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FLORIDA BOARD OF MEDICINE  
TELEPHONE CONFERENCE CALL

The above entitled Conference Call convened  
on the 21st day of January, 2011, commencing at 12:00  
p.m.

Reported by:  
JEFFREY R. BABCOCK  
Court Reporter

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

2 MICHAEL CHIZNER, M.D., Chair  
TULLY PATROWICZ, M.D.  
3 TRINA ESPINOLA, M.D.  
STEVEN ROSENBERG, M.D.  
4 LINDA KING  
JERRY PARRISH  
5 TERENCE MAHONEY, M.D.  
BRADLEY LEVINE  
6 FRANK FARMER, M.D.  
FRED BEARISON, M.D.  
7 ROBERT NUSS, M.D.  
GEORGE THOMAS, M.D.  
8 JASON ROSENBERG, M.D.  
ONELIA LAGE, M.D.  
9  
LARRY MCPHERSON, JR., J.D.  
10 EDWARD TELLECHEA, ESQUIRE

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FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 P R O C E E D I N G S

2 MR. MCPHERSON: Mr. Chair, this is Larry. It  
3 looks like it's after 12:00, so if you want to we  
4 can call this conference call of the Florida Board  
Page 2

5 of Medicine to order, and if you direct, start  
6 with a roll call.

7 DR. CHIZNER: Thank you, Larry. My name is  
8 Dr. Michael Chizner, Chairman of the Florida Board  
9 of Medicine calling the call for the conference  
10 call, January 21st, 2011. Mr. McPherson, will you  
11 please call the roll?

12 MR. MCPHERSON: Yes, sir. By my watch, it's  
13 12:02. Dr. Chizner?

14 DR. CHIZNER: Present.

15 MR. MCPHERSON: Dr. Farmer?

16 DR. FARMER: Here.

17 MR. MCPHERSON: Dr. Espinola?

18 DR. ESPINOLA: Present.

19 MR. MCPHERSON: Mr. Mullins? Doctor Nuss?

20 DR. NUSS: Here.

21 MR. MCPHERSON: Dr. Bearison?

22 DR. BEARISON: Present.

23 MR. MCPHERSON: Dr. Patrowicz?

24 DR. PATROWICZ: Here.

25 MR. MCPHERSON: Dr. Jason Rosenberg?

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 DR. J. ROSENBERG: Present.

2 MR. MCPHERSON: Dr. Thomas?

3 DR. THOMAS: Present.

4 MR. MCPHERSON: Dr. Steven Rosenberg?

5 DR. S. ROSENBERG: Here.

6 MR. MCPHERSON: Dr. Winchester has been  
7 excused. Doctor -- I mean, Ms. Goersch?

8 Ms. Goersch? Dr. Tucker? Mr. Levine?  
9 MR. LEVINE: Here.  
10 MR. MCPHERSON: Dr. Lage? Okay, Mr. Mullins?  
11 Ms. Goersch? Dr. Tucker? Dr. Lage? All right,  
12 you have a quorum, Mr. Chair, you have one, two,  
13 three, four, five, six, seven, eight, nine, ten  
14 members present.  
15 DR. CHIZNER: Thank you, Mr. McPherson.  
16 Mr. Tellechea?  
17 MR. TELLECHEA: Yes, Dr. Chizner?  
18 DR. CHIZNER: Would you like to begin?  
19 MR. TELLECHEA: Yes, I will. I don't know if  
20 I'd like to, but I will. Well, good afternoon now  
21 everybody. As you all know, since we last met, we  
22 have a new governor, and the governor has already  
23 issued his first executive order. And I'm going  
24 to address this preliminarily because we need to  
25 talk about this before we go forward with

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 discussing these rules.  
2 As part of the Executive Number 1101, the  
3 governor has ordered all agencies under the  
4 direction of the governor to immediately suspend  
5 all rule-making and requiring the agencies to  
6 submit all those rules -- any rules that they are  
7 in the process of working on to a new office that  
8 he has created called the Governor's Office of  
9 Fiscal Accountability and Regulatory Reform -- we  
10 call it GOFARR, now, it's the new acronym -- and

11 shall do so before going forward with any rules,  
12 and the rules must be approved by GOFARR before  
13 going forward with the rules.

