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January 31, 2023

Via U.S. Mail

Phillip Ohler
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-431
Nevada Board of Psychological Examiners**

Dear Mr. Ohler:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Open Meeting Law (“OML”) by the Nevada Board of Psychological Examiners (“Board”), specifically alleging that the Board failed to retain audio recordings of its meetings pursuant to NRS 241.035(4).

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG’s investigation of the Complaints included a review of the Complaint, the initial response filed on behalf of the Board, dated October 13, 2021, and the supplemental response filed on behalf of the Board, dated October 21, 2021.

After investigating the Complaint, the OAG determines that the Board did not violate the OML as alleged in the Complaint.

FACTUAL BACKGROUND

On or about August 17, 2021, Mr. Ohler contacted the Board’s Executive Director, Lisa Scurry, via email and requested audio and transcripts of several Board meetings held by the Board from November 2017 through February 2020. The Complaint alleges that on August 20, 2021, Executive Director

Scurry responded to Mr. Ohler by indicating that the requested documents would be placed on a thumb drive and mailed to Mr. Ohler the following week. Additionally, the Complaint alleges that on September 1, 2021, Mr. Ohler again contacted Executive Director Scurry to follow up on the request and that Executive Director Scurry advised that the documents would be mailed on September 2, 2021.

In a letter dated September 1, 2021, the Board responded to Mr. Ohler's records request, providing audio recordings for several of the requested meetings. However, the Board's response noted that "several of the audio recordings have not been located". Executive Director Scurry further noted that while Mr. Ohler requested meeting transcripts, the Board did not generally transcribe meetings and provided meeting minutes. On October 12, 2021, the Board sent a supplemental response to Mr. Ohler in response to his August 17, 2021, records request. Therein, the Board provided copies of the recordings of its meetings from 2018 and 2019.

With regards to the Board's February 14, 2020, meeting, the Board asserts that said meeting was recorded via the virtual platform "BlueJeans", and the recording of the meeting may be accessed on the BlueJeans platform.

LEGAL ANALYSIS

The Nevada Board of Psychological Examiners was created under the provisions of NRS Chapter 641 and is a "public body" as defined in NRS 241.015(4); therefore, the Board is subject to the OML.

The OML requires that for each of its meetings, a public body must record the meeting on audiotape or other means of sound reproduction or cause the meeting to be transcribed by a certified court reporter. NRS 241.035(4). The audio record or transcription is deemed a public record and must be retained by the public body for at least 3 years after the adjournment of the meeting. *Id.* The OML further provides that if a public body makes a good faith effort to comply "but is prevented from doing so because of factors beyond the public body's reasonable control, including, without limitation, a power outage, a mechanical failure or other unforeseen event, such failure does not constitute a violation." NRS 241.035(8).

1. The OML does not require a public body to both aurally record meetings and prepare a transcript.

On its face, the OML requires a public body to record its meetings either “on audiotape or another means of sound reproduction **or** cause the meeting to be transcribed by a court reporter who is certified pursuant to chapter 656 of NRS.” NRS 241.035(4) (emphasis added). Thus, the OAG finds no violation where a public body chooses only either to aurally record or, alternatively, transcribe, its meetings.

2. The Board did not violate the OML for failing to keep the records required under NRS 241.035(4).

As noted above, the OML requires that public bodies retain the aural record or transcription for at least 3 years after the adjournment of the meeting that is subject to the recording or transcription. NRS 241.035(4)(a). Additionally, as noted above, the OML carves out an exception to a finding of a violation where a public body makes a good faith effort to comply but is prevented from doing so because of factors beyond its reasonable control. NRS 241.035(8).

First, the OAG notes that Mr. Ohler’s underlying request sought to obtain meeting recordings and transcripts for the Board’s meetings held on November 17, 2017, January 11, 2018, January 28, 2018, February 23, 2018, April 6, 2018, April 20, 2018, May 11, 2018, June 8, 2018, July 13, 2018, and August 10, 2018, among other subsequent meetings. Given that the OML only requires that public bodies retain recordings and transcripts for at least 3 years, and at least 3 years had passed since the dates of those meetings, the OAG will refrain from providing an opinion as to the Board’s compliance with the OML on those records.

As to the remaining requested audio recordings of the Board’s meetings, the Board responded in correspondence noting that it had not held a meeting on September 18, 2018. The Board also provided Mr. Ohler with audio recordings for its meetings held on March 8, May 6, June 14 and August 9, 2019, and January 23, 2020. Subsequently, the Board provided additional audio recordings to Mr. Ohler on October 12, 2021. The Board provided subsequent correspondence to Mr. Ohler after its initial response to the public record request providing all meeting recordings in its possession for 2018 and 2019. Similarly, with regards to the Board’s February 14, 2020, meeting, the Board asserts that the meeting was recorded via the virtual platform “BlueJeans”, and the recording of the meeting may be accessed on the

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BlueJeans platform. Accordingly, given the Board's responses to the records request, the OAG does not find an OML violation has occurred.

CONCLUSION

Upon review of your Complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
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