



AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101

May 15, 2023

Eva Romero



**Re: Open Meeting Law Complaint, OAG File No. 13897-459, Nevada Board of
Dental Examiners**

Dear Ms. Romero:

The Office of the Attorney General (OAG) has received your Complaint alleging that the Nevada Board of Dental Examiners (“Board”) violated Nevada’s Open Meeting Law (“OML”) at its September 7, 2022, October 11, 2022, and October 26, 2022, open meetings. Pursuant to Nevada Statute, the Office of Attorney General is authorized to investigate and prosecute violations of the Open Meeting Law. *See* Nevada Revised Statutes (“NRS”) 241.037, 241.039, and 241.040.

Following its review of your Complaint and Supplemental Complaint; the Board’s Response and Supplemental Response; minutes from the September 7, 2022, open meeting; precedent cases: *Tahoe Regional Planning Agency v. McKay*, 769 F.2d 534 (1985), *McKay v. Board of County Com’rs of Douglas County*, 103 Nev. 490 (1987), *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87 (2003), and *The Commission on Ethics of the State of Nevada v. Hansen*, 134 Nev. 304 (2018); Attorney General Open Meeting Law Opinions AG File No. OMLO 2001-09/AG File No. 00-050, OMLO 2001-18/AG File No. 01-017, OMLO 2002-21/AG File No. 02-019; and other relevant legal authorities; the OAG concludes the Board did not violate Nevada’s Open Meeting Law.

FACTUAL BACKGROUND

The Nevada Board of Dental Examiners (“Board”) is a public body as defined by Nevada Revised Statute (“NRS”) 241.015(4) and thus, subject to the OML. The Board held public meetings on or about September 7, 2022, October 11, 2022, and October 26, 2022, each proceeded by the posting of notice and agenda pursuant to NRS 241.020.

Prior to the September 7, 2022, meeting, the Board created a draft agenda for its September 7, 2022, meeting (“First Sept. 7 Meeting Agenda”). The Board attempted service of Notice of the First Sept. 7 Meeting Agenda, including notice of an agenda item regarding Complainant. Such service was not completed. Notice was required because item 4.a. described, under the heading, “New Business” and designated as “For Possible Action,” a “Discussion of recent events, evaluation, and potential employment action regarding [Complainant], General Counsel. The Board may go into closed session pursuant to NRS 241.030 and/or consider the character, alleged misconduct, or professional competence of the General Counsel – NRS 631.190; NRS 241.031.” (*See Exhibit 1: September 7, 2022, Board Meeting 1st Draft Agenda*).

Service of Notice and agenda of the First Sept. 7 Meeting Agenda to Complainant was not completed. (*See Exhibit 3: Affidavit of Attempted Service*). The agenda item was removed from the September 7, 2022, Meeting Agenda, not addressed at the meeting, and added to the agenda for the subsequent meeting, October 11, 2022. A new draft agenda was created, amended, and posted without mention of Complainant (“Second Sept. 7 Meeting Agenda”).

The Second Sept. 7 Meeting Agenda confirms such removal, as the original agenda item 4.a. had been replaced with a new agenda item 4.a., then reading, “Review, discussion, and possible recommendation to the Board regarding rates and hiring outside legal counsel to represent the Board in future litigation -NRS 631.190”. (*See Exhibit 4: September 7, 2022, Board Meeting 2nd Draft Agenda*).

The agenda for the September 7, 2022, meeting was subsequently amended again, adding several agenda items under the title “New Business”, none of which mention Complainant, nor was she mentioned in any other agenda item. (*See Exhibit 5: September 7, 2022, Board Meeting Amended Agenda*). This was the final version of the agenda, published and followed by the Board at the September 7, 2022, Meeting (“Third Sept. 7 Meeting Agenda”).

Minutes and audio recording of the September 7, 2022, meeting reflect that the Board followed the Third Sept. 7 Meeting Agenda. The discussion listed under agenda item 4.a. pertained to retention of the law firm Lewis, Roca, Rothgerber, Christie, LLP. There was no mention made of the Complainant in the meeting in any way. (*See Exhibit 6: September 7, 2022, Minutes*).