14 He has also ordered the Secretary of State  
15 not to publish any rule-making notices in the  
16 Florida Administrative Weekly except under the  
17 direction of the Governor's -- under GOFARR.

18 Section II of this executive order, it asks  
19 state agencies not under the direction of the  
20 governor requesting them to likewise suspend  
21 rule-making procedures pending a review by the  
22 Governor's Office of Fiscal Accountability and  
23 Regulatory Reform.

24 There's other aspects of it that I don't  
25 think we need to take up at this time right now,

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 but the immediate question that is raised by this  
2 executive order is whether the Board of  
3 Medicine -- how it applies to the Board of  
4 Medicine. I don't know if you folks may have  
5 heard earlier this week, Attorney General Bondi  
6 had made some comments regarding this executive  
7 order and how it applies to the Board of Medicine  
8 in regard to it's pain clinic rules. General  
9 Bondi has stated that it is not her opinion that  
10 the Board of Medicine is an agency under the  
11 direction of the governor.

12 And this is -- basically this analysis is  
13 based on the fact that Members of the Board of  
Page 5

14 Medicine are appointed by the governor for set  
15 terms, four-year terms. And, you know, when you  
16 operate at your Board Meeting, you do not operate  
17 under the direction of the governor. The governor  
18 does not participate in your rule-making, the  
19 governor does not participate in any hearings,  
20 disciplinary cases, licensure matters.

21 Now, you know of course, the governor can  
22 call you up and ask you to do -- you know, to  
23 operate in a certain way, but you are not required  
24 to do so. The only way -- and of course you  
25 cannot be removed from office unless it's for

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 misfeasance -- malfeasance and some other narrow  
2 exceptions.

3 As opposed to the Department of Health, which  
4 is an agency that does work under the direction of  
5 the governor. The governor, you know, basically  
6 has hiring and firing, immediate hiring and firing  
7 authority over anybody in the Department of  
8 Health, and can direct them to do things and not  
9 to do things.

10 So that's the difference between an agency  
11 like the Board of Medicine, and an agency like the  
12 Department of Health. So we have concluded that  
13 we do not believe that you are an agency under the  
14 direction of the governor, so Section I of this  
15 executive order does not apply to you.

16 Now, Section II, which is the voluntary  
Page 6

17 portion, says that "State agencies not under the  
18 direction of the governor are requested to  
19 likewise suspend rule-making procedures pending a  
20 review by this office."

21 The attorney general's office we are going to  
22 be recommending to all the state agencies that --  
23 well, all the boards that we represent -- that you  
24 voluntarily comply with this provision. However,  
25 we are going to ask that you comply with this

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 provision in all respects with the exception of  
2 the pain clinic rules. These pain clinic rules,  
3 they are -- you know, you've been working on these  
4 for a long time now. They will have a significant  
5 and immediate impact upon the health, safety and  
6 welfare of the public. The governor's office  
7 early this week indicated that they support  
8 efforts to rein in these -- the rein in the bad  
9 pain clinics, so we believe it would be  
10 appropriate for you to go forward and continue  
11 your rule-making and your rule-making actions  
12 regarding these pain clinic rules that are here  
13 today that we have the SERCS today for your review  
14 and consideration. Do any of you have any  
15 questions regarding that?

16 SPEAKER: No.

17 SPEAKER: No.

18 DR. J. ROSENBERG: Mr. Chairman, Jason  
19 Rosenberg, I'd make a motion that we go forward.

20 MR. TELLECHEA: With the pain clinic rules?

21 DR. J. ROSENBERG: With the pain clinic  
22 rules.

23 DR. LAGE: Second --

24 DR. CHIZNER: There's a motion from Jason, do  
25 we have a second?

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 SPEAKER: Dr. Rosenberg --

2 DR. LAGE: Second, Onelia.

3 DR. CHIZNER: We have -- I'm sorry?

4 DR. LAGE: Second, Onelia.

5 DR. CHIZNER: Onelia second. Board Members,  
6 any comments? We have a motion and a second, all  
7 in favor?

8 (Chorus of ayes.)

