

42

Final Order No. DOH-08-1625-FOF-MOA  
FILED DATE - 7/16/08  
Department of Health

By: *Racina O'Neil*  
Deputy Agency Clerk

ADMISSION OF  
ADMINISTRATIVE  
HEARINGS  
1:46

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**vs.**

**DOH Case No.: 2006-00284  
DOAH Case No.: 07-3513PL  
License: CH 5108**

**FRANCIS J. FALOWSKI, D.C.**

**Respondent.**

\_\_\_\_\_ /

**FINAL ORDER**

THIS MATTER came before the Board of Chiropractic Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 20, 2008, in Fort Lauderdale, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order (a copy is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by Tobey Schultz, Assistant General Counsel. Respondent was not present or represented by counsel. Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

**RULINGS ON PETITIONER'S EXCEPTION**

Petitioner filed an exception to Paragraph 13 of the Recommended Order. The exception was filed to correct a scrivener's error that appears in the Recommended

Order. Paragraph 13 references "Dr. Whitney" and an "Amended Administrative Complaint." Petitioner requested that Paragraph 13 be amended to read:

13. In its Administrative Complaint, the Department seeks to impose penalties against Dr. Falowski that include suspension or revocation of his license and/or the imposition of an administrative fine. Therefore, it has the burden of proving by clear and convincing evidence that Dr. Falowski committed the violation alleged in the Administrative Complaint. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

The Board voted to accept the exception and substitute the above-listed language for Paragraph 13 of the Recommended Order.

#### **FINDINGS OF FACT**

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated by reference herein.
2. There is competent substantial evidence to support the findings of fact.

#### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 460, Florida Statutes.
2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated by reference herein.

#### **PENALTY**

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

**IT IS HEREBY ORDERED AND ADJUDGED that**

1. Respondent shall pay an administrative fine of **five thousand dollars (\$5,000.00)** payable within **thirty (30) days** of the filing date of this Final Order. Payment shall be made to: Department of Health, HMQ/AMS, Compliance Management Unit, PO Box 6320, Tallahassee, Florida 32314-6320, attn: Chiropractic Medicine Compliance Officer.

2. Respondent's license to practice chiropractic medicine shall be placed on probation for a period of **two (2) years**. The Administrative Law Judge's recommendation stated that the Board could set appropriate terms and conditions of the probation. The only condition of probation is that Respondent must attend **two (2)** entire meetings of the Board of Chiropractic Medicine during each of the next two calendar years (for a total of **four (4)** meetings). The calendar year will begin with the filing date of this Final Order. Respondent shall sign in with the Executive Director before the board meeting begins and shall sign out of the meeting when excused by the Board.

#### **MOTION TO ASSESS COSTS**

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of **six thousand one hundred forty-nine dollars and ninety cents (\$6,149.90)**. Said costs are to be paid within **thirty (30) days** from the filing date of this Final Order.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 14<sup>th</sup> day of July, 2008.

**BOARD OF CHIROPRACTIC MEDICINE**

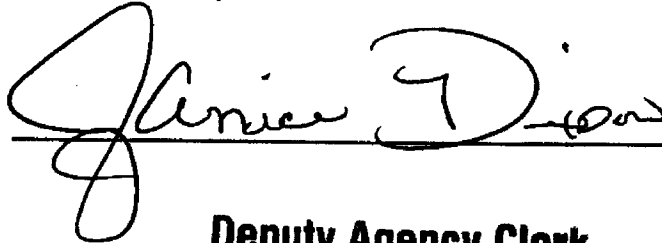
  
\_\_\_\_\_  
Joe Baker, Jr., Executive Director  
on behalf of Kenneth Dougherty, D.C., CHAIR

**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 IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to: **Francis J. Falowski, D.C.**, 4700 N. State Road 7, Bldg A., Suite 102, Lauderdale Lakes, Florida 33319 and his counsel of record, **Neil G. Garfield**, 470 South Carpenter Road, Titusville, Florida 32796; **Patricia M. Hart**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice mail to: **Deborah B. Loucks**, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050; and **Tobey Schultz**, Assistant General Counsel, Department of Health, Prosecution Services Unit, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265, on July 15, 2008.

  
\_\_\_\_\_

**Deputy Agency Clerk**

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK: *Rachelle B.*  
DATE: 5-1-08

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF CHIROPRACTIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case Numbers 2006-00284  
DOAH Case Number 07-003513PL

FRANCIS FALOWSKI, D.C.