The agenda for the next meeting, on October 11, 2022, listed item 6.b. under “New Business”, a “Discussion of recent events, evaluation and potential employment action regarding Eva Romero, General Counsel. The Board may go into closed session pursuant to NRS 241.030 and/or consider the character, alleged misconduct, or professional competence of the General Counsel – NRS 631.190; NRS 241.033(4)”. (*See Exhibit 10: October 11, 2022, Board Meeting Agenda*).

In an email exchange between Complainant's attorney and Board Counsel, the attorneys agreed to remove the above-mentioned agenda item 6.b. to the following meeting. (*See Exhibit 8: E-mail Thread Between Attorneys*).

The minutes from the October 11, 2022, meeting reflect the request on the record, by Board President Dr. Lee to remove the agenda item regarding the Complainant. A motion to approve the agenda with several items, including all those related to Complainant removed, was put forward and seconded by Ms. McIntyre and Ms. Arias, respectively. As such, there was no discussion of Complainant at that meeting. (*See Exhibit 11: October 11, 2022, Board Meeting Minutes*).

The agenda for the October 26th meeting contained, under section 5. New Business, two (2) items labeled as "b.", the second item pertaining to a "Discussion of recent events, evaluation and potential employment action regarding Eva Romero, General Counsel – NRS 631.190; NRS 241.033(4)". (*See Exhibit 12: October 26, 2022, Board Meeting Agenda*). Service of notice to Complainant was neither attempted nor completed.

After the October 26, 2022, meeting was called to order, roll taken, and quorum established, the meeting was opened to public comment. Complainant, present in the audience, made a public statement objecting to the meeting for insufficient notice pursuant to NRS 241.033 and NRS 241.040. She argued that the previously agreed-to waiver of notice was for the purposes of negotiation of a settlement, which did not happen. Further Complainant argued that the agreement required service of the notice and agenda upon her attorney. (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*).

At the October 26, 2022, meeting, the Deputy Attorney General representing the Board ("Board DAG") requested clarification from Board Counsel regarding the waiver of notice agreed to by Complainant. The Board Counsel's response led to more need for clarification, at which point the Board DAG offered to provide legal advice on the potential litigation related to this matter, either on the record or privately, in accordance with NRS 241.015(3)(b)(2). Thereafter, Dr. Lee moved to go into a closed session, seconded by Dr. West. The motion unanimously passed. (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*).

Upon return from the closed session, the agenda item's misnumbering was corrected on the record by Dr. Lee. Then Dr. Lee and Ms. McIntyre recused themselves from the agenda item concerning Complainant, now correctly numbered as 5.c. Replacements for the recused members were nominated and voted into their temporary positions. Before discussion of the agenda item occurred, the Board DAG requested clarification regarding the recusals, which was provided, and the meeting continued. (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*).

Dr. Johl introduced agenda item 5.c. and a motion was made and passed to proceed therewith. A summary of the investigation was delivered, and with no further discussion, Dr.

Johl moved to terminate Complainant for cause. The motion was seconded and passed unanimously, and the matter closed. (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*).

Public comment was then taken, during which Complainant claimed that she was wrongfully terminated and read into the record the contents of her statement which was also to be published and made available in the Public Book for the October 26, 2022, meeting. Her statement contained allegations that the Board President and Secretary Treasurer posed an “immediate danger to the public,” that the Board was covering up allegations of harassment of an employee and herself, that her termination, and noticing of the pertinent meetings was improper and amounted to due process violations. (*See Exhibit 15: October 26, 2022, Board Meeting Public Book*).

On or about September 6, 2022, Ms. Romero filed an Open Meeting Law Complaint with the Office of The Attorney General (“Initial Complaint”) alleging, among other things, that Board President and Secretary Treasurer “tried to force [her] to resign ... after [she] reported an incident of harassment ...”. The Complaint also alleged several OML violations related to meeting agendas and notices. (*See Exhibit 16: Complaints, September 6, 2022*).

