

OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the matter of:

OAG FILE NO.: 13897-363

Nevada State Board of Veterinary
Medical Examiners

BACKGROUND

Patricia Handal filed a complaint with the Office of the Attorney General (“OAG”) alleging violations of the Nevada Opening Meeting Law (“OML”) by the Nevada State Board of Veterinary Medical Examiners (“Board”), regarding a meeting held by the Board on January 16, 2020. The allegations relate to the Board’s inclusion on its agenda and consideration of an agenda item related to payment of legal fees. The Complaint specifically alleges and requests investigation into the following:

ALLEGATION NO. 1: Whether a professional board may vote on an agenda item when no explanation or supporting documentation is provided to them either written or verbally?

ALLEGATION NO. 2: Whether Board members acted with due diligence in voting on an agenda item without being provided any information to make an informed decision, and whether such action constitutes abdication of their responsibilities to the people of the State?

ALLEGATION NO. 3: Whether the public may learn if funds approved by the Board were in fact used for the specific purpose mentioned during Board action?

ALLEGATION NO. 4: Whether the Board’s insurance would cover legal fees, if actions were taken by a Board member in his official capacity?

ALLEGATION NO. 5: Whether there was a violation of NRS 281.611(1)(c) [abuse of authority] or NRS 281.611(1)(e)(A) [gross waste of public money]?

ALLEGATION NO. 6: Whether the Board violated NRS Chapter 241 for its failure to include a clear and complete statement of topics scheduled to be considered during

1 its January 16, 2020 meeting?

2 **ALLEGATION NO. 7:** Whether the Board violated NRS Chapter 241 for its failure
3 to clearly denote action items on its agenda and its failure to use “for possible action”
4 next to the appropriate item?

5 The OAG has statutory enforcement powers under the OML and the authority to
6 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
7 241.040. The OAG’s investigation of the Complaint included a review of the following:: the
8 Complaint and the attached exhibits; the written response by the Board of Veterinary
9 Medical Examiners dated March 27, 2020, and the attached exhibits; the Public Notice and
10 Agenda for the Board’s January 16, 2020 meeting; the transcript of Agenda Item 8D from
11 the January 16, 2020 Board meeting; the draft minutes of the January 16, 2020 Board
12 meeting; the audio recordings for Agenda Item 8D from the January 16, 2020 Board
13 meeting; and the Board of Veterinary Medical Examiners’ supplemental response to the
14 OML complaint dated July 22, 2020.

15 After investigating the Complaint, the OAG determines that the Board violated the
16 OML as detailed below.

17 **FINDINGS OF FACT**

18 1. The Nevada State Board of Veterinary Medical Examiners is a “public body”
19 as defined in NRS 241.015(4) and is subject to the OML.

20 2. The Board held a public meeting on January 16, 2020. Agenda Item 8 of the
21 Public Notice and Agenda reads as follows:

- 22 8. Discussion and Determination for Possible Action
23 A. 2021 Board Meeting Dates
24 B. FY19 Annual Audit for Review
25 C. Discussion of potential statutory changes for the 2021
26 Legislative Session
27 D. Consideration and approval of payment of legal fees for
28 confidential matter
E. AB 319 Policy and Discussion

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1 3. According to the Board, Agenda Item 8(D) related to a complaint received from
2 a Board member from a state agency related to the Board member's actions and service as
3 a Board member.¹

4 4. This Board member contacted the Board's Executive Director Jennifer Pedigo,
5 and separately, the Board's legal counsel, Louis Ling, and informed them of his receipt of
6 the complaint by the state agency.

7 5. Mr. Ling determined that the complained-of actions regarding the Board
8 member were actions taken by the Board member in the course and scope of the Board
9 member's duties as a Board member and therefore, the Board member would be entitled to
10 legal representation. Mr. Ling also determined that, for ethical reasons, he could not
11 represent the Board member relative to the complaint and provided the Board member
12 with the names of attorneys who may be competent in representing the Board member in
13 the matter.

14 6. The next time that Ms. Pedigo and/or Mr. Ling heard anything regarding the
15 matter was after the complaint was resolved in favor of the Board member and the Board
16 member was seeking reimbursement for the associated legal fees. Ms. Pedigo then
17 consulted with Mr. Ling regarding how to word at agenda item to seek the Board's review
18 and potential approval of reimbursement of the Board member's legal fees. Mr. Ling wrote
19 the wording that eventually became Agenda Item 8(D) on the Board's January 16, 2020
20 Agenda.