Respondent,  

---

**MOTION FOR FINAL ORDER**

COMES NOW, the Department of Health, and requests that this Honorable Board of chiropractic medicine enter a Final Order in the above-styled cause. As grounds therefore, the Petitioner would state that:

1. Petitioner is the state department charged with violation of false, deceptive, or misleading advertising, fraudulent, representation, practicing beyond the scope of license pursuant to 460.413(1)(d)(k)(t), Florida Statutes
2. On October 10, 2006, Petitioner filed an Administrative Complaint against the Respondent alleging that the Respondent violated Section 460.413(1)(t), Florida Statutes (2005).
3. On July 31, 2007, the case was filed with the Division of Administrative Hearings.
4. On October 15, 2007, a final hearing took place in Tallahassee, Florida.

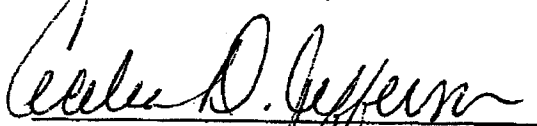
00003

5. On March 20, 2008, the Administrative Law Judge issued a Recommended Order in the above-styled cause.

6. The Respondent has been advised by a copy of this Motion that the Board will consider the record, that includes the following documents, in this matter: Petitioner's Exceptions to the Recommended Order, Respondent's Response to Petitioner's Exceptions to the Recommended Order, Recommended Order, Amended Administrative Complaint, Petitioner's Proposed Recommended Order, Respondent's Proposed Recommended Order, Motion to Access Costs with attachments, Transcript of Hearing, Petitioner's Exhibits and Pleadings.

WHEREFORE, Petitioner would respectfully request that this Honorable Board enter a Final Order in this case.

Respectfully submitted,

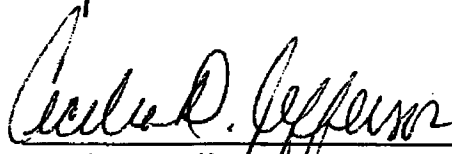


Cecelia D. Jefferson  
Assistant General Counsel  
Florida Bar Number 0007609  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265  
(850) 245-4640  
(850) 245-4682 FAX

00004

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy hereof has been furnished to Respondent, Francis Falowski, D.C, 9040 Equus Circle, Boynton Beach, Florida 33437, by postage-paid U.S. Mail, this 30<sup>th</sup> day of April, 2008:

  
\_\_\_\_\_  
Cecelia D. Jefferson  
Assistant General Counsel

CDJ/cs

00005



**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK: *Racene*  
DATE 5.1.08

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF CHIROPRACTIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

Case Number: 2006-00284

vs.

FRANCIS FALOWSKI, 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 (2005). 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 (2005),<sup>1</sup> states as follows:

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

---

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

00027

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 **six thousand one hundred forty nine dollars and ninety - one cents (\$6,149.90)**, based on the following itemized statement of costs:

Complaint:	\$	39.79
Investigation:	\$	1,235.80
Legal:	\$	3,962.32
Expenses:	\$	911.99

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of **six thousand one hundred forty nine dollars and ninety - one cents (\$6,149.90)**, 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

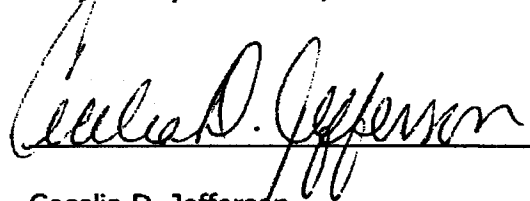
upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

5. Petitioner requests that the Board grant this motion and assess costs in the amount of **six thousand one hundred forty nine dollars and ninety - one cents (\$6,149.90)**, 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 (2005).

WHEREFORE, the Department of Health requests that the Board enter a Final Order assessing costs against the Respondent in the amount of **six thousand one hundred forty nine dollars and ninety - one cents (\$6,149.90)**.

DATED this 30<sup>th</sup> day of April, 2008.

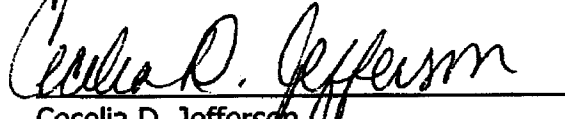
Respectfully submitted,



Cecelia D. Jefferson  
Assistant General Counsel  
Florida Bar Number #0007609  
Department of Health  
Prosecution Services Unit  
4052 Bald Cypress Way, Bin # C-65  
Tallahassee, Florida 32399-3265  
(850) 245-4640  
(850) 245-4682 FAX

*CERTIFICATE OF SERVICE*

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been provided to: Frances Falowski, D. C., 9040 Equus Circle, Boynton Beach, Florida, 33437, by certified U.S. Mail this 30<sup>th</sup> day of April 2008.