On or about October 20, 2022, the Board responded to this office’s notice of Open Meeting Law Complaint, providing denials of some allegations, and explanations of the circumstances related thereto, especially those circumstances related to the service of notice of the meeting at which the situation would be addressed. (*See Exhibit 17: Board Responses, October 20, 2022*)

On or about November 4, 2022, Ms. Romero filed a Supplemental Complaint to the Office of the Attorney General, alleging continued violations of the OML by the Board, related to agendas, notices, and conduct of and during the Board’s meetings in October 2022 (“Supplemental Complaint”). (*See Exhibit 16: Complaints, November 4, 2022*).

On or about December 7, 2022, the Board responded to this office’s notice of Supplemental OML Complaint, further explaining and supporting their denials of the allegations put forth in the complaints. (*See Exhibit 17: Board Responses, December 7, 2022*).

DISCUSSION AND LEGAL ANALYSIS

This office has authority to investigate complaints, allegations, and violations of Nevada Open Meeting Law only. Thus, it will refrain from addressing any of the underlying issues and allegations related to or arising from accusations of harassment, wrongful termination, danger to the public, or other issues not directly related to the OML.

The Nevada Board of Dental Examiners is a public body pursuant to NRS 241.015(4), and thus, subject to the Nevada Open Meeting Law (“OML”). However, the

Complaint and Supplemental Complaint contain many allegations that are outside the scope of the OML.

Allegations

Those allegations related to the OML in the primary complaint are that, “Dr. Lee & Ms. McIntyre ... attempt[ed] to hold Board Meetings without proper notice, publicly defaming [Complainant] in a "DRAFT" Agenda referencing an illegally noticed hearing; removing the "DRAFT" public notice after [Complainant] informed the DAG about it rather than posting an Addendum; completely revising the Agenda to discuss misappropriating Board funds to retain counsel ... to defend them in pending litigation; failing to include themselves in the Agenda for the other Board Members to consider Dr. Lee & Ms. McIntyre's immediate removal as Officers ... ; attempting to circumvent NV Law by seeking to appoint an interim Exec. Dir. ... ; and Dr. Lee & Ms. McIntyre failing to recuse themselves ... ; ... that at Dr. Lee & Ms. McIntyre's direction, [the Board had] already removed [Executive Director] Ms. [Hardeep] Sull and [Complainant] from our respective position [sic] as "Staff" on the NV Board's website, prior to holding any Board Meeting in compliance with NV Open Meeting Law & in violation of NRS Chapter 241.” (*See Exhibit 16: Complaints, September 6, 2022*).

Pertinent allegations in the Supplemental Complaint are that “Since 9/06/2022, the Board has continued with repeated violations of OML, to which its DAG, Rosalie Bordelove, was also present & [sic] complicit in those violations on 9/07/2022 & 10/26/2022 ... in Board Meetings & Agendas More OML Violations occurred during the ... Board Meetings: 9/07/2022: no clear and complete agenda permitting the Board to change Full Time positions of Executive Director & General Counsel to Part Time; prematurely hiring & referring to ... GC, Jason Dworin, as the new GC & ED prior to the meeting & [sic] the vote taking place”. (*See Exhibit 16: Complaints, November 4, 2022*).

The above complaints raise issues related to the September 7, 2022, October 11, 2022, and October 26, 2022, meetings of the Board as follows:

- Whether the notices and agendas of the meetings were properly posted and followed for each of the three meetings at issue?
- Whether there was a clear and complete description of the agenda items regarding the change of status of Board executive positions?
- Whether there was an “illegally noticed hearing” in a posted draft agenda for the September meeting?
- Whether there was a proper description of the agenda item regarding retaining outside counsel?
- Whether there was an improper failure to include an agenda item regarding the immediate removal of two Board Officers?
- Whether the Board attempted to circumvent the OML by seeking to appoint an interim officer?

