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October 10, 2016

Via U.S. Mail

Dr. Albert Ruezga  
2340 E. Calvada Blvd. Ste. #1  
Pahrump, Nevada 89048

**Re: Open Meeting Law Complaint, A.G. File No. 13897-209  
Nevada Board of Dental Examiners Budget  
and Finance Committee**

Dear Dr. Ruezga:

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 discussed the character of the Complainant in violation of NRS 241.033 and denied him the right to present public comment at the meeting.<sup>1</sup>

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<sup>1</sup> The OML complaint also alleges non OML violations such as defamation. The OAG only has jurisdiction over OML violations and those allegations are the only ones addressed in this opinion.

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. 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 five minutes and forty-one seconds into the meeting, and concluding at a point seven minutes and thirty-eight 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 also reflects that Board counsel, John Hunt, presented public comment beginning at a point eight minutes and six seconds into the meeting, and concluding at a point nine minutes and forty-five seconds into the meeting. Hunt identified his statement as public comment at the beginning of his statement and again at the end of his statement. Hunt also submitted written documentation to the Board to be included in the public record of the meeting.<sup>2</sup>

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

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<sup>2</sup> Hunt's conduct at the meeting is the focal point of the complaint in this matter. The documents submitted by Mr. Hunt are public record and are available on the Board's website under the Complainant's licensure information.

public comment. At that point, another unidentified person stated no.<sup>3</sup> At the end of the meeting the Board again allowed for public comment. The audio recording reflects that the Complainant did not give additional public comment at the end of the meeting.

### **DISCUSSION AND ANALYSIS**

#### **1. Did the Board violate the OML by failing to provide the Complainant with personal notice pursuant to NRS 241.033?**

NRS 241.033(1) provides:

1. 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.

In determining whether a violation of the notice requirement contained in NRS 241.033 occurred, the OAG reviews the actual discussion during which a public body is alleged to have considered a person's character, alleged misconduct, professional competence, or physical or mental health. In doing so, the OAG evaluates the substance of the discussion and contextual cues to determine whether the notice requirement applies. *See generally*, OMLO 2005-13 (July 22, 2005).

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<sup>3</sup> 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.

The audio recording of the Board's meeting reflects that during the public comment portion of the Board's meeting, John Hunt summarized prior disciplinary action taken against Complainant by the Board. Following Hunt's public comment, there was no discussion, response or comment by any of the Board members present at the meeting.<sup>4</sup> Since the Board said nothing to suggest that it had convened the meeting for the purpose of deliberating upon, or that it did in fact consider, the character, alleged misconduct or professional competence, or physical or mental health of the Complainant, the Board was not required to give the Complainant notice pursuant to NRS 241.033. *See* OMLO 2002-34 (August 2, 2002).

**2. Did the Board violate NRS 241.020 by not allowing public comment during discussion of individual agenda items?**

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).

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<sup>4</sup> Allowing Board counsel to participate in public comment did not violate the OML. *See generally*, OMLO 2004-06 (February 18, 2004).

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 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. 76<sup>th</sup> Sess. 18-21 (May 13, 2011).*

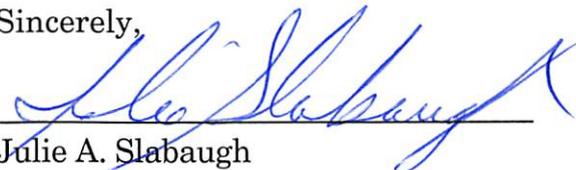
The agenda for the meeting of August 18, 2016, allowed for two periods of public comment, one directly following the call to order and roll call, and one at the end of the meeting prior to adjournment. The Complainant gave public comment during the first period listed on the agenda. The agenda also made 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 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).*

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**CONCLUSION**

No violation of NRS 241.020 or 241.033 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