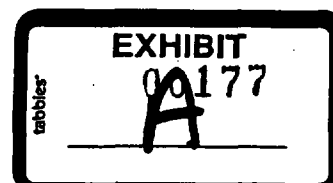
Tobey Schultz
Assistant General Counsel

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

BEFORE ME, the undersigned authority, personally appeared **JAMES R. COOKSEY**, who was sworn and states as follows:

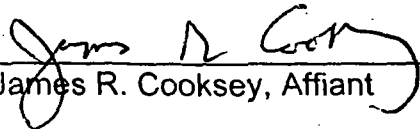
- 1) My name is James R. Cooksey.
- 2) I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of the records at the Florida Department of Health (DOH).
- 3) I am a Operations Management Consultant for the Consumer Services Unit for DOH. The Consumer Services Unit is where all complaints against Florida health care licensees (e.g., medical doctors, dentists, nurses, respiratory therapists) are officially filed. I have been in my current job position for more than one year. My business address is 4052 Bald Cypress Way, Bin C-75, Tallahassee, Florida 32399-3275.
- 4) As a Operations Management Consultant, my job duties include reviewing data in the Time Tracking System and verifying that the amounts correspond. The Time Tracking System is a computer program which records and tracks DOH's costs regarding the investigation and prosecution of cases against Florida health care licensees.
- 5) As of today, DOH's total costs for investigating and prosecuting DOH case number 2006-28448 (DEPARTMENT OF HEALTH v. MANUEL CARRIL, D.C.) are FOUR HUNDRED SEVENTY-SEVEN DOLLARS and NINETY-EIGHT CENTS (\$477.98).
- 6) The costs for DOH case number 2006-28448 (Department of Health v. MANUEL CARRIL, D.C.) are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case numbers 2006-28448 (DEPARTMENT OF HEALTH v. MANUEL CARRIL, D.C.) are detailed in Exhibit 2 (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.
- 8) The itemized costs as reflected in Exhibit 2 are determined by the following method: DOH employees who work on cases daily are to keep track of their time in six-minute increments (e.g., investigators and lawyers). A designated DOH employee in the Consumer Services



Unit, Legal Department, and in each area office, inputs the time worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (e.g., Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)

- 9) James R. Cooksey, first being duly sworn, states that he has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NOT.


James R. Cooksey, Affiant

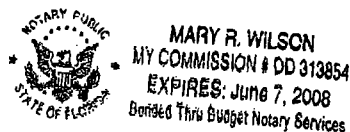
State of Florida
County of Leon

Sworn to and subscribed before me this 5 day of April, 2007,
by James R. Cooksey, who is personally known to me.


Notary Signature

MARY R WILSON
Name of Notary Printed

Stamp Commissioned Name of Notary Public:



Complaint Cost Summary

Complaint Number:200628448

Complainant's Name: anonymous
 Subject's Name: MANUEL CARRIL

	***** Cost to Date *****	
	Hours	Costs
Complaint:	0.60	\$29.90
Investigation:	1.00	\$49.83
Legal:	3.20	\$398.25
	*****	*****
Sub Total:	4.80	\$477.98
Expenses to Date:		\$0.00
Prior Amount:		\$0.00
Total Costs to Date:		\$477.98

00179



Time Tracking Report
Itemized Cost by Complaint
 Complaint 200628448

Report Date: 04/04/2007

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
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BUREAU OF CONSUMER COMPLAINTS

HA22	0.60	\$49.83	\$29.90	09/11/2006	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA22	1.00	\$49.83	\$49.83	11/27/2006	77	PREPARATION OF DESK INVESTIGATION SYNOPSIS
Sub Total	1.60		\$79.73			

BUREAU OF LEGAL SERVICES

HLL49B	0.10	\$126.00	\$12.60	12/04/2006	35	TELEPHONE CALLS
HLL49B	0.40	\$126.00	\$50.40	12/04/2006	35	TELEPHONE CALLS
HLL49B	0.10	\$126.00	\$12.60	12/05/2006	35	TELEPHONE CALLS
HLL36B	1.80	\$123.94	\$223.09	12/12/2006	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL49B	0.20	\$126.00	\$25.20	12/13/2006	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL36B	0.30	\$123.94	\$37.18	01/21/2007	79	STIPULATION
HLL36B	0.30	\$123.94	\$37.18	01/22/2007	79	STIPULATION
Sub Total	3.20		\$398.25			

Total Cost	4.80		\$477.98			
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Time Tracking Report
Itemized Expense by Complaint
Complaint

Report Date: 04/04/2007

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
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SubTotal
Total Expenses

00181

STATE OF FLORIDA
DEPARTMENT OF HEALTH

2001 FEB 14 PM 3:32
PRACTITIONER REGULATION
LEGAL

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2006-28448

MANUEL CARRIL, D.C.