- Whether Dr. Lee and Ms. McIntyre failed to recuse themselves from deliberating and voting on an agenda item?
- Whether it was improper to remove Ms. Sull and [Complainant] from their respective positions as "Staff" on the NV Board's website, prior to addressing the issue in any Board Meeting?
- Whether the hiring of a new General Counsel and Executive Director was properly noted on the agenda.
- Whether Chief Deputy Attorney General Bordelove gave the Board improper advice or counsel related to private discussions between the Board and its counsel.

Relevant Authority

Pertinent rules are found in NRS 241 in general, and specifically in the following:

- NRS 241.015(3)(b)(2) "Meeting": (b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present, whether in person or by means of electronic communication: (2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.
- NRS 241.020(3) provides that, "Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting." The notice must include: (d) An agenda ... "
- NRS 241.020(3)(d) provides that such above-mentioned agenda must consist of: (1) A clear and complete statement of the topics scheduled to be considered during the meeting. (2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term "for possible action" next to the appropriate item or, if the item is placed on the agenda pursuant to [NRS 241.0365](#), by placing the term "for possible corrective action" next to the appropriate item."
- NRS 241.020(3)(d)(4) provides that, "If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, [the agenda will consist of] the name of the person whose character, alleged misconduct or professional competence will be considered."
- NRS 241.020(3)(d)(5) provides that, "If, during any portion of the meeting, the public body will consider whether to take administrative action regarding a person, [the agenda will consist of] the name of that person."
- NRS 241.020(3)(d)(6) provides that the agenda will consist of "Notification that: ... (III) The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

- NRS 241.030(1) provides that, “a public body may hold a closed meeting to: (a) consider character, alleged misconduct, professional competence or physical or mental health of a person.”
- NRS 241.030(2) provides that, “A person whose character, alleged misconduct, professional competence, or physical or mental health will be considered by a public body during a meeting may waive the closure of the meeting and request that the meeting or relevant portion thereof be open to the public. A request described in this subsection: (a) May be made at any time before or during the meeting; and (b) Must be honored by the public body unless the consideration of the character, alleged misconduct, professional competence, or physical or mental health of the requester involves the appearance before the public body of another person who does not desire that the meeting or relevant portion thereof be open to the public.
- NRS 241.030(4) provides that, “This chapter does not: (d) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.
- NRS 241.033(1) provides that, “Except as otherwise provided in subsection 7, a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person or to consider an appeal by a person of the results of an examination conducted by or on behalf of the public body unless it has: (a) Given written notice to that person of the time and place of the meeting; and (b) Received proof of service of the notice.
- NRS 241.033(2) provides that, “The written notice required pursuant to subsection 1: (a) Except as otherwise provided in subsection 3, must be: (1) Delivered personally to that person at least 5 working days before the meeting; or (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting. (b) May, with respect to a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, include an informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the character, alleged misconduct, professional competence, or physical or mental health of the person. (c) Must include: (1) A list of the general topics concerning the person that will be considered by the public body during the closed meeting; and (2) A statement of the provisions of subsection 4, if applicable.

Discussion

A. Notice Regarding September 7 Meeting

Regarding notices and agendas for the September 7, 2022, meeting of the Board, the Board had posted, both electronically and physically, the First Sept. 7 Meeting Agenda on the 29th day of August 2022. (*See Exhibit 2: Certificates of Posting for September 7, 2022,*

Board Meeting Agenda). However, due to notice requirements related to an agenda item, service of which was incomplete. The Second Sept. 7 Meeting Agenda was posted on August 30, 2022. (*See Exhibit 2: Certificates of Posting for September 7, 2022, Board Meeting Agenda*). This second draft did not contain the aforementioned agenda. However, that agenda was again amended, and the final, Third Sept. 7 Meeting Agenda was posted on August 31, 2022, at or around 4:00 – 4:30 pm, without the agenda item that necessitated early notice served upon Complainant. (*See Exhibit 2: Certificates of Posting for September 7, 2022, Board Meeting Agenda*).