21 7. At the time the Board discussed Agenda Item 8(D) at the January 16, 2020
22 Board meeting, Mr. Ling informed the Board that there was a matter that was "still
23 confidential" that had now resolved against "one of us." Mr. Ling informed the Board that
24 he could not represent the individual in the matter and that the person found a private
25 lawyer to present that individual in the matter, and that the agenda item was to seek a
26

27 ¹ In its supplemental response to the OML Complaint, the identity of the Board member
28 who was subject to this Complaint was revealed as Dr. Davyd Pelsue and the state agency
to which the complaint was filed was the Nevada Commission on Ethics.

1 reimbursement payment to that individual for the private legal fees incurred. Mr. Ling
2 counseled the Board that because the matter was resolved in the individual's favor, that
3 the matter was and will always be confidential.

4 8. Ultimately, the Board voted to approve the payment of the legal fees incurred
5 at the January 16, 2020 meeting.

6 LEGAL STANDARDS AND CONCLUSIONS OF LAW

7 1. **The Board's Notice and Agenda denoted topics scheduled as items** 8 **"for possible action" during its January 16, 2020 meeting.**

9 The OML requires that a public body's agenda contain a list describing the items on
10 which action may be taken and clearly denote that action may be taken on those actions,
11 by placing the term "for possible action" next to the appropriate item. NRS 241.020(d)(2).
12 The agenda item that is subject to this instant Complaint is Agenda Item 8D –
13 Consideration and approval of payment of legal fees for confidential matter.

14 The Board clearly titled Agenda Item 8 and denoted the items as "Discussion and
15 Determination **for Possible Action.**" (emphasis added). Under that general header, the
16 Board's January 16, 2020 Agenda lists five (5) topics, including Agenda Item 8D, to consider
17 and approve the payment of legal fees for the confidential matter. It is clear that the Board
18 identified the topics found under Agenda 8 as items on which the Board could take action.
19 Accordingly, the OAG does not find a violation of the OML.

20 2. **The Board's descriptions on its January 16, 2020 meeting agenda for** 21 **Agenda Item No. 8(D) failed to provide sufficient "clear and complete** 22 **statements of topics to be considered."**

23 An agenda for a meeting of a public body must include a "clear and complete
24 statement of the topics to be considered during the meeting." NRS 241.020(2)(d)(1). The
25 "clear and complete statement" requirement of the OML stems from the Legislature's belief
26 that "incomplete and poorly written agendas deprive citizens of their right to take part in
27 government' and interferes with the 'press' ability to report the actions of government."
28 *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the
"clear and complete" standard for agenda items is required for compliance under the OML.

1 *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public
2 meetings so that the public can attend a meeting when an issue of interest will be
3 discussed.” *Id.* at 155. The OAG previously explained:

4 *Sandoval’s* holding means that use of catch-all phrases such as ‘and all matters
5 related thereto’ do[] not comply with the statute’s requirement that each
6 agenda contain a clear and complete statement of topics. Related matters,
7 should they come up during a meeting, must be agendized for discussion at a
future meeting.

8 Op. Nev. Att’y Gen. No. 10-049 (December 17, 2010).

9 The OAG has also previously stated that public bodies should apply a reasonableness
10 standard in determining whether an agenda item is clear and complete. Op. Nev. Att’y
11 Gen. No. 79-8 (March 26, 1979); *see also* Nevada Open Meeting Law Manual, 12th Ed.,
12 January 2016, Updated March 26, 2019, §6.02. Under a reasonableness standard, “the
13 degree of specificity that is reasonable for any particular agenda item will vary from item
14 to item depending on the relevant circumstances.” Op. Nev. Att’y Gen. No. 79-8 (March 26,
15 1979). Still, the OAG has also cautioned that the use of general or vague language as mere
16 subterfuge should be avoided. *Id.* To assist in crafting a clear and complete agenda, the
17 OAG has offered several guidelines to assist public bodies to ensure that an agenda item is
18 clear and complete, including that “Agenda items must be described with clear and
19 complete detail so that the public will receive notice in fact of what is to be discussed by
20 the public body”; [a]lways keep in mind the purpose of the agenda is to give the public
21 notice of what its government is going, has done, or may do”; and [a]n agenda must never
22 be drafted with the intent of creating confusion or uncertainty as to the items to be
23 considered or for the purpose of concealing any matter from public notice.” Nevada Open
24 Meeting Law Manual, 12th Ed., January 2016, Updated March 26, 2019, §6.02.