9 DR. CHIZNER: Any opposed? Passes  
10 unaniously.

11 MR. LEVINE: Mr. Chairman, this is Brad  
12 Levine. I do have a question.

13 DR. CHIZNER: Yes, sir.

14 MR. LEVINE: And I'm not sure if it's to  
15 Mr. Tellechea or to the Board itself. Should we  
16 craft a letter or some kind of statement that, you  
17 know, saying why we're going forward with this and  
18 the exceptional circumstances around this to the  
19 governor's office so he's clearly aware that we're  
20 doing this not in avoiding his rule, but because  
21 of the health, welfare and safety of the public?

22 DR. CHIZNER: Very good point.  
Page 8

23 Mr. Tellechea?

24 MR. TELLECHEA: Well, that's something that  
25 you can do if you so desire. As far as the

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 rule-making aspects go, we're going to -- if you  
2 approve these SERCS that were provided here today  
3 and determine that they need to be ratified by the  
4 legislature, we're going to go ahead and file  
5 these rules with the legislature.

6 If you would like, what we could also do is  
7 file the rules with the Governor's Office of  
8 Fiscal Accountability and Regulatory Reform with a  
9 cover letter saying, you know, "Here are these  
10 rules for your consideration; however, you know,  
11 due to the importance of these rules and the  
12 significant impact -- significant and immediate  
13 impact it will have on the health, safety and  
14 welfare of the public, we have also filed them  
15 with the Florida legislature for ratification."  
16 If that is something that you would like to do, we  
17 can do.

18 DR. S. ROSENBERG: This is Steve Rosenberg,  
19 I'll make a motion to that effect.

20 DR. BEARISON: Bearison, I'll second it.

21 DR. CHIZNER: There's a motion and second.  
22 I'd like to make a comment: Ed, I feel it's  
23 important that we as a Board should support  
24 Governor Scott's executive order to suspend  
25 rule-making and his creation of this office of

1 fiscal accountability and regulatory reform; but  
2 since our mission of the Board of Medicine, as you  
3 point out is to protect and promote the health and  
4 safety of the citizens of Florida, we should make  
5 it clear that the pain clinic rules in this cover  
6 letter are of the utmost importance, and will have  
7 an immediate and significant impact on the health  
8 and safety of the citizens of Florida.

9 And we also appreciate his support of efforts  
10 to rein in and regulate pain clinics along  
11 with Attorney General Pam Bondi's support and  
12 their commitment to support the prosecution of  
13 those who would violate the health and safety of  
14 the citizens of Florida. And we would like to  
15 move it along and elicit their support in helping  
16 us move it along so that these rules can be moving  
17 forward for legislative ratification.

18 MR. TELLECHEA: Okay. Well, if you vote to  
19 do that, we will go ahead and file -- send a  
20 letter along with the rules to the governor's  
21 office as we simultaneously file these rules for  
22 ratification with the legislature.

23 SPEAKER: Call to question.

24 DR. CHIZNER: All in favor?

25 (Chorus of ayes.)

1 DR. CHIZNER: Any opposed? Passes  
2 unanimously.

3 MR. TELLECHEA: Am I to assume that the Board  
4 is going to, in all other aspects with other rules  
5 they will voluntarily suspend rule-making?

6 SPEAKER: So moved.

7 SPEAKER: Second.

8 DR. CHIZNER: There's a motion on the floor  
9 to suspend all rule-making in support of Governor  
10 Scott's executive order. All in favor?

11 SPEAKER: Except for pain management.

12 (Chorus of ayes.)

13 MR. TELLECHEA: Yeah, that motion is with the  
14 exception of the pain clinic rules; am I correct?

15 SPEAKER: Right.

16 DR. CHIZNER: Yes. All in favor?

17 (Chorus of ayes.)

