

1 are at the 1001 E. 9th Street address. In order to resolve this confusion, Chief Deputy District
2 Attorney Melanie Foster attempted to move the meeting to the Commission Chambers.
3 However, the Commission Chambers were closed because of maintenance. The meeting
4 then occurred in the 2nd floor Caucus Room. Chief Deputy District Attorney Foster requested
5 staff to place a notice on the Commission Chambers' door that the meeting would occur in
6 the 2nd floor Caucus Room. Mr. Schmidt alleges that no such notice was placed on the door.

7 The Board sits as STMGID, Washoe County Ordinance No. 519, Nov. 25, 1986, and
8 Chairwoman Bonnie Weber chaired the meeting. During the joint meeting, Mr. Schmidt
9 requested to speak under item 1 of the agenda, "Salute to the flag." Ms. Weber denied that
10 request. However, Mr. Schmidt addressed the Board and STMGID on this agenda item
11 under item 3, "Public comments and discussion thereon."

12 The Board and STMGID conducted a meeting with ten items, eight of which were
13 non-action items. Mr. Schmidt alleges that Commissioner Jim Galloway entered into
14 deliberations on non-action items. However, after a review of the audiotapes, the evidence
15 does not support that allegation.

16 **III.**

17 **ISSUES**

18 1. Did the Board and/or STMGID violate the Open Meeting Law by failing to clearly
19 delineate the specific room in which the meeting would occur?

20 2. Did the Board and/or STMGID violate the Open Meeting Law by not allowing
21 public comment under agenda item 1, "Salute to the flag"?

22 3. Did the Board and/or STMGID deliberate on non-action items during the public
23 meeting?

24 **IV.**

25 **CONCLUSIONS OF LAW**

26 1. Did the Board and/or STMGID violate the Open Meeting Law by failing to clearly
27 delineate the specific room in which the meeting would occur?

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1 NRS 241.020(2)(a) requires the public notice to state the “time, place and location of
2 the meeting.” This specific issue has not been addressed by either the Supreme Court of
3 Nevada or an opinion of this office. It is a cardinal rule of statutory construction that “[i]f the
4 plain meaning of a statute is clear on its face, then [the court] will not go beyond the language
5 of the statute to determine its meaning.” *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist.*
6 *ex rel. County of Clark*, 120 Nev. 575, ___, 97 P.3d 1132, 1135 (2004); “When the language
7 of a statute is plain, its intention must be deduced from that language.” *Hedlund v. Hedlund*,
8 111 Nev. 325, 328, 890 P.2d 790, 792 (1995). As a result, this office will look at the plain
9 meaning of the statute. The purpose of the meeting notice is to provide the general public
10 with enough notice so that the public can ascertain the place and location of the meeting.¹
11 Inherent in these words is that “place” is more general than a “location.”

12 Here, the agenda provides the physical address and the floor within that building in
13 which the room exists. This is the “place” of the meeting. It must next be determined whether
14 the “location” was sufficiently described on the agenda. The agenda states, “Caucus Room.”
15 The “Caucus Room” is clearly identified by approximately 8-inch high silver lettering outside
16 the room. Since the “Caucus Room” is clearly identified, both on the agenda and outside of
17 the room, the average member of the public has sufficient notice of the “location” of the
18 meeting. Although confusion may have been created by the two different locations listed on
19 the two different agendas, the average member of the public could have easily checked both
20 locations for the meeting. Further, Chief Deputy District Attorney Foster took steps to clarify
21 any confusion by placing the sign on the door. Mr. Schmidt alleges that the sign was not
22 placed on the door of the Commission Chambers which would have indicated the exact
23 location of the meeting. However, it is immaterial whether this act occurred because, as
24 previously mentioned, the members of the public could have easily ascertained the correct
25 meeting location. Therefore, any confusion created by the agendas was *de minimis* in nature,
26

27 ¹ “Place” is defined as an “indefinite term. It is applied to any locality, limited by boundaries, however
large or however small.” BLACK’S LAW DICTIONARY 1148 (6th ed. 1990).

28 “Location” is defined as “[s]ite or place where something is or may be located.” BLACK’S LAW DICTIONARY
940 (6th ed. 1990).

1 and this office does not find a violation of the Open Meeting Law based on the facts as
2 presented.

3 2. Did the Board and/or STMGID violate the Open Meeting Law by not allowing
4 public comment under item 1, "Salute to the flag"?

5 Although Mr. Schmidt's complaint raises an issue regarding public comment, this office
6 has determined, after reviewing the evidence, that these comments are so intertwined with
7 pending litigation that this office will not opine upon this issue. However, it must be noted that
8 Mr. Schmidt did address the Board and/or STMGID regarding the flag salute during the public
9 commend period, and to that end, this office does not find an Open Meeting Law violation.

10 3. Did the Board and/or STMGID deliberate on non-action items during the public
11 meeting?

12 NRS 241.010 states that it is the intent of the Legislature that public bodies' "actions be
13 taken openly and that their deliberations be conducted openly." In *Dewey v. Redevelopment*
14 *Agency of the City of Reno*, 119 Nev. 87, 98 (2003), the Supreme Court of Nevada adopted
15 this office's definition of "deliberation" as "to examine, weigh and reflect upon the reasons for
16 or against the choice" leading to the ultimate decision.

17 After a review of the audiotapes, the evidence does not support that either public body
18 deliberated on any agenda items during the meeting. Instead, it appeared that the public
19 bodies discussed a variety of issues, but those discussions did not appear to be of the variety
20 that would lead to an ultimate decision. However, even if the public body deliberated on
21 non-action items as alleged by Mr. Schmidt, the Open Meeting Law does not prohibit
22 deliberations on non-action items. Only deliberations conducted during closed meetings are
23 prohibited. This particular meeting was open the entire time, and thus, neither public body
24 violated the Open Meeting Law.

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V.

CONCLUSION

The Office of the Nevada Attorney General finds that the Washoe County Board of Commissioners and South Truckee Meadows General Improvement District complied with the Open Meeting Law. As a result, this office is closing its file on this issue at this time.

DATED this _____ day of January, 2006.

GEORGE J. CHANOS
Attorney General

By: _____
NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1205

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of January, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

GARY R SCHMIDT
9000 MT ROSE HIGHWAY
RENO NV 89511

JOHN B RHODES
DEPUTY DISTRICT ATTORNEY
WASHOE COUNTY DISTRICT ATTORNEY
PO BOX 30083
RENO NV 89520-3083

An Employee of the Office of the Nevada Attorney General

1 did not contain an agenda statement indicating that Senator Schneider would address the
2 Board or an agenda statement related to his comments. Senator Schneider's comments
3 included a request that the Board stop its "adversarial" relationship with the Nevada
4 Institutional Review Board. He also called the Board "dysfunctional" and told the members
5 that they were acting like "a bad homeowner's association."² Senator Schneider also
6 supported President Royal's conduct as President of the Board. At the conclusion of the
7 Senator's comments, the Board considered the issues raised by Senator Schneider, and
8 then, President Royal immediately and unilaterally attempted to adjourn the meeting. After
9 which, he left the meeting with Senator Schneider and others. President Royal neither called
10 for further public comment nor a motion to adjourn.³

11 On the advice of legal counsel, the Board passed a motion to proceed with the meeting
12 and not adjourn. Item 5 on the agenda resulted in President Royal being removed from his
13 position and member Dr. David Edwards replacing him as President of the Board. The Board
14 completed the remaining items on the agenda and called for public comment. The Board
15 then adjourned the meeting.

16 **III.**

17 **ISSUE**

18 Did the Board violate the Open Meeting Law by proceeding with the meeting after
19 President Royal attempted to unilaterally adjourn the meeting?

20 **IV.**

21 **CONCLUSIONS OF LAW**

22 NRS 241.020(2)(c) requires:

23 2. Except in an emergency, written notice of all meetings must be
24 given at least 3 working days before the meeting. The notice must
include:

25 (c) An agenda consisting of:
26 (1) A clear and complete statement of the topics scheduled to be
considered during the meeting.

27 ² These quotes came from an affidavit provided to this Office by President Royal.

28 ³ President Royal alleges that he closed the meeting pursuant to a perceived emergency under Robert's
Rules of Order, which will be discussed *infra*.

1 (2) A list describing the items on which action may be taken and
clearly denoting that action may be taken on those items.

2 (3) A period devoted to comments by the general public, if any,
3 and discussion of those comments. No action may be taken upon
4 a matter raised under this item of the agenda until the matter itself
has been specifically included on an agenda as an item upon
which action may be taken pursuant to subparagraph (2).