25 In the case at bar, the Board’s January 16, 2020 Notice and Agenda delineated that
26 they would consider and possibly approve “payment of legal fees for a confidential matter.”
27 While this description, on its face, alerted the public that the Board would be discussing
28 expending funds for legal fees, the public, nor the Board members, were not apprised as to

1 how much legal fees were incurred, on whose behalf the legal fees were incurred, or for
2 what specific matter the legal fees were incurred. The lack of clarity and completeness of
3 Agenda Item 8(D) was further brought to light by Board President Steve Damonte, who at
4 the meeting questioned, “. . . So we’re, we’re being asked to approve something that we
5 know nothing about.” Under a reasonableness standard, the agenda item at issue here is
6 not considered proper, as at the least, it should include the board member’s name, the
7 amount of the legal fees incurred, and the matter in which the legal fees were incurred.
8 The public was not made privy, by virtue of the Board’s Public Notice of the January 16,
9 2020 meeting, specifically what was to be discussed by the public body.

10 The OAG is also mindful and gives credence to the general policy that the detail or
11 description of work or tasks performed in attorney billing records is confidential. This is
12 not to say, however, that the OAG finds that all information regarding counsel’s work
13 performed and billed as attorneys’ fees is confidential; in fact, the number of hours an
14 attorney spends on a particular matter is generally not confidential information.

15 Accordingly, the OAG finds that the Board’s description for Agenda Item 8(D) did
16 not meet the clear and complete rule.

17 **3. The OAG does not find liability on the part of individual Board**
18 **members for the OML violations.**

19 The OML provides that generally, each member of a public body who attends a
20 meeting of that public body where an OML violation occurs, has knowledge of the violation,
21 and participates in the violation, is guilty of a misdemeanor. NRS 241.040(1). Such board
22 member may also be subject to an administrative fine. NRS 241.040(4). However, the
23 OML provides a safe harbor provision which provides that no criminal penalty or
24 administrative fine may be imposed upon a member of a public body if a member of a public
25 body violates a provision of the OML as a result of legal advice provided by an attorney
26 employed or retained by the public body. NRS 241.040(6).

27 Here, while the OAG finds a violation of the OML has occurred, the OAG does not
28 find liability on the part of individual Board members. Specifically, during the discussion

1 of Agenda Item 8D, the Board’s counsel, Louis Ling, advised his clients that the Board had
2 “a matter that is still confidential that’s now resolved” and that because it was resolved in
3 favor of the Board member, the matter would always be confidential. Mr. Ling advised his
4 clients that Mr. Ling, the Board’s counsel, asserted both in the Board’s response to the
5 instant OML Complaint as well as at the Board’s January 16, 2020 meeting, that generally,
6 the Board’s counsel would have represented the individual in the confidential matter and
7 the Board would have paid the attorneys’ fees to its counsel without the need of a specific
8 Board agenda item to approve the expense. Thus, it appears that the Board proceeded with
9 Agenda Item 8(D) on the advice of its counsel. Accordingly, the OAG does not find personal
10 liability on the part of any individual Board member.

11 **4. The remaining concerns raised by Dr. Handal are not within the**
12 **jurisdiction of the OAG under the OML, and therefore, the OAG will**
13 **refrain from providing any opinions regarding the same.**

14 Dr. Handal’s Complaint further seeks the OAG’s opinion regarding the following
15 topics:

16 **ALLEGATION NO. 1:** Whether a professional board may vote on an agenda item
17 when no explanation or supporting documentation is provided to them either written
18 or verbally?

19 **ALLEGATION NO. 2:** Whether Board members acted with due diligence in voting
20 on an agenda item without being provided any information to make an informed
21 decision, and whether such action constitutes abdication of their responsibilities to
22 the people of the State?

23 **ALLEGATION NO. 3:** Whether the public may learn if funds approved by the
24 Board were in fact used for the specific purpose mentioned during Board action?

25 **ALLEGATION NO. 4:** Whether the Board’s insurance would cover legal fees, if
26 actions were taken by a Board member in his official capacity?

27 **ALLEGATION NO. 5:** Whether there was a violation of NRS 281.611(1)(c) [abuse
28 of authority] or NRS 281.611(1)(e)(A) [gross waste of public money]?