  
Cecelia D. Jefferson  
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(s) 2006-00284 (Department of Health v Francis Falowski, D.C.) are six thousand one hundred forty – nine dollars and ninety cents (\$6,149.90)
- 6) The costs for DOH case numbers 2006-00284 (Department of Health v. Francis Falowski, 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 2006-00284 (Department of Health v. Francis Falowski, 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)

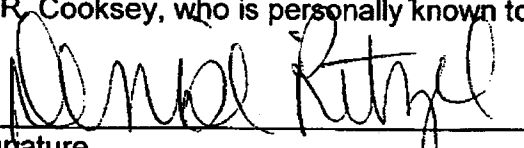
- 9) James R. Cooksey, first being duly sworn, states that he has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

  
James R. Cooksey, Affiant

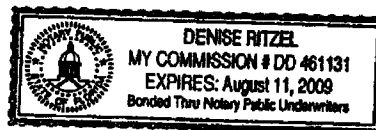
State of Florida  
County of Leon

Sworn to and subscribed before me this 2nd day of April, 2008,  
by James R. Cooksey, who is personally known to me.

  
Notary Signature

Denise Ritzel  
Name of Notary Printed

Stamp Commissioned Name of Notary Public:



## Complaint Cost Summary

Complaint Number: 200600284

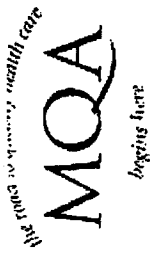
Complainant's FREIBERG, RICHARD

Name: ALLEN

Subject's

Name: FALOWSKI, FRANCIS J

	***** Cost to Date *****	
	Hours	Costs
Complaint:	0.80	\$39.79
Investigation:	18.70	\$1,235.80
Legal:	38.50	\$3,962.32
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	58.00	\$5,237.91
Expenses to Date:		\$911.99
Prior Amount:		\$0.00
Total Costs to Date:		\$6,149.90



**\*\*\* CONFIDENTIAL \*\*\***  
**Time Tracking System**  
**Itemized Expense by Complaint**  
 Complaint 200600284

Report Date: 04/02/2008

Page 1 of 1

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
<b>PROSECUTION SERVICES UNIT</b>				
HLL53A	12/13/2007	\$251.99	131400	COURT REPORTING
HL34B	12/04/2007	\$625.00	131630	EXPERT WITNESS
HLL53A	10/16/2007	\$17.50	230000	PRINTING & REPRODUCTION
HLL53A	10/29/2007	\$17.50	230000	PRINTING & REPRODUCTION
	<b>SubTotal</b>	<b>\$911.99</b>		
	<b>Total Expenses</b>	<b>\$911.99</b>		

0003



**\*\*\* CONFIDENTIAL \*\*\***  
**Time Tracking System**  
**Itemized Cost by Complaint**

Complaint 200600284

Report Date: 04/02/2008

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
<b>CONSUMER SERVICES UNIT</b>						
HA22	0.80	\$49.74	\$39.79	01/09/2006	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA22	0.20	\$49.83	\$9.97	12/04/2006	4	ROUTINE INVESTIGATIVE WORK
<b>Sub Total</b>	<b>1.00</b>		<b>\$49.76</b>			
<b>INVESTIGATIVE SERVICES UNIT</b>						
L186	1.00	\$63.10	\$63.10	01/12/2006	4	ROUTINE INVESTIGATIVE WORK
L186	1.00	\$63.10	\$63.10	03/30/2006	4	ROUTINE INVESTIGATIVE WORK
L186	1.00	\$63.10	\$63.10	04/04/2006	4	ROUTINE INVESTIGATIVE WORK
L186	1.50	\$63.10	\$94.65	04/05/2006	6	SUPPLEMENTAL INVESTIGATION
L186	1.50	\$63.10	\$94.65	04/05/2006	4	ROUTINE INVESTIGATIVE WORK
L186	2.00	\$63.10	\$126.20	04/06/2006	4	ROUTINE INVESTIGATIVE WORK
L186	1.00	\$65.88	\$65.88	09/04/2007	5	ROUTINE INSPECTION
L186	0.50	\$65.88	\$32.94	10/22/2007	6	SUPPLEMENTAL INVESTIGATION
L186	1.00	\$65.88	\$65.88	10/22/2007	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CEASE
L186	0.50	\$65.88	\$32.94	10/23/2007	76	REPORT PREPARATION
L161	3.50	\$72.18	\$252.63	10/31/2007	48	FORMAL HEARING
L186	3.50	\$65.88	\$230.58	10/31/2007	48	FORMAL HEARING
L175	0.50	\$80.35	\$40.18	03/31/2008	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CEASE
<b>Sub Total</b>	<b>18.50</b>		<b>\$1,225.83</b>			
<b>PROSECUTION SERVICES UNIT</b>						
HL12A	1.00	\$100.00	\$100.00	06/30/2006	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL36B	0.40	\$123.94	\$49.58	07/12/2006	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL36B	0.40	\$123.94	\$49.58	10/02/2006	79	STIPULATION
HLL36B	0.40	\$123.94	\$49.58	11/17/2006	25	REVIEW CASE FILE
HLL53A	0.20	\$123.32	\$24.66	07/03/2007	37	REVIEW LETTER