5 Further, NRS 241.015(2) defines a “meeting” as “[t]he gathering of members of a public body
6 at which a *quorum* is present to deliberate toward a decision or to take action on any matter
7 over which the public body has supervision, control, jurisdiction or advisory power.” [Emphasis
8 added.] NRS 241.015(4) defines a “quorum” as “a simple majority of the constituent
9 membership of a public body or another proportion established by law.”

10 Here, President Royal began the meeting and allowed Senator Schneider to address
11 the Board. Since Senator Schneider’s proposed comments were not on the agenda and they
12 did not relate to a specific agenda item, this Office must presume that he made these
13 comments pursuant to the public comment portion of the meeting. Without this presumption,
14 President Royal violated the Open Meeting Law by allowing discussion regarding an item not
15 on the agenda. Even if this Office presumes that Senator Schneider addressed the Board
16 pursuant to the public comment portion of the meeting, President Royal violated the Open
17 Meeting Law by not calling for or permitting further public comment prior to unilaterally
18 adjourning the meeting. However, since a quorum of the Board remained and passed a
19 motion to proceed with the meeting, the President’s violation of the Open Meeting Law was
20 cured by the remaining board members because they called for further public comment at the
21 end of the meeting. Thus, the Board immediately cured the President’s violation of the Open
22 Meeting Law.

23 With regard to Robert’s Rules of Order, the parliamentary rules of procedure of a board
24 do not and cannot preempt Nevada’s Open Meeting Law. See A. Schwing, OPEN MEETING
25 LAWS 2d § 10.68, at 587-88 (2000). Here, President Royal relies on the emergency provisions
26 of Robert’s Rules of Order for adjourning the meeting. He personally declared the Board in
27 crisis because of the comments of Senator Schneider and adjourned the meeting. In doing
28 so, he specifically relied on the “Ordinary Practice in Adjourning” and “Cases Where the

1 Assembly can Adjourn without a Motion” sections of Robert’s Rules of Order (10th ed.), pp. 84-
2 85 and pp. 232-33 respectively. To begin with, Robert’s Rules of Order requires a motion to
3 adjourn unless certain circumstances exist.⁴ Further, Nevada’s Open Meeting Law permits a
4 public body to hold a meeting with or without the “president” or “chair” of the public body if a
5 quorum is present. See NRS 241.015(1). Thus, Robert’s Rules of Order and Nevada’s Open
6 Meeting Law are consistent on this issue, and as occurred in this instance, a public body may
7 choose to proceed with a properly noticed agenda with or without the chair if a quorum is
8 present.

9 Further, President Royal misapplied Robert’s Rules of Order’s emergency clause to
10 this situation. That clause states, “[i]n the event of fire, riot, or other extreme emergency, if
11 the chair believes taking time for a vote on adjourning would be dangerous to those present,
12 he should declare the meeting adjourned” Robert’s Rules of Order (10th ed.), p. 84,
13 II. 32- 35. The only other instances when a chair may unilaterally adjourn a meeting is if the
14 meeting is to end at a particular time or if the agenda has been completed by the public body
15 and there is no further business to be completed by the public body. Robert’s Rules of Order
16 (10th ed.), p. 232 I. 30 through 233, I. 17. Under both circumstances, however, the chair
17 should indicate his intent to adjourn the meeting in case the members of the public body do
18 not wish to adjourn for some reason. (See Robert’s Rules of Order (10th ed.), p. 232 I. 30
19 through 233, I. 17 for examples.) By unilaterally attempting to adjourn a properly noticed and
20 agendized meeting, based upon circumstances which do not amount to an actual emergency,
21 President Royal acted inconsistently with Robert’s Rules of Order and Nevada’s Open
22 Meeting Law. However, the immediate and subsequent actions of the Board cured the Open
23 Meeting Law violation because a quorum of the Board resumed the meeting with all matters
24 identified on the agenda being considered and the Board conducted a public comment period
25 prior to properly adjourning the meeting.

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⁴ The certain circumstances do not exist in this case and will be discussed *infra*.

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V.

CONCLUSION

The Homeopathic Medical Examiners Board averted an Open Meeting Law violation by continuing the meeting and allowing for public comment without President Royal. The Office of the Nevada Attorney General warns that acts similar to those that took place here by the President can be construed as an intentional violation of the Open Meeting Law subjecting the perpetrator to possible civil and criminal action. Therefore, the Office of the Nevada Attorney General strongly advises the Homeopathic Medical Examiners Board and its individual members to follow all provisions of the Open Meeting Law without exception.

DATED this _____ day of April, 2006.

GEORGE J. CHANOS
Attorney General

By: _____
NEIL A. ROMBARDO
Senior Deputy Attorney General
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100 North Carson Street
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of April, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

DANIEL ROYAL
10120 SOUTH EASTERN AVE #100
HENDERSON NEVADA 89052

MARY LOU HEACOCK
BOARD OF HOMEOPATHIC MEDICAL EXAMINERS
3626 PECOS MCLEOD SUITE 5
LAS VEGAS NV 89121

An Employee of the Office of the Attorney General

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:) Attorney General File No. 06-012
MINERAL COUNTY BOARD OF) OMLO 2006-04
COMMISSIONERS)

I.

INTRODUCTION

In a letter received February 23, 2006, by the Office of the Nevada Attorney General, District Attorney Cheri Emm-Smith forwarded a complaint from Mineral County Board of Commissioners Chairman Richard Bryant, who filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of Chapter 241 of the Nevada Revised Statutes. In particular, Chairman Bryant alleged that the Mineral County Board of Commissioners (Board) violated the Open Meeting Law at its February 8, 2006 meeting by considering Mr. Donald Orndorff's character, misconduct, competence, or physical or mental health during an open meeting without personally notifying Mr. Orndorff, and at the December 29, 2005 meeting, a quorum of the Board violated the Open Meeting Law by discussing an item in private.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office opened an investigation by the Office of the Nevada Attorney General, Investigation Division, which interviewed 5 witnesses and reviewed the complaint, agenda, supporting documents, and videotape recordings.

II.

FINDINGS OF FACT

The Board conducted a public meeting on February 8, 2006. At the beginning of the meeting, Brenda Jones of the Mineral County Clerk/Treasurer's Office began to read a letter

1 authored by Mr. Arthur Johnson that commented on the character and/or competence of Mr.
2 Orndorff, Director of the Mineral County Parks and Recreation Department as well as the
3 Economic Development Coordinator for Public Lands. Upon realizing the nature of this letter,
4 Chairman Bryant and District Attorney Emm-Smith interrupted Ms. Jones and requested that
5 she refrain from reading further comments about Mr. Orndorff. Ms. Jones complied with this
6 request.

7 During the December 29, 2005 meeting, Commissioners Black and Fowler discussed
8 and deliberated over an item noticed on the agenda during a recess of the meeting.
9 Chairman Bryant admonished both Commissioners Black and Fowler to cease deliberations
10 during the recess because they were outside the view of the public. However, the facts
11 indicate that the two proceeded with their discussion and deliberations even after the
12 admonishment.¹

13 III.

14 ISSUES

15 A. Did the Board violate the Open Meeting Law by discussing Mr. Orndorff's
16 character and/or competence without proper personal notice?

17 B. Did Commissioners Black and Fowler violate the Open meeting Law by
18 discussing and deliberating about a noticed item in private?

19 IV.

20 CONCLUSIONS OF LAW

21 A. Did the Board violate the Open Meeting Law by discussing Mr. Orndorff's
22 character and/or competence without proper personal notice?

23 NRS 241.033(1) states:

24 1. A public body shall not hold a meeting to consider the
25 character, alleged misconduct, professional competence, or
26 physical or mental health of any person or to consider an appeal by

27 ¹ This office realizes that the civil statute of limitations for this issue expired on approximately April 30,
28 2006, but given the serious nature of the allegations and the possible criminal sanctions that surround such an
allegation, this office drafts this opinion under the one-year statute of limitations for criminal misdemeanor
offenses of the Open Meeting Law.

1 a person of the results of an examination conducted by or on behalf
2 of the public body unless it has:

- 3 (a) Given written notice to that person of the time and place of
4 the meeting; and
5 (b) Received proof of service of the notice.