NRS 241.020 demands that notices and agendas of public meetings be posted prior to 9:00 am on the third working day prior to the day of the meeting. As the Third Sept. 7 Meeting Agenda was posted after 4:00 pm on August 31, 2022, the notice of the September 7, 2022, meeting was posted three (3) working days prior to the day of the Board meeting. This calculation omits Saturday, Sunday, and Monday, September 3, 4, and 5, as a Saturday, Sunday and Monday/Labor Day that are not working days. Thus, the Board did not violate subsection of NRS 241.020 regarding notice in relation to the September 7, 2022, Board meeting.

B. Requirement of Clear and Complete Description of Agenda Items

As the First Sept. 7 Agenda and the Second Sept. 7 Agenda were replaced by amendment, the only relevant agenda for purposes of the clear and complete discussion is the Third Sept 7 Agenda. Regarding the clear and complete standard for descriptions of topics for discussion, the agenda provides, under section 4, “New Business”, separate agenda items for topics in a series of discussions and considerations including those “... regarding possible decision concerning hiring [Lewis, Roca, Rothgerber as] outside legal counsel ...” (*See Exhibit 5: September 7, 2022, Board Meeting Amended Agenda, at 4a.*); “... possible approval or rejection of delegation of authority ... to the Board’s President and/or Secretary-Treasurer to approve and execute a contract to retain legal counsel ...” (*See Id, at 4b.*); “... approval/rejection of reinstatement of ... Ms. Karla Martinec ...” (*See Id, at 4c.*); “... and possible approval/rejection of delegation of temporary authority ... to the Board’s President to hire additional Board staff ...” (*See Id, at 4d.*); and finally, “... and possible selection and appointment of [Jason Dworin, Esq. as] part-time interim Executive Director ...”. (*See Id, at 4e.*)

These descriptions of the topics to be discussed provide the specific action to be considered and deliberated upon, as well as the names of the persons or firm to be considered and discussed in each agenda item. Thus, the descriptions of the respective agenda items satisfy the clear and complete description requirements under NRS 241.020(3)(d)(1). Further, each of the above-described agenda items was followed by the prescribed phrase, “for possible action,” as per NRS 241.020(3)(d)(2). Therefore, the Board did not violate the OML regarding clear and complete agenda items.

C. Allegations Not Addressed

Complainant's allegations related to use of the words, "draft" and/or "addendum" are moot, as they were used properly and such allegations ask this office to dictate to the Board minute word choices that are not under its purview or authority. Thus, such allegations will not be addressed further herein. Nor will this office comment on Complainant's allegations of defamation, misappropriation of funds, or administrative misconduct, as its purview and scope of investigation are limited to the OML. Similarly, the removal of Ms. Sull and Complainant from their respective positions as "Staff" on the Board's website, prior to addressing the issue in any Board Meeting is not an OML violation. Those allegations aside, although the practice of posting draft agendas may be worth scrutinizing and revising, none of the Board's conduct related to agendas or notice of the September 7, 2022, meeting is violative of OML provisions.

D. October Meeting and Notice

Moving on to the October 2022 meetings, the draft agenda for the October 11, 2022, meeting of the Board contained an agenda item, under section "6. New Business," subsection "b.," describing a "Discussion of recent events, evaluation, and potential employment action regarding Eva Romero, General Counsel." (*See Exhibit 9: October 11, 2022, Board Meeting Agenda*). The description included notice that "The Board may go into closed session pursuant to NRS 241.030 and/or consider the character, alleged misconduct or professional competence of the General Counsel." (*Id.*) This agenda item, similar to that in the September 7th meeting agenda, necessitated notice being sent to the person named as per NRS 241.033(1) and NRS 241.033(2). Service of this notice upon Complainant was completed on September 6, 2022, by certified mail, more than thirty days prior to the October 11th meeting. (*See Exhibit 7: Notice of October 11, 2022, Board Meeting with Proof of Delivery*).

The day before, and day of, the October 11th meeting, email communications between the newly hired counsel to the Board, Jennifer Hostetler of Lewis - Roca, and Complainant's attorney, Daniel Marks, established that the Complainant was interested and willing to both "... push out the meeting to discuss a potential resolution and waive the notice period for a new hearing." (*See Exhibit 8: Email Thread*). Thus, at the start of the meeting, "Dr. Lee made a request to table agenda items 6(a), 6(b), and 6(c)." (*See Exhibit 11: October 11, 2022, Board Meeting Minutes*).