18 DR. CHIZNER: Any opposed? Passes  
19 unanimously.

20 MR. TELLECHEA: Okay, at the Board Meeting,  
21 we have -- with the rules and legislative  
22 committee meeting, we'll provide you with a full  
23 copy of this executive order, and we'll address  
24 all the other aspects of it at that time.

25 Now, with that said, you have -- the Board

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 office has forwarded you copies of the statements  
2 of estimated regulatory costs, and these are the

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3 enhanced statements that contain the full economic  
4 analysis regarding the -- regarding these rules  
5 and, you know, what type of costs and impact  
6 they're going to have on Florida -- on Florida in  
7 both government and the private sector and all  
8 that. They are there for your review and your  
9 consideration. what we're going to need for you  
10 folks to do is one, first of all, we need you to  
11 either approve or reject these. And then if you  
12 approve them -- then if you approve them, you need  
13 to instruct us to go ahead and file them with the  
14 legislature for ratification.

15 DR. S. ROSENBERG: This is Steve Rosenberg.  
16 Do you need that on each and every one of these or  
17 can we do that on all four of them together? I  
18 think there are four separate ones.

19 MR. TELLECHEA: Let's do them separately just  
20 to make it clean.

21 DR. S. ROSENBERG: Okay.

22 DR. CHIZNER: Ed?

23 MR. TELLECHEA: Yes, sir.

24 DR. CHIZNER: You may proceed with the first  
25 rule.

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 MR. TELLECHEA: Yes, okay. The first rule is  
2 64B8-9.0131, Standards of Practice for Physicians  
3 Practicing in Pain Management Clinics.

4 SPEAKER: Move to approve.

5 DR. CHIZNER: Is there a second?

6

SPEAKER: Second.

7

DR. CHIZNER: There's a motion to approve and a second. Any comments, Board Members?

9

DR. S. ROSENBERG: Yeah, this is Dr. Steve Rosenberg, this actually pertains to all of them. I just want to compliment the administrative staff for what obviously is a Herculean effort. It's very impressive that they were able to get all of this done on all of these rules so promptly and so comprehensively.

16

DR. CHIZNER: Thank you, Dr. Rosenberg.

17

MR. MCPHERSON: Thank you. We'll make sure that Mr. Parrish from the Florida State University office gets that message. I'm sure he's listening to it right now.

21

DR. S. ROSENBERG: Thanks again for everything.

23

MR. TELLECHEA: Now, Board Members, is the motion to approve this and file the rule with the legislature for ratification?

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FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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DR. THOMAS: Yes, Thomas.

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DR. J. ROSENBERG: Second, Rosenberg.

3

DR. CHIZNER: Okay, there's a motion and a second. Is there any more comments from the Board? All in favor?

6

(Chorus of ayes.)

7

DR. CHIZNER: Any opposed? Motion carries unanimously.

8

9 MR. TELLECHEA: Okay, Board Members, the next  
10 rule is 64B8-9.0132. This is for Requirement for  
11 Pain Management Clinic Registration Inspection or  
12 Accreditation.

13 DR. S. ROSENBERG: Move for approval,  
14 Rosenberg. Steve Rosenberg.

15 DR. PATROWICZ: Second, Patrowicz.

16 SPEAKER: And file with the legislation;  
17 right?

18 MR. TELLECHEA: That's correct. File -- so  
19 it's movement -- the motion is to move to approve  
20 and file with the legislature for ratification.

21 DR. PATROWICZ: Second that.

22 DR. CHIZNER: There's a motion and a second.  
23 Any other comments? All in favor?

24 (Chorus of ayes.)

25 DR. CHIZNER: Any opposed? Motion carries

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 unanimously. Ed?

2 MR. TELLECHEA: Okay, thank you very much,  
3 Board Members. Rule 64B8-9.0133, Approval of  
4 Physician Pain Management Accrediting  
5 Organizations.

6 DR. PATROWICZ: Move approval, Patrowicz.

7 DR. S. ROSENBERG: Second, Rosenberg. Steve  
8 Rosenberg.

9 DR. CHIZNER: Comments, Board Members?

10 SPEAKER: Also just to file with the  
11 legislature for approval.

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DR. CHIZNER: That's correct.