6 In OMLO 2005-10 this Office considered a similar issue. In that opinion, a member of the
7 North Valleys Citizen Advisory Board commented on the character of the presenter and his
8 family. A complaint was filed with this Office by the presenter's wife alleging a violation of the
9 Open Meeting Law, in particular NRS 241.033, for failing to notice her of these comments.
10 This Office opined that the Board did not violate the Open Meeting Law "because the
11 unilateral comments by one Board member did not cause the Board to redirect its agenda
12 item to 'consider the character'" of the presenter's wife. OMLO 2005-10 (May 20, 2005).

13 Similarly, the comments made about Mr. Orndorff were during the deliberations of an
14 agenda item noticed as "Public Hearing on Proposed Ordinance being Ordinance #189A, Bill
15 #205 providing for County Land Sales and Lease Appraisals, costs and related requirements."
16 The agenda item had nothing to do with the character and/or competence of Mr. Orndorff.
17 The comments in a letter authored by a member of the public, which was read by the County
18 Clerk/Treasurer, does not redirect the agenda item to consider the character and/or
19 competence of Mr. Orndorff. This is especially true in this case because both the Chairman
20 and District Attorney ended any conversation about Mr. Orndorff immediately upon hearing
21 the content of the letter. Therefore, the Board did not violate the Open Meeting Law at its
22 February 8, 2006 meeting.

23 B. Did Commissioners Black and Fowler violate the Open meeting Law by
24 discussing and deliberating about a noticed item in private?

25 NRS 241.010 states:

26 In enacting this chapter, the Legislature finds and declares that all
27 public bodies exist to aid in the conduct of the people's business. It
28 is the intent of the law that their actions be taken *openly* and that
their deliberations be conducted *openly*. [Emphasis added.]

NRS 241.015(2), in pertinent part, defines the term "meeting" as "[t]he gathering of members
of a public body at which a *quorum* is present to deliberate toward a decision or to take action
on any matter over which the public body has supervision, control, jurisdiction or advisory

1 power.” [Emphasis added.] NRS 241.015(4) defines the term “quorum” as “a simple majority
2 of the constituent membership of a public body or another proportion established by law.”
3 Section 5.01 of the NEVADA OPEN MEETING LAW MANUAL defines the term “deliberate” as to
4 “examine, weigh and reflect upon the reasons for or against the choice.” NEVADA OPEN
5 MEETING LAW MANUAL, §5.01, at p. 30 (10th ed. 2005) NRS 241.020(1), in pertinent part,
6 states, “[e]xcept as otherwise provided by specific statute, all *meetings* of public bodies *must*
7 *be open and public*, and all persons must be permitted to attend any meeting of these public
8 bodies.” [Emphasis added.]

9 Here the Commission is made up of 3 members, which, pursuant to NRS 241.015(3)
10 and (4), means that two members meeting to deliberate on any matter which the public body
11 has jurisdiction or control over satisfies the definition of a meeting. During a recessed portion
12 of the meeting, Commissioners Black and Fowler continued to deliberate about potential
13 language for a proposed ordinance on the Board’s agenda that had been previously
14 discussed during the open portion of the meeting. By conducting these deliberations during a
15 recessed portion of the meeting, the two members conducted the meeting in a closed and
16 non-public forum. Even after being admonished by Chairman Bryant to cease their
17 deliberations, the facts indicate that the two Commissioners continued with their deliberations
18 during the recessed portion of the meeting, which shows a complete disregard for the Open
19 Meeting Law. It can also be argued that this is a factual basis for the specific intent necessary
20 to prove a criminal violation of the Open Meeting Law. Thus this Office finds that the
21 members violated the Open Meeting Law, and this Office warns that future similar violations
22 by either Commissioner may result in litigation and/or criminal prosecution pursuant to NRS
23 241.040.

24 **V.**

25 **CONCLUSION**

26 The Mineral County Board of Commissioners did not violate the Open Meeting Law by
27 failing to serve personal notice on Mr. Orndorff because the Board was not obligated to notice
28 him of the comments of a private citizen that involved his character and/or competence since

1 that was not the purpose of the agenda item. However, the facts indicate that Commissioners
2 Black and Fowler violated the Open Meeting Law by continuing to deliberate during a
3 recessed meeting. The Office of the Nevada Attorney General warns that future similar acts
4 may result in litigation and/or criminal action against Commissioners Black and/or Fowler.

5 DATED this _____ day of June 2006.

6 GEORGE J. CHANOS
7 Attorney General

8
9 By: _____
10 NEIL A. ROMBARDO
11 Senior Deputy Attorney General
12 Nevada State Bar No. 6800
13 100 North Carson Street
14 Carson City, Nevada 89701-4717
15 (775) 684-1205

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of June 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

CHERI EMM-SMITH
MINERAL COUNTY DISTRICT ATTORNEY
PO BOX 1210
HAWTHORNE NV 89415

RICHARD BRYANT CHAIRMAN
MINERAL COUNTY COMMISSIONERS
PO BOX 1450
HAWTHORNE NV 89415

SHELLEY HARTMANN CHAIRMAN
MINERAL COUNTY ECONOMIC DEVELOPMENT
AUTHORITY
PO BOX 1635
HAWTHORNE NV 89415

DONALD ORNDORFF DIRECTOR
MINERAL COUNTY PARKS AND RECREATION
PO BOX 1450
HAWTHORNE NV 89415

NANCY BLACK
MINERAL COUNTY COMMISSIONER
PO BOX 1450
HAWTHORNE NV 89415

EDWARD FOWLER
MINERAL COUNTY COMMISSIONER
PO BOX 1450
HAWTHORNE NV 89415

An Employee of the Office of the Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

4	In the Matter of:	}	Attorney General File No. 06-016
5	Nevada State Board of Homeopathic Medical	}	OMLO 2006-05
6	Examiners and Nevada Institutional Review	}	
7	Board Standing Committee (Subcommittee of	}	
	the Nevada State Board of Homeopathic	}	
	Medical Examiners)	}	

I.

INTRODUCTION

In a letter received April 25, 2006, by the Office of the Nevada Attorney General, Robert Gentry, Executive Director of the Nevada Institutional Review Board (NIRB) filed a complaint with this office alleging a violation of the Nevada Open Meeting Law, NRS chapter 241. In particular, Mr. Gentry alleges that the Nevada State Board of Homeopathic Medical Examiners (Board) violated the Open Meeting Law by failing to provide requested public notices of the April 1, 2006 and April 18, 2006 meetings.

In a letter received April 10, 2006, by this office, Daniel J. Friesen, President of the NIRB, filed a complaint with this office alleging a violation of the Nevada Open Meeting Law, NRS chapter 241. In particular, President Friesen alleges that the Board violated the Open Meeting Law by creating Committees without “any discussion or approval of any duties, authority, or powers to act” at its February 16, 2006 meeting.

In a letter received April 25, 2006, by this office, Dr. Daniel F. Royal, a member of the Board, filed a complaint with this office alleging a violation of the Nevada Open Meeting Law, NRS chapter 241. In particular, Dr. Royal alleges that the NIRB Standing Committee (Committee) violated the Open Meeting Law by failing to provide minutes for the Committee’s March 3, 2006, March 16, 2006, and March 28, 2006 meetings and/or making decisions outside of an open meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that

1 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In
2 investigating this matter, this office reviewed the complaints, available agendas, minutes,
3 supporting documents, and the audiotape recordings of the February 16, 2006 meeting.

4 **II.**

5 **FINDINGS OF FACT**

6 On February 16, 2006, the Board conducted a properly noticed meeting. At the
7 meeting and after significant discussion, the Board passed a motion to allow the Chair to
8 appoint members to a variety of subcommittees. The Chair, pursuant to the motion, created
9 the subcommittees noticed on the agenda and appointed members to the subcommittees.
10 The agenda clearly stated the duties of each subcommittee.

11 On April 1, 2006 and April 18, 2006, the Board conducted properly noticed meetings.
12 Prior to those meetings, on March 29, 2006, Mr. Gentry requested copies of all notices and
13 support material of the Board. The Board failed to provide the requested information.¹

14 On March 3, 2006, March 16, 2006, and March 28, 2006, the Committee conducted
15 public meetings and took action in open session.² Subsequent to the meetings, Dr. Daniel
16 Royal requested the written minutes and audiotapes of these meetings. As of the date of this
17 opinion, the Committee has failed to produce the written minutes or audio recordings to Dr.
18 Royal, and the Committee has been unable to produce the minutes and audio recordings to
19 this office after numerous requests.

20 **III.**

21 **ISSUES**

22 1. Did the Board violate the Open Meeting Law at its February 16, 2006 meeting
23 for failing to discuss or approve any duties, authority, or powers for each subcommittee?