The present matter stands opposite to *In the Matter of Nevada Library Collective, A.G. File No. 13897-252, (Jan. 4, 2018)*, in which that board violated OML by having discussed that complainant's character, misconduct and/or professional competence without having properly noticed her prior thereto. Here, when service of notice for the September meeting was attempted and failed, the Board did not address the agenda item concerning Complainant. There was no discussion or deliberation of her matter, nor was she mentioned throughout the September 7, 2022, meeting. Further, service of the Notice of the agenda for

the October 11th meeting was completed properly and timely. (See *Exhibit 7: Notice of October 11, 2022, Board Meeting with Proof of Delivery*). At that point, the discussion of settlement negotiations began, leading to the matter being pushed from the meeting on the 11th to the meeting on the 26th. (See *Exhibit 8: Email Thread Between Attorneys*). Therefore, as Complainant was properly noticed, and the description of the agenda item involving her was clear and complete, the Board did not violate OML statutes related to notices and agendas regarding the October 11, 2022, meeting.

E. October 11 Non-Meeting

During the October 11, 2022, Board meeting, during agenda item “5. General Counsel’s Report: a. Legal Actions/Litigation Update,” Board President “Dr. Lee entertained a motion to go into a closed session to discuss litigation strategy,” and similarly entertained a motion to return to the open meeting afterwards. (See *Exhibit 11: October 11, 2022, Board Meeting Minutes*). Complainant alleges that such a closed session was improper and violative of OML. This allegation lacks merit for the following reasons:

In the motion entertained by Dr. Lee, mentioned above, the private discussion with the Board’s attorney was described in the minutes using the phrase “closed session.” Such a private discussion with the Board’s attorney was not a “closed meeting.” A Board’s private session with its counsel to discuss a matter of potential or existing litigation, even with a quorum present, “... *is not considered a “meeting” subject to the requirement that it be open to the public.*” (See *OMLO 2002-21/AG File No. 02-019*) (emphasis added).

The conclusion that a Board’s private discussion with its attorney is not subject to the OML is supported in the statutes, particularly NRS 241.015(3)(b)(2), which provides that a “Meeting”, “*Does not include a gathering or series of gatherings of members of a public body, ... at which a quorum is actually or collectively present, ... To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction, or advisory power and to deliberate toward a decision on the matter, or both.*” (Emphasis added). This rule was put in place in 2019 to protect attorney-client privileged conversations between elected or appointed bodies and their counsel, and separates such closed-sessions as ‘non-meetings’ not subject to OML from open meetings subject to OML. Therefore, the Board’s private discussion with its attorney cannot be considered a closed meeting in violation of OML. The Board was also neither required to record that session, nor required to make such recording available to the public. Though the Board may have erred in describing a non-meeting as a closed session, the record shows no indicia that the Board’s error was purposeful or contained any intent to mislead or confuse the public. Without any further evidence of malicious intent, that mistake in nomenclature is insufficient to support a finding of a violation of the OML.

F. October Meeting Notice

Turning now to the October 26, 2022, meeting, the agenda for the meeting was posted electronically and physically between 3:00 pm and 6:45 pm on October 20, 2022, thus, counting from the 9:00 am cut-off on October 21, 2022, the agenda was properly posted more than three (3) days prior to the meeting. (*See Exhibit 2: Certificates of Posting for Agenda for October 26, 2022, Board Meeting*). The posted agenda contained mention of Complainant in the description of an agenda item under section “5. New Business ... [c.] Discussion of recent events, evaluation and potential employment action regarding Eva Romero, General Counsel” This item description required that early notice be provided to her. However, Complainant’s counsel had waived that notice requirement on her behalf in the email thread between the attorneys, in exchange for pushing the agenda item from the October 11th meeting to the October 26th meeting, thus allowing for a period in which settlement negotiations were to take place. (*See Exhibit 8: Email Thread*).