1 NRS 241.039(1) provides that a complaint alleging a violation of NRS Chapter 241
2 may be filed with the Office of the Attorney General. Moreover, NRS 241.039(2) provides
3 that the Attorney General “shall investigate and prosecute any violation of **this chapter**”.
4 NRS 241.039(2) (emphasis added). On its face, NRS 241.039 only allows the OAG to
5 investigate and prosecute complaints under NRS Chapter 241. Dr. Handal’s request that
6 the OAG perform an investigation on the acceptable procedures for voting, due diligence,²
7 use of funds, insurance coverage, and alleged violations of NRS Chapter 281 are not based
8 on alleged violations of NRS Chapter 241, Nevada’s Open Meeting Laws. The OAG only
9 has statutory authority to investigate and prosecute alleged violations under NRS 241 and
10 therefore will abstain from making a determination on the same.

11 **5. The OAG will forego bringing a lawsuit based on this Complaint.**

12 NRS 241.037 confers upon the OAG the power bring suit “in any court of competent
13 jurisdiction to have an action taken by a public body declared void or for an injunction
14 against any public body or person to require compliance with or prevent violations of [NRS
15 241].” NRS 241.037(1).

16 Here, after receiving the Board’s initial response to Ms. Handal’s OML Complaint,
17 the OAG received a supplemental response from the Board, indicating that the at-issue
18 agenda item and presentation of the matter to the Board at the January 16, 2020 meeting
19 was based upon Board staff’s understanding that the law applicable to the Board member
20 required confidentiality as a matter of law. Based on that interpretation, the Board
21 asserted that it could not identify the name of the Board member or the law that it
22 understood to be at issue in the underlying complaint. However, the Board’s supplemental
23 response indicated that the Board’s staff was incorrect in its interpretation of the
24 confidentiality provisions at play in the underlying complaint and that the proceeding for
25 which the Board voted to reimburse the Board member on January 16, 2020 was a matter

26 ² The OAG has previously stated that the OML does not allow the OAG to second guess
27 decisions or actions by public bodies even if the decision might have been improvident.
28 Nevada Open Meeting Law Manual, 12th Ed., January 2016, Updated March 26, 2019,
§6.02; AG File No. 09-044 (December 17, 2009).

1 of public record. Further, in its supplemental response, the Board has indicated that it and
2 its staff are ready to have the Board address the matter again at an upcoming public
3 meeting.

4 Accordingly, given the aforementioned findings of a violation of the OML by the
5 Board, the OAG directs the Board to correct the OML violation at its upcoming Board
6 meeting. The Board must, in correcting the violation, include an item on its agenda posted
7 for the meeting at which the public body intends to take correct action, pursuant to NRS
8 241.0365.

9 If the Attorney General investigates a potential OML violation and makes findings
10 of fact and conclusions of law that a public body has taken action in violation of the OML,
11 “the public body must include an item on the next agenda posted for a meeting of the public
12 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
13 public body must treat the opinion of the Attorney General as supporting material for the
14 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board
15 must also place an item on its next meeting agenda in which they acknowledge the present
16 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG investigating
17 in this matter. The Board must also include the OAG Opinion in the supporting materials
18 for its next meeting.

19 **SUMMARY**

20 Upon investigating the present Complaint, the OAG makes findings of fact and
21 conclusions of law that the Nevada State Board of Veterinary Medical Examiners violated
22 the OML by failing to comply with the “clear and complete statement” requirement for its
23 January 16, 2020 Board meeting, as set forth above.

24 Dated: January 8, 2021.

25 AARON FORD
26 Attorney General

27 By: /s/ Justin R. Taruc
28 Justin R. Taruc
Deputy Attorney General

CERTIFICATE OF SERVICE

1 I hereby certify that on the 5th day of October, 2020, I served the foregoing
2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the
3 same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**
4 addressed as follows:

5
6 Nevada State Board of Veterinary
7 Medical Examiners
8 4600 Kietzke Lane, Bldg. O, #265
9 Reno, NV 89502

10 **Certified Mail No.:** **7019 0160 0000 0498 4472**

11 Patricia Handal
12 ██████████
13 ████████████████████

14 **Certified Mail No.:** ████████████████████

15 Kristin Geddes, Esq.
16 The Geddes Law Firm, P.C.
17 1575 Delucchi Lane, Suite 206
18 Reno, Nevada 89502
19 *Counsel for Patricia Handal*

20 **Certified Mail No.:** **7019 0160 0000 0498 4496**

21
22 /s/ Debra Turman
23 An employee of the Office of the
24 Nevada Attorney General
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