24 _____
25 ¹ It must be noted that the author of this opinion interviewed Mr. Gentry on June 20, 2006. Mr. Gentry
indicated that the Board has never provided a notice since his March 29, 2006 request.

26 ² This Office has a policy of accepting the word of the public lawyers representing public bodies
27 regarding Open Meeting Law issues. In this case, the author of this opinion interviewed Deputy Attorney
28 General (DAG) Ned Reed. DAG Reed stated that he attended the March 3 and 28 meetings and that the Board
noticed the meeting and took action in open session. He also stated that he was aware of the March 16
meeting, but he could not attend due to a scheduling conflict. However, he stated that he was aware that the
meeting occurred in open session, and the Committee's actions also occurred in open session.

1 2. *Did the Board violate the Open Meeting Law by failing to provide Mr. Gentry*
2 *notices and support material after his March 29, 2006 request for such information?*

3 NRS 241.020, in pertinent part, states:

4 3. Minimum public notice is:

5 . . .
6 (b) Providing a copy of the notice to any person who has
7 requested notice of the meetings of the public body. A request for
8 notice lapses 6 months after it is made. The public body shall
9 inform the requester of this fact by enclosure with, notation upon or
10 text included within the first notice sent. The notice must be:

11 (1) Delivered to the postal service used by the public body not
12 later than 9 a.m. of the third working day before the meeting for
13 transmittal to the requester by regular mail; or

14 (2) If feasible for the public body and the requester has agreed to
15 receive the public notice by electronic mail, transmitted to the
16 requester by electronic mail sent not later than 9 a.m. of the third
17 working day before the meeting.

18 . . .
19 5. Upon any request, a public body shall provide, at no charge, at
20 least one copy of:

21 . . .
22 (c) . . . , any other supporting material provided to the members of
23 the public body for an item on the agenda

24 . . .
25 6. A copy of supporting material required to be provided upon
26 request pursuant to paragraph (c) of subsection 5 must be:

27 (a) If the supporting material is provided to the members of the
28 public body before the meeting, made available to the requester at
29 the time the material is provided to the members of the public body;
30 or

31 (b) If the supporting material is provided to the members of the
32 public body at the meeting, made available at the meeting to the
33 requester at the same time the material is provided to the members
34 of the public body.

35 If the requester has agreed to receive the information and material
36 set forth in subsection 5 by electronic mail, the public body shall, if
37 feasible, provide the information and material by electronic mail.

38 In OMLO 99-05 (March 19, 1999), this office opined that a public body may not charge to mail
39 an agenda requested pursuant to NRS 241.020(3)(b). In Section 6.06 of the NEVADA OPEN
40 MEETING LAW MANUAL, it states, “agenda supporting material *need not be mailed* but must be
41 made available over the counter when the material is ready and has been distributed to
42 members of the public body and at the meeting.” NEVADA OPEN MEETING LAW MANUAL, § 6.06,
43 at 44-45 (10th ed. 2005). See OMLO 98-01 (January 21, 1998); OMLO 2003-06 (February 27,
44 2003); and NRS 241.020(6).

45 ///

1 Here, Mr. Gentry requested the Board's agendas in writing. The Board repeatedly
2 failed to send the requested agendas to Mr. Gentry. Pursuant to NRS 241.020(3)(b), the
3 Board has violated the Open Meeting Law. However, this is the first violation of the Open
4 Meeting Law by the Board. Therefore, at this time, this office will not take legal action against
5 the Board, but this office advises the Board to immediately start mailing the Board's agendas
6 to Mr. Gentry upon his requests. Failure to do so, on behalf of the Board, may result in
7 litigation.

8 With regard to the requested support material, the Board is not legally obligated to mail
9 the requested support material. However, in this case, Mr. Gentry agreed to receive the
10 support material via e-mail. Thus, pursuant to NRS 241.020(6), the Board must e-mail Mr.
11 Gentry any support material that can be feasibly e-mailed. Otherwise, the Board is only
12 legally obligated to make the support material available for copying, at no cost, to Mr. Gentry.
13 This office trusts and expects the Board to comply with this portion of this opinion, and failure
14 to do so may also result in litigation.

15 3. *Did the Committee violate the Open Meeting Law by failing to provide Dr. Royal*
16 *with the written requested minutes of the March 3, 2006, March 16, 2006, and March 28, 2006*
17 *Committee meetings and/or by taking action outside an open meeting?*

18 NRS 241.035(1) provides:

19 1. Each public body *shall* keep written minutes of each of its
20 meetings, including:

21 (a) The date, time and place of the meeting.

22 (b) Those members of the public body who were present and
23 those who were absent.

24 (c) The substance of all matters proposed, discussed or decided
25 and, at the request of any member, a record of each member's vote
26 on any matter decided by vote.

27 (d) The substance of remarks made by any member of the general
28 public who addresses the public body if he requests that the
minutes reflect his remarks or, if he has prepared written remarks, a
copy of his prepared remarks if he submits a copy for inclusion.

(e) Any other information which any member of the public body
requests to be included or reflected in the minutes. [Emphasis
added.]

///

1 “Minutes or audio recordings of public meetings are declared by the Open Meeting Law to be
2 public records and must be available for *inspection* by the public within 30 working days after
3 the meeting is adjourned.” See NEVADA OPEN MEETING LAW MANUAL, § 10.03, at 70 (10th ed.
4 2005) (emphasis added) citing NRS 241.030(2) and OMLO 99-06 (March 19, 1999). “[I]f a
5 person wants a copy of the minutes or tapes that are public records, public bodies should
6 consult the open records law or other statutes dealing with fees to determine what, if any, fees
7 may be charged.” NEVADA OPEN MEETING LAW MANUAL, § 10.05, at 72 (10th ed. 2005). See
8 NRS chapter 239 for public records law. The Open Meeting Law requires a public body to
9 create both written minutes and some type of audio recording. See NRS 241.035(1) and (4).
10 Both must be made available for inspection by the public within 30 working days of the
11 meeting. This office further opines that the phrase “made available for inspection by the
12 public” in NRS 241.035(2) contemplates that the public body must make the minutes readily
13 accessible from its principal place of business similar to making support material available to
14 the public.

15 In this case, after several requests, the Committee has been unable to produce written
16 minutes or audio recordings of the meetings to Dr. Royal or this office.⁴ Since the meetings
17 occurred in March, more than 30 working days have passed from the dates of the meetings.
18 Therefore, this office finds that the Committee violated the Open Meeting Law because neither
19 the written minutes nor the audio recordings of the meetings are being made “available for
20 inspection by the public.” NRS 241.035(2). At this time, this office will not pursue litigation.
21 However, this office advises the Committee to make the present audio recordings immediately
22 available to the public for inspection and to produce the current minutes as soon as possible.
23 Failure to do so, and any failures of the Committee to comply with NRS 241.035(2) in the
24 future, may result in litigation.

25 Although this office did not receive a complaint regarding the Committee’s agenda
26 statements, it must be pointed out that the Committee’s agenda statements do not comply

27 ⁴ A conversation with Dr. Fuller Royal, Secretary of the Board, indicated that the Committee is not taking
28 minutes, but instead, the members are keeping handwritten personal notes. Such notes do not qualify as
minutes, as required by NRS 241.035, because they are not being made available to the public.

1 with the Open Meeting Law. NRS 241.020 requires a public body to notice agenda items
2 clearly and completely. Section 7.02 of the NEVADA OPEN MEETING LAW MANUAL states,
3 “Generic agenda items such as . . . ‘Old Business’ do not provide a clear and complete
4 statement of the topics scheduled to be considered. Such items should not be listed as action
5 items” NEVADA OPEN MEETING LAW MANUAL, § 7.02, at 56 (10th ed. 2005) citing OMLO
6 99-03 (January 11, 1999). In this instance, the Committee’s March 28, 2006 agenda notices
7 item 5 as “Old Business” and is denoted as an action item. Further, the March 16, 2006
8 agenda notices item 6 as a “report on interaction with members of the Legislature” and is
9 denoted as an action item. The noticing of these generic items as action items invites “trouble
10 because discussions spawned under them may be of great public interest and may lead to
11 deliberations or actions without the benefit of public scrutiny or input” because the items are
12 not clearly and completely noticed to the public. NEVADA OPEN MEETING LAW MANUAL, § 7.02,
13 at 56 (10th ed. 2005). Thus, the Committee violated the Open Meeting Law by failing to
14 properly notice its meetings as it relates to the content of the agendas. Since the Committee
15 has no previous history of Open Meeting Law violations, this office will not take action at this
16 time. However, this office advises the Committee to review its policies in agenda drafting to
17 ensure that they comply with this opinion. This office also advises that failure to comply with
18 this opinion and the NEVADA OPEN MEETING LAW MANUAL on this subject may lead to future
19 litigation.