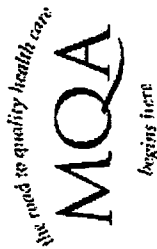
035

**Time Tracking System  
 Itemized Cost by Complaint**

Complaint 200600284

Report Date: 04/02/2008

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL53A	0.40	\$123.32	\$49.33	07/13/2007	79	STIPULATION
HLL53A	0.40	\$123.32	\$49.33	08/07/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL53A	0.20	\$123.32	\$24.66	08/07/2007	35	TELEPHONE CALLS
HLL53A	0.20	\$123.32	\$24.66	08/09/2007	60	MISCELLANEOUS
HLL53A	0.30	\$104.39	\$31.32	08/16/2007	60	MISCELLANEOUS
HLL53A	0.30	\$123.32	\$37.00	08/21/2007	60	MISCELLANEOUS
HLL53A	0.30	\$123.32	\$37.00	08/31/2007	47	TRIAL PREPARATION
HLL53A	0.30	\$123.32	\$37.00	08/31/2007	36	PREPARATION OR REVISION OF LETTER
HLL53A	0.30	\$123.32	\$37.00	08/31/2007	6	SUPPLEMENTAL INVESTIGATION
HLL53A	0.50	\$104.39	\$52.20	09/05/2007	74	MEETINGS WITH DEPARTMENT STAFF
HLL53A	0.30	\$104.39	\$31.32	09/07/2007	103	REVIEW SUPPLEMENTAL REPORT
HLL53A	0.40	\$104.39	\$41.76	09/11/2007	74	MEETINGS WITH DEPARTMENT STAFF
HLL53A	0.50	\$104.39	\$52.20	09/11/2007	35	TELEPHONE CALLS
HLL53A	0.40	\$104.39	\$41.76	09/11/2007	35	TELEPHONE CALLS
HLL53A	0.30	\$104.39	\$31.32	09/11/2007	74	MEETINGS WITH DEPARTMENT STAFF
HLL53A	1.40	\$104.39	\$146.15	09/17/2007	60	MISCELLANEOUS
HLL22B	0.10	\$112.43	\$11.24	09/17/2007	37	REVIEW LETTER
HLL22B	0.20	\$112.43	\$22.49	09/20/2007	70	CONFERENCES WITH LAWYERS
HLL53A	0.30	\$104.39	\$31.32	09/24/2007	35	TELEPHONE CALLS
HLL53A	0.30	\$104.39	\$31.32	09/26/2007	38	REVIEW DISCOVERY REQUESTS/RESPONSES
HLL53A	0.30	\$104.39	\$31.32	09/26/2007	74	MEETINGS WITH DEPARTMENT STAFF
HLL53A	1.50	\$104.39	\$156.59	09/28/2007	39	PREPARE/RESPOND TO DISCOVERY
HLL53A	0.40	\$104.39	\$41.76	10/02/2007	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN OFF.
HLL22B	0.50	\$91.00	\$45.50	10/03/2007	39	PREPARE/RESPOND TO DISCOVERY
HLL36B	0.30	\$105.87	\$31.76	10/05/2007	74	MEETINGS WITH DEPARTMENT STAFF
HLL53A	1.50	\$104.39	\$156.59	10/05/2007	39	PREPARE/RESPOND TO DISCOVERY
HLL53A	0.70	\$104.39	\$73.07	10/08/2007	47	TRIAL PREPARATION
HLL22B	0.20	\$112.43	\$22.49	10/17/2007	70	CONFERENCES WITH LAWYERS
HLL53A	0.50	\$91.00	\$45.50	10/24/2007	47	TRIAL PREPARATION
HLL53A	3.00	\$91.00	\$273.00	10/25/2007	47	TRIAL PREPARATION
HLL22B	0.50	\$91.00	\$45.50	10/26/2007	70	CONFERENCES WITH LAWYERS
HLL22B	0.20	\$91.00	\$18.20	10/29/2007	27	REVIEW MEMORANDUM
HLL53A	2.00	\$91.00	\$182.00	10/29/2007	47	TRIAL PREPARATION