MR. MCPHERSON: This is Larry.

DR. CHIZNER: Yes, sir?

MR. MCPHERSON: I think Ed can address what the requirements are for filing with the legislature. I believe that's only if the economic impact statement reaches a certain level. Did you want to address that as well?

MR. TELLECHEA: Well, I'm assuming that by making the motion for filing it for ratification they are making the determination that it does trigger one of those three provisions and it does need ratification. That's the way I'm looking at it.

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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MR. MCPHERSON: Correct.

SPEAKER: Call to question.

DR. CHIZNER: There's a motion and a second. All in favor?

(Chorus of ayes.)

DR. CHIZNER: Any opposed? So carried unanimously.

MR. MCPHERSON: Okay, I'm sorry, this is Larry again. With regard to 9.0132?

DR. CHIZNER: Yes, sir.

MR. MCPHERSON: If you look at Page 8 of that SERC, it says that it's not likely to increase regulatory costs or have an adverse impact, or to affect the private jobs sector. So if you look at

J012111 BOARD MEETING MEET ME (2).txt  
15 Page 8 of the SERC, Mr. Tellechea, do you feel  
16 just in an abundance of caution you want to  
17 send --

18 MR. TELLECHEA: Well, Mr. McPherson, I would  
19 say that in an abundance of caution, send it to  
20 ratify, because if you don't send it to ratify --

21 MR. MCPHERSON: Okay. Okay.

22 MR. TELLECHEA: -- it's not going to get  
23 done.

24 MR. MCPHERSON: Okay. Understood. All  
25 right, so a motion to approve and file with the

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 legislature was made and seconded. Was there --

2 DR. CHIZNER: Yes, it was. It passed  
3 unanimously, Larry.

4 MR. MCPHERSON: Okay, so the next -- I'm  
5 sorry, the next motion was for 64B8-9.0133?

6 DR. CHIZNER: Correct.

7 MR. MCPHERSON: And -- so that was approved,  
8 and file with the legislature, that was unanimous?

9 SPEAKER: Yes.

10 MR. MCPHERSON: Okay. I'm sorry to  
11 interrupt.

12 DR. CHIZNER: All right. Ed?

13 MR. TELLECHEA: Yes. Okay, did we already  
14 vote on 9.0133?

15 DR. CHIZNER: Yes.

16 SPEAKER: We did.

17 MR. TELLECHEA: Okay, then the final one is

18 J012111 BOARD MEETING MEET ME (2).txt  
the 64B8-9.0134, Maximum Number of Prescriptions  
19 in Registered Pain Management Clinics.

20 SPEAKER: Move approval.

21 MR. TELLECHEA: Hold on a second, hold on one  
22 moment. What was that?

23 SPEAKER: Need language approved.

24 MR. TELLECHEA: Yeah, we need the language --  
25 there was some language that was sent to you that

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 needs approved. There was some minor changes that  
2 needed to be made to it. So the first thing what  
3 I need you to do is to approve the language that's  
4 been changed.

5 DR. S. ROSENBERG: So moved, Steve Rosenberg.

6 DR. PATROWICZ: Second, Patrowicz.

7 DR. CHIZNER: There's a motion and a second  
8 for the language review approval. All in favor?

9 (Chorus of ayes.)

10 DR. CHIZNER: Any opposed? Carries  
11 unanimately. Now, for the approval and filing for  
12 legislative ratification.

13 MR. TELLECHEA: Right now, with the  
14 legislative ratification, this language will not  
15 have any effect upon -- the language change does  
16 not in any way really effect the outcome of the  
17 SERC. It's still the same results you're going to  
18 get from it. So just to let you know when you  
19 make your vote on this SERC.

20 DR. CHIZNER: Motion on the -- motion? Board

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Members?

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SPEAKER: So moved.

22

SPEAKER: Second, please.

23

DR. CHIZNER: There's a motion and a second.

24

Any comments, Board Members?

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FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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SPEAKER: Call the question.

