

1 IN THE STATE OF NEVADA
2 OFFICE OF THE ATTORNEY GENERAL
3

4 In the Matter of:

5 BOARD OF EXAMINERS FOR
6 MARRIAGE AND FAMILY
7 THERAPISTS AND CLINICAL
8 PROFESSIONAL COUNSELORS.

AG FILE No. 13897-198
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

9 BACKGROUND

10 Jacob Wiskerchen filed a complaint (Complaint) with the Office of the Attorney
11 General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Board
12 of Examiners for Marriage and Family Therapists and Clinical Professional Counselors
13 (the "Board") regarding the Board's April 29, 2016, meeting. The Complaint makes three
14 allegations. First, that the Board failed to post minutes of its April 29, 2016, meeting
15 within the required time frame. Second, that the minutes from this meeting are
16 incomplete or inaccurate because (1) item 3 of the meeting minutes refer the reader to
17 another set of minutes which were not posted; (2) items 25-30 are listed as tabled but
18 were ignored before the meeting was adjourned; and (3) the chair did not request public
19 comment prior to adjournment of the meeting. The third and final allegation is that the
20 minutes do not contain complete reports of all discussion.

21 Although the Board violated the OML by failing to timely post minutes of its April
22 29, 2016, meeting, the Board did not violate the OML regarding the other allegations.

23 MATERIALS REVIEWED

24 In the course of investigating the Complaint, the OAG reviewed (1) the public
25 notice and agenda, (2) the minutes and the audio recordings of both the April 29, 2016,
26 Board meeting and the April 29, 2016, hearing on the adoption of regulations pertaining
27 to chapter 641A of the Nevada Administrative Code, and (3) the responses to the
28 Complaint from the Board's counsel and several of the Board members.

LEGAL STANDARD

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. “Public bodies exist to aid in the conduct of the people’s business” and must do so in compliance with the statutory requirements of Nevada’s Open Meeting Law. *Sandoval v. Board of Regents*, 119 Nev. 148, 154, 67 P.3d 902, 905 (2003); NRS 241.010. An action taken in violation of the OML is void. NRS 241.036. The gravamen of the Complaint concerns the OML’s requirement that a public body keep written minutes of its meetings. NRS 241.035. Specifically, the statute requires that the minutes include the substance of all matters proposed, discussed or decided. NRS 241.035(1). Minutes or an audio recording of the meeting must be available to the public within 30 days after adjournment of the meeting. NRS 241.035(2). Unless good cause is shown a public body is required to approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body. NRS 241.035(1)(e).

“There is no statutory provision requiring public bodies to discuss, or take action on, all agenda items.” *Schmidt v. Washoe County*, 123 Nev. 128, 135, 159 P.3d 1099, 1104 (2007) (*abrogated on other grounds by Buzz Stew LLC v. City of Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008)). However, notice of the meeting must notify the public that the public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time. NRS 241.020(2)(d)(6)(III). Public meetings must also have periods devoted to comments by the general public. NRS 241.020(2)(d)(3). Such comments must be taken at the beginning of the meeting and again before adjournment, or immediately after the public body discusses any item on the agenda on which action may be taken. *Id.*

FINDINGS OF FACT

1. The Board was created by NRS 641A.090.
2. The Board is a “public body” as defined in NRS 241.015(4), and subject to the OML.

1 3. After discharging its previous Executive Director on August 28, 2015, the
2 Board did not have an Executive Director until January 25, 2016, when a new Executive
3 Director began. That Executive Director quit without notice on June 20, 2016.

4 4. While this matter was pending, two Board members were replaced and the
5 term of another Board member ended, leaving a vacancy.

6 5. The Board met on April 29, 2016, by videoconference. Members of the public
7 were allowed to attend in person at locations on the campuses of the University of
8 Nevada in Las Vegas and in Reno.

9 6. The agenda for this meeting was sent to all persons on the Board's mailing
10 list, posted on the Board's website as well as the State's website, and posted at various
11 locations in Las Vegas, Reno, and Carson City.

