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September 29, 2016

Via U.S. Mail

Dr. Adrian Ruiz
1680 Tangiers Drive
Henderson, Nevada 89012

**Re: Open Meeting Law Complaint, A.G. File No. 13897-206
Nevada Board of Dental Examiners Budget
and Finance Committee**

Dear Dr. Ruiz:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging a violation of the Nevada Open Meeting Law (OML) by the Budget and Finance Committee of the Nevada Board of Dental Examiners (Board) at a public meeting held on August 18, 2016.

FACTUAL BACKGROUND

The Board held a public meeting in Las Vegas on August 18, 2016. The Board Chair and Board Staff were present in the Las Vegas location, and two members of the Board appeared via telephone. The complainant was present as a member of the public in the Las Vegas location and alleges that the Board denied him the right to present public comment at the meeting.

To investigate the complaint, the OAG reviewed the audio recording of the meeting, together with a response from the Board, and the narrative from the complainant as well as the audio recording of the meeting provided by the

complainant.¹ The OAG also reviewed the agenda of the meeting and the meeting materials posted on the Board's website which included a written copy of complainant's public comments.

The agenda for the meeting provided for a period of public comment at the beginning of the meeting, following call to order and roll call, and at the end of the meeting prior to adjournment. Additionally, the agenda stated that the Chair had the discretion to entertain public comment on individual matters as they were addressed sequentially in accordance with the agenda.

The audio recording of the meeting establishes that the complainant presented public comment at the outset of the meeting, beginning at a point one minute and thirty-six seconds into the meeting, and concluding at a point five minutes and fifteen seconds into the meeting. The complainant also submitted his comments in writing to the Board. Those comments are posted on the Board's website with the other written materials that were submitted for the Board's consideration at the meeting.

The audio recording next reflects that at seventeen minutes and forty seconds into the meeting, during Staff's presentation of agenda item 3(i), an unidentified person in attendance at the meeting asked if he or she could give public comment. At that point, another unidentified person stated no.² At the end of the meeting, during the final public comment period, the complainant presented additional public comment. The audio recording establishes that the complainant's comments began at a point one hour fifty-two minutes and fifty-five seconds into the meeting, and concluded at a point one hour, fifty-three minutes and fifty seconds into the meeting.

¹ The audio recording received from the complainant had been obtained by him from the Board and was the same recording the OAG received in the Board's response.

² The OAG encourages the Chair to instruct all individuals who speak at future meetings to clearly identify themselves in the event review of the record becomes necessary.

DISCUSSION AND ANALYSIS

NRS 241.020(2)(d)(3) provides that an agenda of a public meeting must contain:

Periods devoted to comments by the general public, if any, and discussion of those comments.

Comments by the general public must be taken:

(I) At the beginning of the meeting before any items on which action may be taken is discussed by the public body and again before the adjournment of the meeting; or

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

The language quoted above was enacted during the 2011 Legislative Session by Assembly Bill (A.B.) 257. It requires a public body to authorize periods of public comment but gives the public body the option to receive public comment at the beginning of the meeting, or as agenda items are addressed during the course of the meeting. *See generally, Wallace v. Wallace*, 112 Nev. 1015, 1023, 922 P.2d 541 (1996) (The use of the word “or” allows for a disjunctive reading). The intent of this subsection, to give the

Dr. Adrian Ruiz
September 29, 2016
Page 4

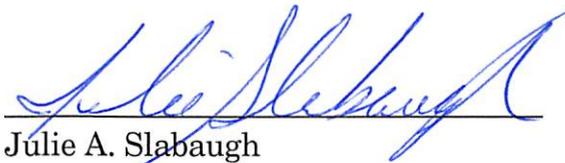
public body a choice of when to allow periods of public comment, is confirmed by the legislative history to A.B. 257. *Hearing on Assembly Bill (A.B.) 257 before the Senate Committee on Government Affairs, 2011 Leg. 76th Sess. 18-21 (May 13, 2011).*

The agenda for the meeting of August 18, 2016, allowed for two periods of public comment, one directly following the call to order and roll call, and one at the end of the meeting prior to adjournment. The complainant gave public comment during both of the periods listed on the agenda. The agenda also made it clear that any additional comment would be received solely at the discretion of the Chair. It was a proper exercise of the Chair's discretion to disallow public comment during Staff's presentation of agenda item 3(i). It should be noted that no other member of the public was allowed to comment during the discussion of agenda item 3(i). Insofar as public comment was authorized and received at the beginning and the end of the meeting, the Chair's discretionary decision to disallow public comment during the meeting did not violate NRS 241.020(d)(3). *See* OMLO 12-034 (January 29, 2013).

CONCLUSION

No violation of NRS 241.020 occurred; the OAG will be closing its file on this matter.

Sincerely,



Julie A. Slabaugh
Senior Deputy Attorney General

JAS/pks

cc: Timothy T. Pinther, DDS
President, Board of Dental Examiners
John A. Hunt, Esquire
General Counsel, Board of Dental Examiners