1

DR. CHIZNER: Call the question, all in  
favor?

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(Chorus of ayes.)

4

DR. CHIZNER: Any opposed? Carries  
unanimously.

5

6

MR. MCPHERSON: Mr. Chair, there's one more  
SERC. Although it's part of 64B-9.0131, there is  
a separate SERC on the training requirements which  
are 64B8-9.0131(2)(n). Mr. Tellechea, did you  
want to have a separate --

10

11

MR. TELLECHEA: That's the next one we were  
going to. There is also a SERC that's been  
provided to you on the training requirements, and  
this is -- remember, we bifurcated the standards  
of practice rules. We took out the training  
requirements because we could not agree upon them  
initially. We -- at the last meeting they went  
ahead and approved new language regarding the  
training requirements, so we did a different  
SERC -- a separate SERC on that.

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I'm sorry, I take that -- hold on one moment.

22

I'm sorry, let me take this back. Correction:

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24 The language for the training requirements, you  
25 folks told us, instructed us what you wanted in

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 the language, and we have the language here that  
2 has been presented to you for your consideration  
3 today.

4 So I need you to approve the language, then I  
5 need you to look at the SERC regarding this  
6 language.

7 DR. CHIZNER: Members, any comments?

8 SPEAKER: Move to approve the language as  
9 stated by counsel.

10 SPEAKER: Second.

11 DR. S. ROSENBERG: Second, Steve Rosenberg.

12 DR. CHIZNER: There's a motion and a second.  
13 Any other comments, Board Members? Call the  
14 motion, all in favor?

15 (Chorus of ayes.)

16 DR. CHIZNER: Any opposed? Passes  
17 unanimously.

18 MR. TELLECHEA: Okay. Then I need -- now I  
19 need you to look at the statement of estimated  
20 regulatory cost that was done in regard to this  
21 language, and it's there for your review,  
22 consideration and approval, hopefully.

23 DR. S. ROSENBERG: Move approval and forward  
24 to the legislation for ratification, Steve  
25 Rosenberg.

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491  
Page 19

1           SPEAKER: Second please.

2           DR. CHIZNER: There's a motion and a second,  
3 any comments, Board Members? Call the motion, all  
4 in favor?

5           (Chorus of ayes.)

6           DR. CHIZNER: Any opposed? Motion carries  
7 unanimously.

8           MR. TELLECHEA: Okay. I believe that's it.  
9 Larry, is there anything else that we missed?

10          MR. MCPHERSON: No, the Board has moved and  
11 approved approval of the rules and SERCs, and  
12 moved and approved filing these with the  
13 legislature for ratification. I believe we have  
14 no new business from the Board office, other than  
15 to thank all the Board Members and all those  
16 involved in this process.

17          And thank you, Mr. Parrish, and of course  
18 thank you very much to Mr. Tellechea, Donna  
19 McNulty, and Nancy Murphy with the attorney  
20 general's office.

21          SPEAKER: With the thanks, does anybody move  
22 to adjourn?

23          DR. CHIZNER: Move to adjourn, is there any  
24 other comments, Board Members?

25          DR. LAGE: Second, Lage.

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

1           DR. CHIZNER: Everyone have a blessed weekend  
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and happy, healthy new year. Move to adjourn.  
(The proceedings were adjourned at 12:25 p.m.)

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

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1 CERTIFICATE OF REPORTER  
2  
3 STATE OF FLORIDA )  
4 COUNTY OF LEON )

5 I, JEFFREY R. BABCOCK, Court Reporter and  
6 Notary Public, do hereby certify that the foregoing  
7 proceedings were taken before me at the time and place  
8 therein designated; that my shorthand notes were  
9 thereafter translated under my supervision; and the  
10 foregoing pages numbered 3 through 23 are a true and  
11 correct record of the aforesaid proceedings.

12 I FURTHER CERTIFY that I am not a relative,  
13 employee, attorney or counsel of any of the parties,  
14 nor relative or employee of such attorney or counsel,  
15 or financially interested in the foregoing action.

16 DATED THIS 26th day of January, 2011.

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