**\*\*\* CONFIDENTIAL \*\*\***  
**Time Tracking System**  
**Itemized Cost by Complaint**

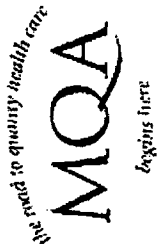
Complaint 200600284

Report Date: 04/02/2008

Page 3 of 4

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL36B	0.80	\$91.00	\$72.80	10/30/2007	47	TRIAL PREPARATION
HLL22B	0.50	\$91.00	\$45.50	10/30/2007	70	CONFERENCES WITH LAWYERS
HLL22B	0.30	\$91.00	\$27.30	10/31/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL53A	2.00	\$91.00	\$182.00	10/31/2007	48	FORMAL HEARING
HLL53A	4.00	\$91.00	\$364.00	11/20/2007	53	PREPARATION OF MOTION TO AVOID STAY/RESPONSE TO MOTION TO STAY
HLL53A	0.30	\$91.00	\$27.30	11/27/2007	60	MISCELLANEOUS
HLL22B	0.80	\$111.56	\$89.25	01/24/2008	25	REVIEW CASE FILE
HLL36B	0.80	\$111.56	\$89.25	01/24/2008	40	PREPARATION OF OR REVISION OF A PLEADING
HLL53A	0.30	\$111.56	\$33.47	01/24/2008	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN OFF.
HLL53A	0.80	\$111.56	\$89.25	01/24/2008	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL53A	0.30	\$111.56	\$33.47	01/24/2008	31	PREPARE OR REVISE CLOSING ORDER
HLL53A	0.60	\$111.56	\$66.94	01/24/2008	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.60	\$111.56	\$66.94	01/25/2008	40	PREPARATION OF OR REVISION OF A PLEADING
HLL53A	0.50	\$111.56	\$55.78	01/25/2008	48	FORMAL HEARING
HLL53A	0.30	\$111.56	\$33.47	01/25/2008	48	FORMAL HEARING
HLL53A	0.30	\$111.56	\$33.47	01/25/2008	60	MISCELLANEOUS
HLL22B	0.40	\$111.56	\$44.62	01/27/2008	70	CONFERENCES WITH LAWYERS
HLL22B	0.40	\$111.56	\$44.62	01/28/2008	70	CONFERENCES WITH LAWYERS
HLL53A	0.50	\$111.56	\$55.78	03/20/2008	70	CONFERENCES WITH LAWYERS
HLL53A	0.40	\$111.56	\$44.62	03/21/2008	70	CONFERENCES WITH LAWYERS
HLL53A	0.30	\$111.56	\$33.47	03/25/2008	46	LEGAL RESEARCH
HLL53A	0.20	\$111.56	\$22.31	03/26/2008	46	LEGAL RESEARCH
HLL53A	0.30	\$111.56	\$33.47	03/26/2008	36	PREPARATION OR REVISION OF LETTER
HLL53A	0.40	\$111.56	\$44.62	03/26/2008	6	SUPPLEMENTAL INVESTIGATION
HLL53A	0.30	\$111.56	\$33.47	03/26/2008	40	PREPARATION OF OR REVISION OF A PLEADING
HLL53A	0.20	\$111.56	\$22.31	03/26/2008	70	CONFERENCES WITH LAWYERS
HLL53A	0.50	\$111.56	\$55.78	03/26/2008	40	PREPARATION OF OR REVISION OF A PLEADING
<b>Sub Total</b>	<b>38.50</b>		<b>\$3,962.32</b>			

**0000**



**\*\*\* CONFIDENTIAL \*\*\***  
**Time Tracking System**  
**Itemized Cost by Complaint**  
Complaint 200600284

Report Date: 04/02/2008

Page 4 of 4

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
------------	----------------	------------	------	---------------	---------------	----------------------

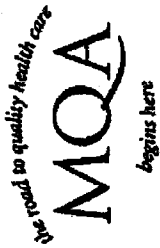
Total Cost			\$5,237.91			
------------	--	--	------------	--	--	--

00038

Florida Department of Health

-- FOR INTERNAL USE ONLY --

Itemizedcost



**\*\*\* CONFIDENTIAL \*\*\***  
**Time Tracking System**  
**Itemized Expense by Complaint**  
 Complaint 200600284

00039

Report Date: 04/21/2008

Page 1 of 1

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
<b>PROSECUTION SERVICES UNIT</b>				
HLL53A	12/13/2007	\$251.99	131400	COURT REPORTING
HL34B	12/04/2007	\$625.00	131630	EXPERT WITNESS
HLL53A	10/16/2007	\$17.50	230000	PRINTING & REPRODUCTION
HLL53A	10/29/2007	\$17.50	230000	PRINTING & REPRODUCTION
HLL53A	11/02/2007	\$350.46	261010	TRAVEL - EMOLYEE - IN FLA
	<b>SubTotal</b>	<b>\$1,262.45</b>		
	<b>Total Expenses</b>	<b>\$1,262.45</b>		

Official Reporting Services, LLC

524 South Andrews Avenue, Suite 302N  
Ft. Lauderdale, Florida 33301-2845  
954-467-8204 Fax 954-467-8214  
Tax ID 20-5849842