20 **V.**

21 **CONCLUSION**

22 The Office of the Nevada Attorney General finds that the Nevada State Board of
23 Homeopathic Medical Examiners violated the Open Meeting Law by failing to mail its public
24 notices to Mr. Gentry and by its failure to make available support material to Mr. Gentry upon
25 his request.

26 The Office of the Nevada Attorney General finds that the NIRB Standing Committee, a
27 subcommittee of the Nevada State Board of Homeopathic Medical Examiners, also violated
28 the Open Meeting Law by failing to make available for inspection audio recordings and/or

1 written minutes within 30 days of the meetings. The Office of the Nevada Attorney General
2 also finds that the NIRB Standing Committee violated the Open Meeting Law by failing to
3 clearly and completely state agenda items on its public notice.

4 The Office of the Nevada Attorney General warns both public bodies to comply with this
5 opinion, and a failure to do so, by either public body, may result in litigation.

6 DATED this 31st day of July, 2006.

7 GEORGE J. CHANOS
8 Attorney General

9
10 By: _____
11 NEIL A. ROMBARDO
12 Senior Deputy Attorney General
13 Nevada State Bar No. 6800
14 100 North Carson Street
15 Carson City, Nevada 89701-4717
16 (775) 684-1205

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 1st day of August, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

An Employee of the Office of the Attorney General

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Revised July 18, 2006

1 Mr. Jordan further indicated, “the information regarding the rescheduled date did not reach our
2 Video Conference Coordinator in time for rescheduling.” As a result, the meeting was not
3 videoconferenced to the Dyer location.

4 The members of the general public at the Dyer location requested that the Chair delay
5 the meeting to allow them to drive to the Silver Peak location, which takes approximately 30-
6 45 minutes according to Ms. Harrison. The audiotapes of the meeting and Mr. Jordan’s
7 response to the complaint indicated that the meeting began at 6:22 p.m., which was 22
8 minutes after the scheduled start time.¹ Further, the guest list indicates that 8 of 10 Dyer
9 residents who appeared at the Dyer location attended the Silver Peak meeting. Their arrival
10 times are unknown. However, the issue of the delayed start is irrelevant. The issue, for
11 purposes of the Open Meeting Law, is the issue stated below.

12 **III.**

13 **ISSUE**

14 Did the Board violate the Open Meeting Law by noticing the meeting to be
15 videoconferenced to the Dyer location but failing to videoconference the meeting to that
16 location?

17 **IV.**

18 **CONCLUSIONS OF LAW**

19 NRS 241.020, in pertinent part, states:

- 20 2. Except in an emergency, written notice of all meetings must be
21 given at least 3 working days before the meeting. The notice must
22 include:
(a) The time, place and location of the meeting.

23 In § 5.05 of the NEVADA OPEN MEETING LAW MANUAL, this office stated that nothing in the Open
24 Meeting Law prohibits a public body from meeting via videoconference, “however, since this is
25 a ‘meeting,’ the *notice requirements* of the Open Meeting Law must be complied with and the
26 public must have an opportunity to listen to the discussions and votes by all the members
27

28 ¹ This office has a policy of accepting the word of public officers with regard to Open Meeting Law investigations. Thus, this office accepts that the meeting began at 6:22 p.m.

1 such as through a speaker phone or other device.” NEVADA OPEN MEETING LAW MANUAL, §
2 5.05 at 33 (10th ed. 2005) (Emphasis added).

3 In this case, the public notice clearly noticed Silver Peak Elementary School as the
4 place and location of the meeting. However, if the meeting was a “regular meeting” and there
5 was no conflict with another scheduled event, the meeting would also be videoconferenced to
6 the other school sites. In effect, the Board was noticing these sites as other locations for the
7 meeting as well. The general public has a right to rely upon the agendas posted by a public
8 body and must be able to rely on the noticed locations of the meeting. This reasoning is
9 consistent with § 5.05 of the NEVADA OPEN MEETING LAW MANUAL. This office realizes that §
10 5.05 of the NEVADA OPEN MEETING LAW MANUAL contemplates the members of the public
11 bodies being in different locations. However, if a public body notices a meeting to be
12 videoconferenced to different locations, the public body must attempt to videoconference the
13 meeting. The Board failed to videoconference the meeting to the Dyer location and not as a
14 result of any technical difficulty or conflict. As such, this office finds that the Board violated
15 the Open Meeting Law by failing accurately to notice the locations of meetings as required by
16 NRS 241.020(2)(a).

17 Further, the language of the notice regarding videoconferencing is ambiguous. Here,
18 the agenda does not indicate, in any way, that the meeting is a rescheduled meeting, which
19 may or may not make the meeting a “regular” meeting. Furthermore the public has no way of
20 knowing from the agenda whether the meeting is a regular meeting or a special meeting. In
21 fact, members of the public would not be able to determine whether the Board is
22 videoconferencing a meeting until they arrived at one of the remote locations and found out
23 the status of the meeting or the availability of the room. This activity violates the spirit of the
24 Open Meeting Law.

25 This office also finds the Board’s explanation that the information did not reach the
26 Video Conference Coordinator in time, to be an inadequate justification for failing to
27 videoconference the meeting. If the Board could post a notice three days prior to the meeting,
28 it should have been able to inform the Video Conference Coordinator in a timely fashion.

1 This office recommends that the Board and its staff take appropriate measures to
2 implement a consistent practice regarding videoconferencing and to indicate accurately and
3 unequivocally on the agenda whether or not these meetings will be videoconferenced. The
4 current language is too ambiguous. Since this office has not found a recent violation of the
5 Open Meeting Law by the Board, this office will not proceed with litigation at this time.

6 **V.**

7 **CONCLUSION**

8 The Board of Trustees of the Esmeralda County School District violated the Open
9 Meeting Law by noticing that a meeting would be videoconferenced to different locations in
10 Esmeralda County, and then failing to videoconference the meeting to those locations. The
11 Office of the Nevada Attorney General trusts and expects the Board of Trustees of the
12 Esmeralda County School District to act in a manner consistent with this opinion. Failure to
13 do so may result in litigation.

14 DATED this 31st day of July 2006.

15 GEORGE J. CHANOS
16 Attorney General

17
18 By:

19 NEIL A. ROMBARDO
20 Senior Deputy Attorney General
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 1st day of August 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

SHERRY HARRISON
POST OFFICE BOX 157
DYER NV 89010

CURTIS L JORDAN
SUPERINTENDENT
ESMERALDA COUNTY SCHOOL DISTRICT
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An Employee of the Office of the Attorney General

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:

THE BOARD OF TRUSTEES OF THE CLARK }
COUNTY SCHOOL DISTRICT }

Attorney General File No. 06-022

OMLO 2006-07

I.

INTRODUCTION

In a letter received June 16, 2006, by the Office of the Nevada Attorney General, Ms. Karen Gray filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, NRS Chapter 241. In particular, Ms. Gray alleges that the Board of Trustees of the Clark County School District (Board) violated the Open Meeting Law at its May 17, 2006 meeting by (1) placing an incomplete and unclear agenda statement on the agenda, item #5, and (2) failing to provide the public with support material in a timely manner.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.

FINDINGS OF FACT

On May 17, 2006, the Board held a "special meeting" pursuant to NRS 386.365 to "adopt, repeal or amend a policy or regulation of the board." Agenda statement #5 on the agenda stated, "Discussion and possible action regarding modifications, additions, language changes, and deletions to the board's governance policies, including those related policies, that may be affected by the modifications as discussed as follows." The agenda statement then listed approximately 21 different policies and/or regulations. The list stated each policy's and/or regulation's number and stated what the policy and/or regulation related to.

1 During the meeting, it was alleged that the members of the general public did not
2 receive the support material in a timely fashion. In fact, the Board's legal counsel admitted in
3 her correspondence that the Board had difficulty providing support material at the meeting
4 because of the large demand. However, Ms. Gray alleges that she was unable to pick up her
5 support material on May 16, 2006, the day before the meeting, although the support material
6 had already been provided to the members of the Board.

7 **III.**

8 **ISSUE**

9 1. Did the Board violate the Open Meeting Law by placing an incomplete and
10 unclear agenda statement, in particular item #5, on the agenda?

