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September 10, 2024

**Via U.S. Mail**

Christopher A. Eccles, Esq.  
Division Counsel  
Division of Industrial Relations  
Department of Business and Industry  
3360 W. Sahara Ave., Ste. 250  
Las Vegas, NV 89102

**Re: Open Meeting Law Complaint, OAG File No. 13897-496  
Occupational Safety and Health Review Board**

Dear Mr. Eccles:

The Office of the Attorney General (“OAG”) is in receipt of your Complaint (“Complaint”) alleging violations of the Open Meeting Law, NRS Chapter 241 (“OML”), by the Occupational Safety and Health Review Board (“Board”) related to its agenda and meeting on October 11, 2023.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG’s investigation of the Complaint included a review of the Complaint, the Board’s Response, and the agenda, minutes, and transcript of the meeting on October 11, 2023. After investigating the Complaint, the OAG determines that the Board did not violate the OML as alleged in the Complaint.

**FACTUAL BACKGROUND**

In 2021, Nevada State Occupational Safety and Health Administration (“OSHA”) inspected a Sierra Concepts Construction, Inc. (“Sierra”) worksite and found a number of safety-related violations. On July 16, 2021, OSHA issued Citations alleging six total violations and a Notification of Penalty levy-

ing fines totaling \$58,298.00. The alleged violations involved inadequate widths of scaffolding, failure to employ personal fall arrest systems or guard-rails, failure to have a competent person on-site with knowledge of applicable safety standards, and failure to verify compliance by preparing a written certification record.

On August 25, 2021, Sierra filed a contest letter. OSHA and Sierra negotiated a settlement that was executed on June 6, 2022. Pursuant to the settlement agreement, OSHA agreed to merge one alleged violation of inadequate scaffold width (Citation 1, Item 1) with one alleged violation of failing to have a competent person on-site (Citation 1, Item 3). This effectively eliminated one fine of \$13,653.00 (remaining fine of \$44,645.00). OSHA also agreed to a 30% reduction from the remaining fine, which brought the total fine down to \$31,251.50. In exchange for these reductions, Sierra agreed to withdraw its contest of the citations.

The matter of the settlement agreement was listed on the Board's agenda for its open meeting on October 11, 2023, under the "Administrative Meeting" component of the meeting. Specifically, the settlement agreement was listed as item 4(c)(iv), which described the action to be taken as, "[r]eview contested case settlements, motions, draft decisions, or procedural issues pending on status report, for approval and issuance of final orders...Sierra Concepts Construction Inc. – **For Possible Action.**" "Contested Case Hearings" were listed on the agenda as a separate component of the meeting.

On September 22, 2023, the Board provided Sierra a "Notice of Rescheduled Administrative Hearing" in which it informed Sierra it would hear the matter of the settlement agreement during the "Administrative Docket" of its open meeting on October 11, 2023. The Notice provided that the Board would consider, "[t]he status of this matter and depending on the outcome of the inquiry, whether the Board may approve the Withdrawal of the Complaint because of settlement in Sierra Concepts Construction, Inc., Docket No. RNO 22-2141 – **For Possible Action.**"

Counsel for Sierra emailed the Board's counsel inquiring as to the nature of the proceeding. Board counsel responded as follows:

“While the Board may reject a settlement, that occurrence is rare. As a consequence, this matter is on the Administrative Docket and not the Contested Hearing Docket. It is not necessary for you to attend the hearing...Given the manner in which this matter has been noticed, the only action available to the Board would be to approve or disapprove the settlement. This is more in the nature of a housekeeping matter, giving rise to a Final Order so that the case could be closed.”