*H453A*

CECELIA JEFFERSON, ESQUIRE  
AGC DEPT OF HEALTH  
4052 BALD CYPRESS WAY  
BUILDING A-02  
TALLAHASSEE, FL 32399-1703

December 10, 2007

Invoice# 30098839

Balance: \$503.98

Re: BOARD OF CHIRO MEDICINE VS FALOWSKI - MARITZA MONROE  
073513, 073514  
on 10/31/07  
by MARITZA MONROE

*2003-1589's*  
~~2006-00284~~

Invoicing Information

Charge Description	Amount
HEARING BEFORE JUDGE HART 164 PGS @ 2.95 O+1	483.80
SENT ORIGINAL TO DAOH ON 12/10/07	10.09
SENT COPY TO ATTY ON 12/10/07	10.09

DATE INVOICE RECEIVED 12/13/07  
 DATE GOODS OR SVCS. REC'D 12/13/07  
 DATE GOODS OR SVCS. APPROVED \_\_\_\_\_  
 PAYMENT APPROVED BY Betty L. Price for  
 KATHRYN PRICE FOR DONNA BROWN  
 SUCCESS IN 5 WORKING DAYS  
 RETURN FINANCE & ACCOUNTING  
 OBJECT CODE 131400  
 ORGANIZATION CODE 6422-13-01-004  
 CO. PA  
 OUT: MOA PS

2007 DEC 13 AM 11:25  
PRACTITIONER REGULATION  
LEGAL

1.00% per month on unpaid balance

*fmb*  
*12/20/07*

Please Remit - - - > Total Due: \$503.98

BALANCE PAST DUE 30 DAYS SHALL BEAR INTEREST.  
CLIENT AGREES TO PAY ALL COSTS OF COLLECTION.

251  
00040



DEPARTMENT OF HEALTH  
 PROSECUTION SERVICES UNIT  
 4052 Bald Cypress Way, BIN # C-65 - Tallahassee, Florida 32399-3265

Work Authorization: ✓ 07-9146

**EXPERT WITNESS WORK AUTHORIZATION AND INVOICE**

**SECTION ONE - WORK AUTHORIZATION**

The expert named below is authorized to perform expert services in this case, per terms of the DOH Expert Witness Agreement.

1. Expert Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ 2. SSN/FEID: \_\_\_\_\_ 3. Expiration Date: 12/30/07

4. MAXIMUM AUTHORIZED FUNDS: 51,625.00 5. Type of Service: Case Review/FH Prep./Testimony

6. Case Number: 2003-15896, 2006-00284 7. Subject Last Name: Falowski 8. Board: CH

9. Requestor's Full Name: Irene Lake/Schultz 10. Requestor Phone Number: 850-245-4640

11. Issuing Authority: Irene Lake *[Signature]* Date Signed: 10/25/2007

**SECTION TWO - EXPERT'S INVOICE FOR SERVICES AND EXPENSES**

- DO NOT EXCEED the Maximum Authorized Funds.
- DO NOT include Travel Expenses on this form. They require a separate travel voucher.
- Enter services and incidental expenses separately (use designated boxes).
- Hourly rate is set as per the terms of the DOH expert Witness Agreement.
- Be Sure to sign and return this ORIGINAL form. Attach any receipts for incidental expenses.
- Contact the Requestor if your expert services require additional funding or if you have any other questions.

**SERVICES ONLY**

(12) Date of Service	(13) Description of Service	(14) Hourly Fee	(15) Hours	(16) Total Fee
10/29/07	REVIEW ALL INVEST REPORT TRANSCRIPTS	\$125.00	2.75	343.75
10/30/07	DISCUSSION WITH MR. SCHULTZ	125.00	.75	93.75
10/29/07	FINAL REVIEW OF FILE PREMISE TOURING	125.00	1.00	125.00
7/31/07	TESTIMONY AT HEARING	125.00	5.50	687.50

**INCIDENTAL EXPENSES ONLY** (i.e. copying, phone calls, film developing costs, etc.) Please attach receipts

(17) Date Incurred	(18) Description of Expenses	(19) Amount \$
N/A		

**GRAND TOTAL FEES EXPENSES: \$ 1,250.00**

I have performed the services as...

...with the DOH Expert Witness Agreement

20. Expert's Signature: \_\_\_\_\_ 21. Date Signed: 11/1/07

**SECTION THREE - REQUESTOR'S ACKNOWLEDGEMENT OF SERVICES**

The above referenced services have been satisfactorily received.

