



STATE OF NEVADA
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April 20, 2016

Via First Class Mail

Billie J. Shea
7115 Souverain Lane
Reno, Nevada 89506

Re: Open Meeting Law Complaint, A.G. File No. 13897-178
Nevada State Board of Massage Therapists

Dear Ms. Shea:

Billie Shea (Ms. Shea), a licensed massage therapist, alleges that two of the seven members of the Nevada Board of Massage Therapists (the Board), NRS 640C.150, which has jurisdiction over Nevada Licensed Therapists, established a policy that allows them to investigate the Board's executive director in private. This policy allegedly resulted in a constructive discharge of the executive director. This alleged violation occurred on December 18, 2015.

Ms. Shea claims that Board Chair April Whiting (Ms. Whiting), Vice Chair Michael Smith (Mr. Smith), and staff attorney Louis Ling (attorney Ling) "acted in a manner that disobeyed the open meeting law." Ms. Shea included with her Open Meeting Law (OML) complaint a copy of an Ethics Commission complaint dated January 1, 2016. She had asked the Ethics Commission to investigate the "behavior" of the three individuals accused in her OML complaint.

As foundation to her complaint, Ms. Shea also alleged that Ms. Whiting and Mr. Smith were quietly discussing business among themselves but they were "openly hostile" to other members of the Board, the executive director and Ms. Shea, all of whom were in attendance. Ms. Shea concluded that this behavior "obviously" meant that Mr. Smith and Ms. Whiting had previously discussed the matter and agreed to their vote on any motion.

The Attorney General has jurisdiction to investigate an allegation of a violation of NRS Chapter 241, the Open Meeting Law. Our office may seek civil remedies against individuals and public bodies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty for violations of the OML are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

It is alleged that Mr. Smith and Ms. Whiting may have acted illegally by holding serial communications with staff attorney Ling, which culminated in the decision to terminate the executive director. As evidence of this collusion, Ms. Shea offered an email sent to her "accidentally" when she requested a copy of the job description. The OAG reviewed the email.

Ms. Whiting's and Mr. Smith's statement agree that the "email" only allowed attorney Ling, Ms. Whiting and Mr. Smith to review and edit a new executive director job description following former executive director Lisa Cooper's resignation. The email was drafted by Diane Huleva (Ms. Huleva) who sent it to attorney Ling for editing.

Ms. Whiting and Mr. Smith both deny discussion of this matter through serial communications. No action was taken, nor could there be one since two persons of a seven member board cannot take action without a quorum. Even if Ms. Whiting and Mr. Smith were discussing business in the board room, they did not violate the OML. The OML applies only to the quorum of a public body. NRS 241.015(2)(3)(a)(1).

The allegation that Ms. Whiting, Mr. Smith, Ms. Huleva and attorney Ling created a "policy which allowed them to investigate the Board's executive director in private and determine action to be taken resulting in a constructive discharge" is unfounded.

All other allegations in the complaint were reviewed, but based on our investigation they are not within the Attorney General's jurisdiction.

We are closing the investigation in this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 

GEORGE H. TAYLOR
Senior Deputy Attorney General
Bureau of Government Affairs
Boards and Open Government Division

Cc: Colleen L. Platt, Esq., Platt Law Group
April Whiting, Board Chair