The Board considered the settlement agreement during its October 11, 2023 open meeting. Sierra was not represented at the meeting. In light of the serious safety concerns surrounding the alleged violations and the perceived diminished deterrent effect of the negotiated fine reductions, the Chairman suggested the Board issue a more potent “proposed settlement.”<sup>1</sup> The Board voted unanimously to approve the settlement with some revisions including a change from the 30% fine reduction to a 10% fine reduction (an increase to the total fine from \$31,251.50 to \$40,180.50). The Board issued a written order on October 16, 2023 containing the Board’s approval and revisions. Sierra filed a timely objection on October 24, 2023.

### LEGAL ANALYSIS

The Board is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(3)(d)(1). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that “incomplete and poorly written agendas deprive citizens of their right to take part in government.” *Sandoval v. Bd. of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence to the “clear and complete” standard for agenda items is required for compliance under the OML. *Id.* “The plain language of NRS 241.020(2)(c)(1) requires that discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic.” *Id.* The OML “seeks to give the public a clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed. *Id.* at 155.

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<sup>1</sup> See transcript, page 18, lines 17 – 19.

“A higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public. *Sandoval* at 155, *citing Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex.App. 2000). However, the OAG applies a reasonableness standard in determining whether an agenda is clear and complete. *In re Board of Veterinary Medical Examiners*, OMLO 13897-363 at 5 (Jan. 8, 2021).

Here, the issue is whether the agenda reasonably notified the public regarding the subjects to be discussed at the October 11, 2023 meeting such that citizens could make an educated decision as to whether to attend. Unlike in *Sandoval*, the agenda item was not of special or significant interest to the public, and thus, did not require a higher degree of specificity.

The Board’s practice of separating the “Administrative Meeting” from the “Contested Case Hearings” is an organizational tool to alert the public to a demarcation between those cases in which the Board will conduct an informal “review” of a contested case settlement and those formal hearings to be “heard in a quasi-judicial forum pursuant to Chapter 618 of the Nevada Administrative Code.”

The agenda item in question adequately notified the public the Board would “review” the settlement agreement and decide whether to approve it. Inherent in a decision of whether to approve a settlement agreement is a discussion of the reasons for that decision. *In re Carson City School District Board of Trustees*, OMLO 13897-444 at 3 (Jul. 3, 2023). The hearing transcript indicates the Board members found the settlement terms insufficient to deter future serious safety violations by Sierra.<sup>2</sup> Thus, the Chairman suggested the Board issue a more potent “proposed settlement,” which the Board delivered. The practical effect of the Board’s action was to state its reservations regarding the original settlement’s perceived lack of deterrent effect, and therefore, to approve the settlement conditioned on some revisions including a change from a 30% fine reduction to a 10% fine reduction. The OAG finds that the Board’s discussion and action reasonably fit within the clear and complete statement on the agenda and did not violate the OML.

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<sup>2</sup> The purpose of Chapter 618 of the Nevada Revised Statutes is to, “provide safe and healthful working conditions for every employee.” NRS 618.015. Pursuant to NRS 618.475 and 618.605, appeals or contests arising under Chapter 618 of the NRS and NAC are adjudicated by the Board. Settlements are approved by the Board, “if the settlement is consistent with the provisions and objectives of chapter 618 of NRS.” NAC 618.833.

It appears the Complainant's largest objection is that the Board's hearing notice and correspondence directed specifically to Sierra (and/or its counsel), separate from the agenda, failed to adequately place Sierra on notice of the nature of the proceeding on October 11, 2023. The OML requires specific notice to be given to individuals whose character, alleged misconduct, or physical or mental health will be discussed during the meeting. NRS 241.033 and 241.0333. The OML's specific notice requirement does not apply here because the agenda item in question does not touch on an individual's character, alleged misconduct, or physical or mental health. The question of notice directed specifically to Sierra as a party to a case before the Board is one of due process under the notice requirements of the Board's rules of practice (NAC 618.650 - .848), which falls outside this OML complaint review.

### **CONCLUSION**

Upon review of your Complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

/s/ Ryan D. Sunga \_\_\_\_\_

Ryan D. Sunga

Senior Deputy Attorney General