11 2. Did the Board violate the Open Meeting Law by failing to provide members of
12 the general public with the support material in a timely fashion?

13 **IV.**

14 **CONCLUSIONS OF LAW**

15 Before analyzing the potential violations, it must be determined whether the Open
16 Meeting Law applies to a meeting conducted pursuant to NRS 386.365.

17 It is not disputed that the Board is a public body pursuant to NRS 241.015(3).
18 NRS 241.020(1), in pertinent part, states, "Except as otherwise provided by specific statute, all
19 meetings of public bodies must be open and public, and all persons must be permitted to
20 attend any meeting of these public bodies." NRS 241.015(2)(a)(1) defines "Meeting" as "The
21 gathering of members of a public body at which a quorum is present to deliberate toward a
22 decision or to take action on any matter over which the public body has supervision, control,
23 jurisdiction, or advisory power." NRS 386.365 permits a board of trustees in a county having a
24 population over 100,000 to adopt, repeal, or amend a policy or regulation of the board. It also
25 requires a 15-day notice of intention to adopt, repeal, or amend such a policy or regulation.

26 Here, a quorum of the Board gathered to deliberate toward adopting, repealing, or
27 amending Board policies and/or regulations. This Office has always opined that a meeting by
28 a public body to adopt a regulation pursuant to NRS Chapter 233B must comply with the

1 Open Meeting Law. See NEVADA OPEN MEETING LAW MANUAL, § 13.02, at 81 (10th ed. 2005).
2 Similarly, a meeting held pursuant to NRS 386.365 by a board of trustees to adopt, repeal or
3 amend board policies or regulations must also comply with the Open Meeting Law because it
4 meets the elements of the definition of a “Meeting” found in NRS 241.015(2)(a)(1).¹

5 1. *Did the Board violate the Open Meeting Law by placing an incomplete and*
6 *unclear agenda statement, in particular item #5, on the agenda?*

7 NRS 241.020(2)(c)(1) requires a public body to post a public notice that contains “[a]n
8 agenda consisting of a clear and complete agenda statement of the topics scheduled to be
9 considered during the meeting.” In *Sandoval v. Board of Regents*, 119 Nev. 148, 155, 67
10 P.3d 902, 906 (2003) the Supreme Court stated, “Nevada’s Open Meeting Law seeks to give
11 the public clear notice of the topics to be discussed at public meetings so that the public can
12 attend a meeting when an issue of interest will be discussed.” “Agenda descriptions for
13 resolutions, ordinances, regulations, statutes, rules or other such items . . . should describe
14 what the statute, ordinance, regulation, resolution, or rule related to so that the public may
15 determine if it is a subject in which they have an interest.” See NEVADA OPEN MEETING LAW
16 MANUAL, § 7.02, at 56 (10th ed. 2005) citing OMLO 99-01 (January 5, 1999) and OMLO 99-03
17 (January 11, 1999).

18 Here, the agenda statement for noticed agenda item #5 is quite lengthy. However, the
19 agenda item states the rule or regulation number and a short title or statement with regard to
20 what the rule or regulation relates to. Although the agenda item is quite lengthy, this Office
21 believes that agenda item #5 does not create confusion nor does it lack clarity. This Office
22 finds that the Board did not violate the Open Meeting Law with regard to the wording of
23 agenda item #5.

24 _____
25 ¹ It has come to the attention of this office through an interview with the complainant that the Board only
26 permits public comments on noticed agenda items during a meeting held pursuant to NRS 386.365. (The
27 agenda seems to confirm this statement.) This office has always opined that if a public body conducts a single
28 public comment period, it must permit the members of the public to comment on both noticed agenda items and
non-noticed agenda items. See NEVADA OPEN MEETING LAW MANUAL, §7.04, at 58 (10th ed. 2005). Therefore,
the Board violated the Open Meeting Law by limiting public comment to only noticed agenda items. However,
because the agenda items from the May 17, 2006 meeting were discussed at multiple subsequent meetings, this
office will not consider litigation at this time. However, this office advises the Board to change its policies with
regard to limiting public comment to noticed agenda items during a meeting held pursuant to NRS 386.365.

1 time.

2 DATED this 24th day of August, 2006.

3 GEORGE J. CHANOS
4 Attorney General

5

6

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 24th day of August, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Karen R. Gray
640 Burton Street
Henderson, NV 89015

Mary-Anne Miller
Clark County Counsel
Office of the District Attorney
P.O. Box 552215
Las Vegas, NV 89155-2215

An Employee of the Office of the Attorney General

1 Unless otherwise stated, items may be taken out of the order
2 presented on the agenda by the discretion of the Chairperson.
3 *Persons who have business before the Commission are solely
4 responsible to see that they are present when their business is
5 conducted.* [Emphasis added.]

6 Besides the public notice discussed above, Mr. Giusti received personal notice of the
7 date, time, and place of the Commission meeting. The Division personally noticed Mr. Giusti
8 because he is a provider of education courses for real estate licensees, and, as such, three of
9 his courses were listed on the agenda for this meeting. The personal notice also stated, "The
10 hearing has a stacked agenda. This means that I cannot be more specific regarding the time
11 your course will be heard."

12 Prior to the meeting, Mr. Giusti spoke to Ms. Smith of the Division regarding the
13 scheduled three day meeting. At Mr. Giusti's request, and in an effort to assist Mr. Giusti so
14 that he would not have to attend all three days of the Commission's meeting, Ms. Smith
15 estimated that Mr. Giusti's issues would be considered on the second day of the
16 Commission's meeting. She also informed him, however, that this was an estimate of when
17 his item would be considered and that she could not be absolutely positive the Division would
18 hear the item on the second day.

19 The Commission proceeded through its agenda quicker than expected, and, as a
20 result, the Commission deliberated and took action on Mr. Giusti's courses on the first day of
21 the meeting. As a result, Mr. Giusti failed to appear for the consideration, deliberations, and
22 actions on his three real estate courses.¹

23 III.

24 ISSUE

25 Did the information provided by the Division to Mr. Giusti result in a violation of the
26 Open Meeting Law?

27 ///

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¹ This information contained in the "Findings of Facts" in this opinion, in part, was established through an investigation by the Department of Business and Industry.

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IV.

CONCLUSIONS OF LAW

NRS 241.020(2)(a)–(c) requires a public body to provide notice of a meeting to the public. As a part of the public notice, the public body must list the time, place, and location of the meeting. It must also state the locations of the notices posted, as well as an agenda with a time for public comment, a list of action items, and a clear and complete statement of topics to be considered at the meeting. NRS 241.033 requires a public body to notice a person when that person’s character, alleged misconduct, professional competence, or physical or mental health is to be considered by the public.

Here, the Commission properly noticed the meeting pursuant to NRS 241.020, and the Commission provided written personal notice.² Therefore, the issue becomes did the subsequent comments of the Division somehow vitiate the notices provided to Mr. Giusti resulting in an Open Meeting Law violation.

If, there was evidence that the Commission and/or Division intentionally deceived Mr. Giusti to prevent him from attending the meeting, a potential violation of the Open Meeting Law would exist. However, there is no proof offered to substantiate such an allegation. In fact, Mr. Giusti was on sufficient notice that the Commission may consider items on the agenda out of order. Further, he was noticed that it was his responsibility to attend the meeting when his business was to be considered. Therefore, this Office finds that the Commission did not violate the Open Meeting Law.

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² Whether personal notice, pursuant to NRS 241.033, is required for the items being considered is not an issue in this opinion, and therefore, this office will go no further in its analysis on this issue.

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V.

CONCLUSION

The Office of the Nevada Attorney General finds that the Nevada Real Estate Commission did not violate Nevada's Open Meeting Law, and the Attorney General's Office is closing its file on this issue at this time.

DATED this 2nd day of October, 2006.

GEORGE J. CHANOS
Attorney General

By: _____
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Nevada State Bar No. 6800
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 2nd day of October, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Martin (Mike) Giusti
P.O. Box 5564
Reno, NV 89513

Kateri Cavin, Esq.
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*Counsel for the Nevada Real
Estate Commission*

An Employee of the Office of the Attorney General

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:

MOAPA VALLEY TOWN ADVISORY BOARD
and CLARK COUNTY PLANNING
COMMISSION

Attorney General File No. 06-034
OMLO 2006-09

I.