22. Requestor's Signature: *[Signature]* 23. Date Signed: 12/4/07

**SECTION FOUR - ORIGINATING OFFICE INFORMATION**

Date Invoiced Rec'd: 12/4/07 Date Goods/Svcs. Rec'd: 12/4/07 EXPANSION OPTION: PA  
 Object Code: 131800 CM Approval: *[Signature]* OCA: MQAPS Date: 12/4/07  
 Organizational Code: 64221301004 CMS Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Address: Ronald Hoffman, D.C.  
 1224 Ocala Road  
 Tallahassee, FL 32304

PROCESS IN 5 WORKING DAYS AND RETURN TO FINANCE AND ACCOUNTING

12/6/07  
 00001  
*[Signature]*

**Secretary of State**  
**Division of Library & Information Services**  
**Administrative Code**  
**Tallahassee, FL 32399-0250**



To: Department of Health  
 Prosecution Services Unit  
 4052 Bald Cypress Way, Bin C-65  
 Tallahassee, FL 32399

**Invoice Number: 70-1290**

This Invoice Number must appear on all checks or correspondence regarding this invoice.

**Invoice Date: 10/29/07**

Qty:	Description	Cost per Unit	Amount
1	Certified copy of Rule 64B2-17.003, F.A.C., in effect from 6-7-00 to the present	8.75	\$8.75
1	Certified copy of Rule 64B2-11.0012, F.A.C., DOH v. Francis Falowki, D.C., 2006-00284	8.75	\$8.75
Requested by Clara Scott HUSSA DATE INVOICE RECEIVED <u>10/29/07</u> DATE GOODS OR SVCS REC'D <u>10/29/07</u> DATE GOODS OR SVCS APPROVED <u>10/30/07</u> PAYMENT APPROVED BY <u>Donna S. Brown</u> PROCESS IN 5 WORKING DAYS RETURN FINANCE & ACCOIN OBJECT CODE <u>23000</u> ORGANIZATION CODE <u>64-22-15-01-004</u> EO: PA OIA: MRAPS			
EID # 59-3466865			Total Amount Due: \$17.50

**Please pay this invoice within 15 days and return the remittance copy with your payment.**  
**If you have questions concerning this invoice, please call 850-245-6270.**

**Remittance Address**  
 Department of State, The Collins Bldg, 107 W. Gaines Street, Tallahassee, FL 32399-0250

State of Florida Agencies please pay by Journal Transfer to SAMAS Account Code  
 45-60-2-572001-45400100-00  
 BF Category 001903

OGS Accounting Use Only:

Jrg. Code:	EO	Object Code:	AR GL	GL
15-40-01	7X	019034	16300	67100

**00042**



3. Respondent's address of record is 4201 N. SR 7, Ft. Lauderdale, Florida 33319.

4. On or about December 28, 2005, through April 6, 2006, Respondent's office, located at 4201 N. SR 7, Ft. Lauderdale, Florida, advertised that the office provided "licensed acupuncture" services.

5. At all times material to this complaint, Respondent was not licensed to practice acupuncture pursuant to Chapter 457, Florida Statutes and there was no licensed acupuncturist employed by Respondent at Respondent's above described office. Nor is Respondent certified to perform acupuncture pursuant to his chiropractic license.

---

6. Section 460.413(1)(t), Florida Statutes (2005), provides that practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform is grounds for discipline by the Board of Chiropractic Medicine.

7. By advertising "licensed acupuncture", Respondent offered to practice beyond the scope of the law governing his license to practice chiropractic medicine.

8. Respondent has violated Section 460.413(1)(t), Florida Statutes (2005), provides that practicing or offering to practice beyond the scope

permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform

**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 2<sup>nd</sup> day of October, 2006.

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

**FILED**

DEPARTMENT OF HEALTH  
DEPUTY CLERK

CLERK: Alicia Stefan  
DATE 10/19/06

Toby Schultz  
Tobey Schultz  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
Florida Bar # 0542131  
(850) 245-4604 ext. 8176  
(850) 245-4682 FAX

PCP: 9/28/06 Kirby + Wolkon

00047

## 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.**

---

00048

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF CHIROPRACTIC MEDICINE

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK: *Raquel B*  
DATE 4-22-08

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOAH CASE NO.: 07-3513PL

DOH CASE NO.: 2006-00284

FRANCIS FALOWSKI, D.C.,

Respondent.

---

**PETITIONER'S EXCEPTIONS TO RECOMMENDED ORDER**

COMES NOW Petitioner, by and through the undersigned counsel, and files this Exception to the Recommended Order issued by the Honorable Judge Patricia M. Hart on March 20, 2008. Petitioner requests that the Board of Chiropractic Medicine enter a Final Order granting Petitioner's exceptions and adopting all other provisions of the Recommended Order. As grounds, Petitioner states the following:

1. On October 31, 2007, a Formal Hearing was held to consider charges that the Respondent violated § 460.413(1)(t), Florida Statutes, (2005), by practicing or offering to practice beyond the scope permitted by law by advertising that his office provided licensed acupuncture services when he was not licensed to practice acupuncture and there was no licensed acupuncturist practicing in Respondent's office.