After commencement of the October 26, 2022, meeting, during the first period devoted to public comment, Complainant “... objected to the meeting going forward due to lack of notice in violation of NRS 241.033 and NRS 241.040.” (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*). Complainant claimed that “The waiver of notice agreed to by her counsel, Daniel Marks, was with respect to service of the notice and agenda through counsel. She stated that her understanding regarding the purpose of the continuation of the last Board meeting of October 11th, was for settlement purposes which she claims did not occur.” (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*).

Board Counsel clarified the agreement reached with Respondent’s attorney prior to the meeting. Board Counsel advised that she had a discussion with Respondent’s attorney in which it was agreed that they would enter settlement negotiations and “continue the meeting to October 26th as long as they waived notice of the meeting.” (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*). Board Counsel further clarified that notice of the October 11, 2022, meeting was properly and timely provided to the Complainant, and that notice of the October 26th meeting was waived as the matter was being continued from that prior previously properly noticed meeting. This description coincides with and is supported by the email communication between Board Counsel and Complainant’s attorney, effectively waiving the written notice of the October 26, 2022, meeting. The contentions related to service of notice for the October 26, 2022, meeting do not support a finding of violation of the OML.

G. October 26 Non-Meeting

During the October 26, 2022, meeting, Board DAG “offered to provide legal advice on potential litigation either on the record or privately ...”. (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*). Board President Dr. Lee then moved for the Board to have a closed session discussion with its counsel, the motion was seconded, voted on and passed.

None of the Board's actions related to a discussion with its attorney during the October 26, 2022, meeting were violative of the OML. Complainant's allegations of improper notice are without merit, as she waived notice of the October 26th meeting in agreeing to push the agenda item regarding her matter from the October 11th meeting agenda. Further, similar to their going into closed session in the October 11th meeting, the Board's going into closed session in the October 26th meeting to discuss potential litigation, "... *is not considered a "meeting" subject to the requirement that it be open to the public.*" (See *OMLO 2002-21/AG File No. 02-019*) (emphasis added), and pursuant to NRS 241.015(3)(b)(2), above.

When the Board had reconvened the October 26, 2022, open meeting, Board President Dr. Lee, and Board Member McIntyre recused themselves from agenda item 5(c), pursuant to NRS 281A.420, "due to the allegations made against the Board members." (See *Exhibit 14: October 26, 2022, Board Meeting Minutes*). This made Complainant's allegations regarding the need for or lack of recusals by Board personnel moot and without merit.

H. Agenda Items 5(b) and 5(c)

When the October 26, 2022, meeting reached agenda items 5.b and 5c., regarding Ms. Sull and the Complainant, Dr. Johl assumed control of the meeting from the then-recused Dr. Lee. A motion to proceed with the agenda items was put forth and seconded by other Board members and passed respective to each agenda item.

Regarding agenda item 5.b., there was no verbal discussion of the matter or action to be taken prior to the vote. There was, however, provided for the public in the Public Board Book for this meeting, among other documentary evidence and letters, a 34-page summary of the report based on the investigation of Jennifer Hostetler. This investigation, report, and summary thereof pertained to both agenda items 5.b., concerning Ms. Sull, and 5.c., concerning Complainant. Instead of an open discussion for the benefit of the public, the Board relied solely on the language of Dr. Johl's motion, namely that the termination of Executive Director Sull would be "based on the findings of the investigation." (See *Exhibit 14: October 26, 2022, Board Meeting Minutes*). Such motion was seconded and unanimously passed. While the lack of discussion of the matter did not provide the public with additional insight into the Board's decision-making process, the investigative summary was detailed, thorough and included in record, and the Board was within its authority to rely on it. While members of the public may desire more transparency in the Board's decision-making process, when a Board is threatened with, or reasonably foresees legal action, the board's decision to rely on written investigatory materials is understandable and does not constitute a violation of OML, as the public was privy to the same summary as the Board members.