INTRODUCTION

In a letter received August 23, 2006 by the Office of the Nevada Attorney General, Ms. Dorene Starita filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, NRS Chapter 241. In particular, Ms. Starita alleges that the Moapa Valley Town Advisory Board (Board) and the Clark County Planning Commission (Commission) violated the Open Meeting Law at their July 26, 2006 and August 17, 2006 meetings, respectively, by failing to provide proper public notice.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, and supporting documents.

II.

FINDINGS OF FACT

NRS 278.150 requires Clark County to prepare a master plan for the county, and NRS 278.160 lists the comprehensive information that must be contained in the master plan. NRS 278.170 permits a county to divide the master plan into smaller units, a process which Clark County follows. The particular plan at issue is the Northeast Clark County Land Use Plan (Plan), which covers 2,700 square miles of land in the less-populated Northeast Clark County.

1 On July 26, 2006, the Board conducted a public meeting pursuant to NRS 278.220 and
2 NRS 241.010–.040 to update the Plan. Pursuant to NRS 278.220(3), the Board placed a
3 notice regarding the Plan in a newspaper of general circulation at least 20 days prior to the
4 hearing. The Board also posted an agenda for the meeting three days prior to the meeting
5 pursuant to NRS 241.020. On the public notice, as part of the agenda, in bold lettering, Item
6 VI(3), under the heading “Zoning,” stated:

7 Northeast Clark County Land Use Update – TAB to take testimony,
8 make appropriate changes and make a recommendation to the
9 Planning Commission and Board of County Commissioners on the
update of the Northeast Clark County Land Use Plan.

10 During the consideration and deliberation of this item, the Board chose to break the item up
11 into 36 individual items that were heard, discussed, and voted on by the Board. All of these
12 items related to the Plan, but none of these items were listed on the agenda. After the
13 actions taken by the Board, the Plan was forwarded to the Commission.

14 On August 17, 2006, the Commission placed on its agenda, as agenda item 28, the
15 following statement:

16 That the Clark County Planning Commission conduct a public
17 hearing and approve, adopt, and authorize the Chairman to sign a
18 resolution amending the Comprehensive Plan by adopting an
update to the Northeast Land Use Plan; and direct staff
accordingly.

19 Similar to the Board, the Commission chose to break up the proposed changes to the Plan
20 into different items. The Commission also took action on these items separately. These
21 items also related to the Plan, but none of these items were listed separately on the agenda.

22 **III.**

23 **ISSUE**

24 Did the Board and/or the Commission fail to provide “clear and complete” notice as
25 required by NRS 241.020(2)?

26 **IV.**

27 **CONCLUSIONS OF LAW**

28 NRS 241.020(2)(c)(1) requires a public body to post an agenda consisting of “a clear and

1 complete statement of the topics scheduled to be considered during the meeting.” In
2 *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003), the Nevada Supreme
3 Court considered the “clear and complete” requirement found in NRS 241.020(2)(c)(1). The
4 Court stated, “Nevada’s Open Meeting Law seeks to give the public clear notice of the topics
5 to be discussed at public meetings so that the public can attend a meeting when an issue of
6 interest will be discussed.” *Sandoval*, 119 Nev. at 155, 67 P.3d at 905. The Court also stated,
7 “[T]he plain language of NRS 241.020(2)(c)(1) requires that discussion at a public meeting
8 cannot exceed the scope of a clearly and completely stated agenda topic.” *Id.* at 154, 67
9 P.3d at 905.

10 Here, the agenda statements clearly place the public on notice that the Board and/or
11 Commission will be considering and taking action on the Plan. Therefore, the issue becomes
12 did the Board and/or Commission exceed the agenda statements by breaking up the Plan into
13 several parts and taking action on those parts individually.

14 This Office has always maintained that the public’s right to meaningful notice and
15 information is paramount in the Open Meeting Law. But, this Office has also opined that the
16 Open Meeting Law must be reasonably interpreted so as not to completely debilitate the
17 efforts of public bodies. In this case, the Plan covers over 2,000 square miles of land.
18 Further, the individual parts voted on by both the Board and/or Commission related to the
19 Plan, and as previously stated, the agenda statements were clear that the Board and/or
20 Commission would be deliberating and taking potential action on the Plan. As a result, the
21 public received notice that the Board and/or Commission would consider, deliberate about,
22 and take action on the Plan.

23 It is also unreasonable to expect the Board and/or Commission to place on the agenda
24 every conceivable issue that may arise from a master plan that covers over 2,000 square
25 miles. Further, for the sake of clarity and efficiency, it is reasonable to divide the plan into
26 various parts for approval. Therefore, this Office cannot find a violation by the Board and/or
27 Commission.

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V.

CONCLUSION

The Office of the Nevada Attorney General does not find a violation by either the Moapa Valley Town Advisory Board or the Clark County Planning Commission. The Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this _____ day of October, 2006.

GEORGE J. CHANOS
Attorney General

By: _____
NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of October, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Ms. Dorene Starita
P.O. Box 782
Logandale, NV 89021

Mary-Anne Miller, Esq.
Office of the District Attorney
P.O. Box 552215
Las Vegas, NV 89155-2215

An Employee of the Office of the Attorney General

1 In this case, the occupational study group involved the following persons: Mr. Robben,
2 Mr. Robben's supervisor - Mr. Stan Gillie, management and personnel staff from the
3 Department of Taxation, the Personnel Analysts from the Department of Personnel, and three
4 Subject Matter Experts (SMEs). It is the role of the SMEs to assist the Personnel Analysts in
5 evaluating the technical aspects of a position, in this case Mr. Robben's position. The SMEs
6 and the Personnel Analysts involved in the study group conducting the evaluation were not
7 appointed by the Personnel Commission as a subcommittee. Further, the final decision
8 maker regarding a re-classification is the Personnel Analyst responsible for the particular
9 department from which the position being re-classified is located, in this case, the Department
10 of Taxation. Depending on the complexity of the classification or re-classification, the
11 Department of Personnel may use more than one Personnel Analyst to make the final
12 decision. The role of the SMEs in these meetings was to provide information to the Personnel
13 Analysts to assist them in making a decision regarding classification. The decision regarding
14 classification of a position may be appealed to the Director of the Department of Personnel,
15 and the Director's decision may then be appealed to the Personnel Commission.

16 **III.**

17 **ISSUE**

18 Were the subject matter expert meetings held by the Department of Personnel subject
19 to the Nevada Open Meeting Law?

20 **IV.**

21 **CONCLUSIONS OF LAW**

22 NRS 241.015(3) defines "public body," in pertinent part as:

23 [A]ny administrative, advisory, executive or legislative body of the
24 State or a local government which expends or disburses or is
25 supported in whole or in part by tax revenue or which advises or
26 makes recommendations to any entity which expends or disburses
or is supported in whole or in part by tax revenue, including, but
not limited to, any board, commission, committee, subcommittee or
other subsidiary thereof

27 Section 3.01 of NEVADA'S OPEN MEETING LAW MANUAL states that the term "body"
28 connotes more than one person coming to a collective consensus to obtain a decision, "all of

1 which indicates a fundamental assumption that the Open Meeting Law concerns itself only
2 with collegial bodies.” A. Schwing, OPEN MEETING LAWS, §6.32 (1994). For purposes of the
3 Open Meeting Law, this Office has always maintained that a “collegial body” is a body
4 consisting of more than one person sharing equal voting power. NEVADA’S OPEN MEETING LAW
5 MANUAL, § 3.01 (10th ed. 2005). This Office previously opined that the Open Meeting Law
6 does not apply to the Governor when he is acting in his official executive capacity because the
7 Governor is not a multi-member body. Op. Nev. Att’y Gen. No. 61–241 (August 24, 1961).

8 Here, the study group did not, and is not required to, build a consensus of all attendees
9 at the meeting to make a decision. In this case, the final decision maker is the Personnel
10 Analyst from the Department of Personnel. Although the SMEs provide input, the ultimate
11 decision maker is the responsible Personnel Analyst.

12 Although more than one Personnel Analyst participated in the study group at issue, that
13 does not transform the study group into a public body for purposes of the Open Meeting Law.
14 In effect, the meetings conducted by the study group are equivalent to a meeting of the
15 Department of Personnel staff. This point is further illustrated by the fact that the final
16 decision may be appealed to the Director of the Department of Personnel, and the Director’s
17 decision may be appealed to the Personnel Commission. Therefore, the study group is not a
18 public body as defined in NRS 241.015(3), and as a result, it does not have to comply with
19 Nevada’s Open Meeting Law.

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CONCLUSION

A Department of Personnel study group regarding classification of a position is not a public body for purposes of the Open Meeting Law. As a result, the Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 20th day of December, 2006.