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Chiropractic Medicine against Respondent, Manuel Carril, D.C., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of Chiropractic Medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 460, Florida Statutes.

2. At all times material to this order, Respondent was licensed to practice chiropractic medicine in the State of Florida, having been issued license number CH 6221 on or about August 24, 1990.

3. Respondent's address of record is 8726 N.W. 26th Street, Unit 16, Miami, Florida 33172.

4. Respondent ran an advertisement for his clinic, Doral Spine and Wellness Center, in the September 3, 2006, edition of the Miami Herald.

5. The advertisement indicated his office offered treatment utilizing the DRX 9000 system, and offered a free initial consultation without stating the usual price for such a consultation.

6. The DRX 9000 system provides a program of treatments for relief from pain for those suffering from low back pain. Each treatment consists of a physician prescribed treatment period on the DRX 9000 system and is designed to provide static, intermittent, and cycling distraction forces to relieve pressures on structures that may be causing low back pain.

7. Respondent advertisement indicated that the DRX 9000 is 86% effective.

8. Respondent's claim that the DRX9000 is 86% effective is misleading. For instance, Respondent's claim is based on one study which did not have a control group and which involved the application of multiple treatment modalities to each patient.

9. Respondent's advertisement failed to identify Respondent as a chiropractic physician or Doral Spine and Wellness Center as a chiropractic institution.

Count One

10. Petitioner re-alleges and incorporates paragraphs one (1) through nine (9) as if fully set forth herein.

11. Section 460.413(1)(d), Florida Statutes (2006), provides that false, deceptive or misleading advertising is grounds for disciplinary action by the Board of Chiropractic Medicine.

12. Rule 64B2-15.001(2)(c), F.A.C., provides that any advertisement or advertising shall be deemed by the Board to be fraudulent, false, deceptive, or misleading if it: "[c]reates false, or unjustified expectations of beneficial treatment or successful cures."

13. Respondent created false or unjustified expectations of beneficial treatment or successful cures by advertising that the DRX 9000 had an 86% success rate.

14. Based on the foregoing, Respondent has violated Section 460.413(1)(d), Florida Statutes (2006), by disseminating false, deceptive, or misleading advertising.

Count Two

15. Petitioner re-alleges and incorporates paragraphs one (1) through nine (9) as if fully set forth herein.

16. Section 460.413(1)(cc), Florida Statutes (2006), subjects a chiropractic physician to discipline for advertising any reduced or discounted fees for services or treatments, or advertising any free services or treatments, without prominently

stating in the advertisement the usual fee of the licensee for the service or treatment which is the subject of the discount, rebate, or free offering.

17. Respondent advertised the following free or discounted services without indicating the usual fee for such services when he placed the advertisement offering the free initial consultation in the September 3, 2006, edition of the Miami Herald.

18. Based on the foregoing, Respondent has violated Section 460.413(1)(cc), Florida Statutes (2006), by advertising any reduced or discounted fees for services or treatments, or advertising any free services or treatments, without prominently stating in the advertisement the usual fee of the licensee for the service or treatment which is the subject of the discount, rebate, or free offering.

Count Three

19. Petitioner re-alleges and incorporates paragraphs one (1) through nine (9) as if fully set forth herein.

20. Section 460.413(1)(e), Florida Statutes (2006), subjects a chiropractic physician to discipline for causing to be advertised, by any means whatsoever, any advertisement which does not contain an assertion or statement which would identify herself or himself as a chiropractic physician or identify such chiropractic clinic or related institution in which she or he

practices or in which she or he is owner, in whole or in part, as a chiropractic institution..

21. Respondent's advertisement in the September 3, 2006, edition of the Miami Herald failed to identify Respondent as a chiropractic physician or Doral Spine and Wellness Center as a chiropractic institution.

22. Based on the foregoing, Respondent has violated Section 460.413(1)(e), Florida Statutes (2006), by causing to be advertised, by any means whatsoever, any advertisement which does not contain an assertion or statement which would identify herself or himself as a chiropractic physician or identify such chiropractic clinic or related institution in which she or he practices or in which she or he is owner, in whole or in part, as a chiropractic institution..

WHEREFORE, the Petitioner respectfully requests that the Board of Chiropractic Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 21st day of January, 2007.

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Rac...*
DATE 01-23-07

Tobey Schultz

Tobey Schultz
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399
Florida Bar # 0542131
(850) 245-4640 ext: 8176
(850) 245-4682 FAX

PCP: 1/18/07 Kirby Wolfson

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.