12 7. On April 29, 2016, the Board also held a public hearing for the adoption and
13 amendment of certain regulations contained in Chapter 641A of the Nevada
14 Administrative Code and known as LCB File No. R091-14.

15 8. The Notice of Intent to Act Upon a Regulation was posted at the Board's
16 office and at various libraries within the State of Nevada.

17 9. The minutes for both of the meetings held on April 29, 2016, were approved
18 at the Board's meeting on June 24, 2016. The minutes from both April 29, 2016,
19 meetings are now posted on the Board's website.¹

20 10. Between the April 29 and June 24, 2016, meetings the Board also held
21 meetings on May 6 and May 12, 2016.

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24 ¹ A draft of the minutes of the meeting on June 24, 2016, is posted on the Board's website, with a
25 notation that the minutes are subject to revision until approved at a Board meeting.
26 <http://marriage.nv.gov/Board/Meetings/2016/Meetings/>. According to the draft minutes of that meeting, the
27 Board also approved the minutes of its December 4, 2015, and February 12, 2016, meetings. However,
28 these minutes were not posted until sometime after this investigation commenced. Additionally, minutes
from the Board's meetings on August 28, 2015, September 11, 2015, September 25, 2015, October 23, 2015,
December 9, 2015, December 18, 2015, January 22, 2016, February 5, 2016, April 7, 2016, May 12, 2016,
and July 20, 2016, were posted in draft form during the pendency of this investigation. Although the
minutes were not posted in a timely manner, the Board meetings were recorded and audio recordings of the
meetings are available to the public upon request.

1 3. The Board’s failure to address all items on the agenda for the April 29, 2016,
2 meeting did not violate the OML because “[t]here is no statutory provision requiring
3 public bodies to discuss, or take action on, all agenda items.” *Schmidt*, 123 Nev. at 135,
4 159 P.3d at 1104.

5 4. The Board did not violate the requirements of the OML with respect to
6 public comment at the April 29, 2016, meeting because the President of the Board asked
7 for public comment both at the beginning and end of the meeting.

8 5. The minutes of the April 29, 2016, Board meeting are in compliance with the
9 requirements of NRS 241.035.

10 **SUMMARY**

11 Although the loss of Executive Directors and turnover in Board members
12 presented difficulties, the Board is ultimately responsible for ensuring compliance with
13 the OML and is not excused from the duty by staffing issues. As a result, no good cause
14 was found for the Board’s violations of the OML. The Attorney General, however, will
15 not seek civil penalties in this matter.

16 Because the OAG finds that the Board violated the OML, the Board must place on
17 its next meeting agenda these Findings of Fact and Conclusions of Law and include them
18 in the supporting materials for the meeting. The agenda must acknowledge that these
19 Findings of Fact and Conclusions of Law resulted from the OAG investigation in the
20 matter of Attorney General File No. 13897-198, and that they have been placed there as
21 a requirement of NRS 241.0395.

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1 Furthermore, the OAG strongly recommends that the Board members and staff
2 receive training in the OML. The OAG is available to provide OML training upon
3 request.

4 DATED this 21st day of September, 2016.

5 ADAM PAUL LAXALT
6 Attorney General

7 By: 
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 21st day of September, 2016, I caused to be deposited for mailing a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, to the following:

Board of Examiners for Marriage and Family
Therapists and Clinical Professional Counselors
9436 W. Lake Mead Blvd., Suite #11-J
P.O. Box 370130
Las Vegas, NV 89137-0130

Via email:

Rose Marie Reynolds
Senior Deputy Attorney General
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Rhonda Collins

An Employee of the Office
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AMENDED CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 23rd day of September, 2016, I caused to be deposited for mailing a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, to the following:

Board of Examiners for Marriage and Family
Therapists and Clinical Professional Counselors
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P.O. Box 370130
Las Vegas, NV 89137-0130

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