GEORGE J. CHANOS
Attorney General

By: _____
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 21st day of December, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Mr. Ty Robben
610 Mary Street
Carson City, NV 89703

Jeanne Greene, Director
Department of Personnel
209 E. Musser St., Room 101
Carson City, NV 89701-4204

An Employee of the Office of the Attorney General

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III.

ISSUE

Did the Board violate the Open Meeting Law by providing a copy of the audio recording 37 working days after the meeting?

IV.

CONCLUSIONS OF LAW

NRS 241.035(2), in pertinent part, states, “minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken.” [Emphasis added.]

Here, the Board did provide the audiotape recording after the 30-working day requirement in NRS 241.035(2). However, NRS 241.035(2) permits the public body to make the “minutes or audiotape recordings . . . available for inspection by the public within 30 working days” of the meeting. [Emphasis added.] Since the Board’s minutes were made available to the public 16 working days after the meeting, the Board complied with NRS 241.035(2) and did not violate the Open Meeting Law.

V.

CONCLUSION

The Verdi Citizen Advisory Board did not violate the Open Meeting Law, and the Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 20th day of December, 2006.

GEORGE J. CHANOS
Attorney General

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 21st day of December, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Mr. Gary Feero
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Blaine E. Cartlidge, Esq.
Deputy District Attorney
Office of the Washoe County
District Attorney
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An Employee of the Office of the Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:) Attorney General File No. 06-042
BOARD OF HOMEOPATHIC MEDICAL)
EXAMINERS and applicable subcommittees)

I.

INTRODUCTION

In multiple letters received on October 20, 2006, by the Office of the Nevada Attorney General, Dr. Daniel J. Royal filed complaints with this Office alleging various violations of the Nevada Open Meeting Law, NRS Chapter 241. In particular, Dr. Daniel Royal alleges that the Board of Homeopathic Medical Examiners (BHME) and its various subcommittees violated the Open Meeting Law at different meetings by: (1) failing to include the remarks of certain individuals in its minutes, (2) failing to provide requested public notices of subcommittee meetings to Dr. Daniel Royal, and (3) failing to make available for inspection either minutes or audio recordings of meetings within 30 working days of the meeting.¹

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.

FINDINGS OF FACT

The complaint alleges that BHME failed to include the remarks of various people in the minutes of meetings ranging from December 20, 2005 through July 22, 2006.²

¹ BHME, at its July 22, 2006 meeting, raised an issue whether it and its various subcommittees had to comply with Nevada's Open Meeting Law. This discussion does not raise an Open Meeting Law issue for purposes of enforcement. However, the law is clear that BHME and its various subcommittees are subject to Nevada's Open Meeting Law.

² The complaint states a meeting date of December 20, 2006, but the date of Dr. Daniel Royal's complaint is October 20, 2006, which predates December 20, 2006. Therefore, this Office will presume that the complainant is complaining about the December 20, 2005 meeting.

1 Dr. Daniel Royal requested receipt of public notices for all BHME subcommittees. On
2 September 26, 2006 and October 3, 2006, BHME NAC Committee and BHME Policy and
3 Bylaws Committee conducted open meetings. Although Dr. Daniel Royal requested to receive
4 all public notices for BHME and its subcommittees, neither subcommittee provided the public
5 notices to Dr. Daniel Royal.

6 BHME conducted a meeting on July 22, 2006. On October 18, 2006, Dr. Daniel Royal
7 requested minutes of the meeting. The Executive Director provided the minutes of the
8 meeting on October 19, 2006.

9 **III.**

10 **ISSUE**

11 1. Did BHME violate the Open Meeting Law by failing to include the comments of
12 various persons in its minutes?

13 2. Did BHME violate the Open Meeting Law by failing to provide requested public
14 notices of subcommittee meetings to Dr. Daniel Royal?

15 3. Did BHME violate the Open Meeting Law by failing to make available for
16 inspection either minutes or audio recordings of meetings within 30 working days of the
17 meeting?

18 **IV.**

19 **CONCLUSIONS OF LAW**

20 1. *Did BHME violate the Open Meeting Law by failing to include the comments of*
21 *various persons in its minutes?*

22 NRS 241.037(3) provides this Office with a 120-day statute of limitations to bring legal
23 action. As a policy, this Office will not opine or investigate an allegation that exceeds the
24 120-day statute of limitations. In this case, Dr. Daniel Royal's complaint was received by this
25 Office after the expiration of the 120-day statute of limitations for all meetings except for the
26 July 22, 2006 meeting. However, this Office received Dr. Daniel Royal's complaint 90 days
27 after the July 22, 2006 meeting. As a result, this Office was unable to determine, prior to the
28 expiration of the 120-day statute of limitations, whether BHME violated the Open Meeting Law

1 as alleged. Therefore, this Office is closing its file on this issue without further investigation or
2 opinion.

3 2. *Did BHME violate the Open Meeting Law by failing to provide requested public*
4 *notices of subcommittee meetings to Dr. Daniel Royal?*

5 NRS 241.020(3)(b)(1)(2) states:

6 3. Minimum public notice is:

7 (b) Providing a copy of the notice to any person who has
8 requested notice of the meetings of the public body. A request for
9 notice lapses 6 months after it is made. The public body shall
10 inform the requester of this fact by enclosure with, notation upon or
11 text included within the first notice sent. The notice must be:

12 (1) Delivered to the postal service used by the public body not
13 later than 9 a.m. of the third working day before the meeting for
14 transmittal to the requester by regular mail; or

15 (2) If feasible for the public body and the requester has agreed to
16 receive the public notice by electronic mail, transmitted to the
17 requester by electronic mail sent not later than 9 a.m. of the third
18 working day before the meeting.

19 Here, it is not disputed that Dr. Daniel Royal requested all public notices of all BHME
20 subcommittees. It is admitted by BHME's legal counsel that the subcommittees failed to
21 provide the requested public notices. Therefore, BHME's subcommittees violated the Open
22 Meeting Law.

23 Although BHME and its various subcommittees have had recent difficulties with
24 complying with the Open Meeting Law, this Office believes it has taken affirmative steps to
25 improve its processes and hired a new Executive Director to ensure compliance with the Open
26 Meeting Law. Therefore, at this time, this Office will not take legal action against BHME's
27 subcommittees. However, this Office strongly recommends that BHME and its subcommittees
28 seek immediate advice from legal counsel on any potential Open Meeting Law issue as well
as training on the Open Meeting Law.

3. *Did BHME violate the Open Meeting Law by failing to make available for*
inspection either minutes or audio recordings of meetings within 30 working days of the
meeting?

///

1 NRS 241.035(2), in pertinent part, states, “[m]inutes or audiotape recordings of the
2 meetings must be made available for inspection by the public within 30 working days after the
3 adjournment of the meeting at which taken”.

4 Here, Dr. Daniel Royal alleges because he did not receive the minutes or audiotape
5 recording prior to October 19, 2006, that BHME violated the Open Meeting Law. However, Dr.
6 Daniel Royal did not request the minutes until October 18, 2006. Therefore, BHME
7 responded reasonably in providing the minutes on October 19, 2006. There is no evidence
8 that indicates BHME did not have at least a “draft” of the minutes, or the audiotape recording
9 of the meeting, available within 30 working days of the meeting. Thus, this Office finds no
10 violation of the Open Meeting Law by BHME.

11 **V.**

12 **CONCLUSION**

13 The Office of the Nevada Attorney General finds that the subcommittees of the Board
14 of Homeopathic Medical Examiners violated the Open Meeting Law by failing to provide the
15 requested public notice. The Office of the Nevada Attorney General warns the Board of
16 Homeopathic Medical Examiners and its various subcommittees that future noncompliance
17 with any provision of the Open Meeting Law may result in litigation. However, at this time, the
18 Office of the Nevada Attorney General will not pursue litigation with regard to this issue.

19 The Office of the Nevada Attorney General finds that Dr. Daniel Royal’s other alleged
20 violations lack merit.

21 DATED this 29th day of December, 2006.

22 GEORGE J. CHANOS
23 Attorney General

24 By:

25 _____
26 NEIL A. ROMBARDO
27 Senior Deputy Attorney General
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 5th day of January, 2007, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Dr. Daniel F. Royal
New Hope Medical LLC
10120 S. Eastern Ave
Suite 100
Henderson, NV 89052

Nancy Eklof, Executive Director
Nevada State Board of
Homeopathic Examiners
435 Court Street
Reno, NV 89501

An Employee of the Office of the Attorney General