Agenda item 5.c., concerning the Complainant, was handled similarly to item 5b. It was noted that "A summary of the investigation was provided for review in the Board

book.,” but there was no further discussion on the matter before Dr. Johl moved to terminate Complainant for cause. (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*). Such motion was seconded and unanimously passed.

Although the Board members did not publicly, verbally put forth their reasoning for approving the motion to terminate the Complainant for cause, they did refer to, and provide to the public, the summary of the investigation upon which they based their actions. This is not an OML violation, however, public bodies should be aware that the public may not be able to devote sufficient time to fully review supporting documents to the same extent the board is and the lack of discussion may increase public confusion and skepticism of the Board’s decision-making processes.

The OML was created to protect and ensure the Nevadan public’s entitlement to a minimum of transparency regarding the actions taken by public boards and commissions, and the votes of the members leading to such actions. The Board met this minimum by including the investigation summary and other documentary evidence in the Public Book, thus allowing the public to see what the Board saw. However, the public also has some expectation of hearing such reasoning directly from the Board members, verbally, on the record and in the minutes.

After the action taken in agenda item 5.c., the meeting was opened to the public for comment, at which point the Complainant made a statement in which she protested the action taken, claiming the termination was wrongful, and reading a portion of her written statement into the record. Complainant was given an additional minute of comment time to read more of her written statement into the record. Ms. Sull’s attorney Matthew Dushoff made a statement, providing that, “... the premise of the waiver of notice for continuation of the meeting to October 26th was for the purpose of settlement negotiations ... [which] never happened.” (*See Exhibit 14: October 26, 2022, Board Meeting Minutes*).

I. Sufficiency of the Waiver of Notice

Regarding the waiver of notice for the October 26, 2022, meeting, a letter from Mr. Marks to Ms. Hostetler dated October 19th is noted to be for “*Settlement Purposes Only*” (*See Exhibit 15: October 26, 2022, Board Meeting Amended Public Book*), and responded to a request from Ms. Hostetler for an offer of settlement from Complainant. This email provided a detailed accounting of potential “Damages” in a monetary amount, along with “Compensatory Damages” in another monetary amount, as well as various affirmative acts requested of the Board to rehabilitate Complainant’s reputation. This letter confirmed that there had been at least the initiation of negotiations, to account for the waiver of the OML notice requirements for the October 26, 2022, meeting. Neither party is bound to pursue negotiations beyond the point at which the party feels the negotiations are fruitless. Therefore, there was no OML violation committed by the Board for improper notice of a person named in the description of an agenda item for discussion of their character, alleged misconduct or professional competence regarding the October 26, 2022, meeting.

In summary of the issues raised at the outset: the notices and agendas of the meetings were properly posted and followed for each of the three meetings at issue. There were clear and complete descriptions of the agenda items regarding the change of status of Board executive positions. There was no “illegally noticed hearing” in a posted draft agenda for the September meeting. There was a proper description of the agenda item regarding retaining outside counsel. There was no improper failure to include an agenda item regarding the immediate removal of the two Board Officers. The Board did not attempt to circumvent the OML by seeking to appoint an interim officer. Dr. Lee and Ms. McIntyre did not fail to recuse themselves from deliberating and voting on the pertinent agenda items. The hiring of a new General Counsel and Executive Director were properly noted on the agendas for the October meetings. And finally, the Board DAG advised the Board properly in relation to closed discussions and the Board’s actions in this matter.

CONCLUSION

The OAG has reviewed the available evidence, pertinent statutes and regulations, and precedent case law, and determined that no violation of the OML has occurred on which formal findings should be made. Complainant’s allegations regarding the Board and its leadership are moot and/or without merit. Complainant’s allegations regarding the Board’s treatment of and interactions with Ms. Sull are similarly moot or without merit.

The OAG will close its file regarding this matter.

Respectfully,

AARON D. FORD
Attorney General

By: 

Joel Bekker
Deputy Attorney General

JB/dw
Attachments

cc: Hilda Krestyn
Nevada State Board of Dental Examiners
2651 N. Green Valley Pkwy., Ste. 104
Henderson, NV 89014