2. On or about March 20, 2008, the Administrative Law Judge ("ALJ") filed her Recommended Order which found that Petitioner proved by clear and convincing evidence that the Respondent had practiced or offered to practice beyond the scope permitted by law in violation of the statute.

3. The Petitioner hereby files this exception to paragraph 13 of the Conclusions of Law as set forth in the Recommended Order.

**STANDARD OF REVIEW**

4. Section 120.57(1), Florida Statutes, as amended, and recent case law have clarified the authority of a reviewing Board under the Administrative Procedures Act. The Board may reject or modify conclusions of law over which it has substantive jurisdiction and interpretations of administrative rules over which it has substantive jurisdiction. The Board of Chiropractic Medicine is vested by the laws of Florida with the authority to interpret and apply such laws, regulations and policies as are applicable to programs within the Board's regulatory sphere. Thus, the Board is not bound by conclusions of law set forth in the Recommended Order to the extent that those conclusions do not represent a reasonable interpretation of the law, regulations and policies within the Board's realm of expertise. Barfield v. Department of Health, 805 So.2d 1008 (Fla. 1st DCA 2001); Humana, Inc. v. DHRS, 492 So.2d 388, 392 (Fla. 4th DCA 1986); Bayonet Point Regional Medical Center v. DHRS, 516 So.2d 995 (Fla. 1st DCA 1987); and Pan Am World Airways v. Florida Public Service Commission, 427 So.2d 716 (Fla. 1983). To the extent that the conclusions of law in the Recommended Order are incorrect interpretations of law, regulations and policies within the exclusive purview of the Board of Chiropractic Medicine, they must be rejected and the Board must adopt conclusions of law that accurately reflect the proper interpretation of the applicable law and rules. However, the Board must:

- a.) state with particularity its reasons for rejecting or modifying such conclusions of law or

- b.) interpretation of administrative rule, and make a finding that the substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

#### **PETITIONER'S EXECPTIONS**

5. Petitioner's exception to the Recommended order is based solely on a scrivener's error that appears in the Order.

6. Paragraph 13 of the Recommended Order states:

"In its Amended Administrative Complaint, the Department seeks to impose penalties against Dr. Whitney that include suspension or revocation of his license and/or the imposition of an administrative fine. Therefore, it has the burden of proving by clear and convincing evidence that Dr. Whitney committed the violation alleged in the Amended Administrative Complaint. Department of Banking and Finance, Division of Securities and Investor Protection v Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v Turlington, 510 So. 2d 292 (Fla. 1987).

7. Paragraph 13 makes reference to Dr. Whitney and an Amended Administrative complaint.

8. The Respondent in this case is Dr. Francis Falowski and the Department filed an Administrative Complaint, not an Amended Administrative Complaint. See Recommended Order, pg 2.

~~9. Any and all references to Dr. Whitney and the Amended Administrative~~  
Complaint should be stricken and references to Dr. Falowski and the Administrative Complaint should be submitted in their place, respectively. These references appear to be scrivener's errors on the part of the Administrative Law Judge.

10. The Board has the authority to correct obvious scrivener's errors such as this. See, e.g. Kolbe v Department of Insurance, 846 So. 2d 656, and Twin City Roofing Construction Specialists, Inc v Department of Financial Services, 969 So. 2d 563.

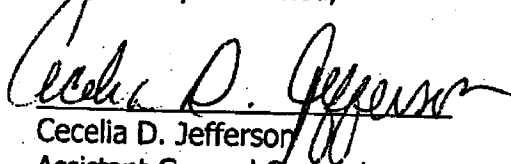
11. Thus, Paragraph 13 should state:

"In its Administrative Complaint, the Department seeks to impose penalties against Dr. Falowski that include suspension or revocation of his license and/or the imposition of an administrative fine. Therefore, it has the burden of proving by clear and convincing evidence that Dr. Falowski committed the violation alleged in the Administrative Complaint. Department of Banking and Finance, Division of Securities and Investor Protection v Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v Turlington, 510 So. 2d 292 (Fla. 1987).

### Conclusion

Based upon the foregoing, the Board of Chiropractic Medicine should enter a Final Order granting Petitioner's exception to paragraph 13 and adopting the Recommended Order.

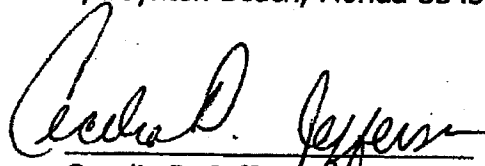
Respectfully submitted,



Cecelia D. Jefferson  
Assistant General Counsel  
Florida Bar # 0007609  
DOH, Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265  
(850) 245-4640 ext. 8167  
(850) 245-4684 FAX

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: Francis Falowski, 9040 Equus Circle, Boynton Beach, Florida 33437, by U.S. mail this 20<sup>th</sup> day of April 2008.

  
Cecelia D. Jefferson