

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3
4 Electronically Filed
5 Feb 27 2018 03:17 p.m.
6 Elizabeth A. Brown
7 Clerk of Supreme Court

8 THE COMMISSION ON ETHICS OF
9 THE STATE OF NEVADA,

10 Appellant,

11 vs.

12 IRA HANSEN, in his official capacity as
13 Nevada State Assemblyman for Assembly
14 District No. 32; And JIM WHEELER, in his
15 official capacity as Nevada State
16 Assemblyman for Assembly District
17 No. 39,

18 No. 69100

19 Respondents.

20 **NOTICE OF SUPPLEMENTAL AUTHORITIES**
21 **(PURSUANT TO NRAP 31(e))**

22 PLEASE TAKE NOTICE that Appellant, Nevada Commission on Ethics,
23 submits a supplemental authority pursuant to NRAP 31(e). Specifically, *Open*
24 *Meeting Law Opinion*, Complaint No. 13897-193 (2016), attached as Exhibit A,
25 supplements Appellant's Petition for En Banc Reconsideration, pgs. 6-9; Petition
26 for Rehearing p. 4; and Opposition to Respondents' Motion to Dismiss Appeal,
27 pgs. 11-14, for the legal proposition that the Commission is exempt from
28 Nevada's Open Meeting Law ("OML") in all pre-panel proceedings pursuant to
29 NRS 241.016(3). NRS 281A.440 is included in the list of exempt proceedings set
30 forth in NRS 241.016(3).

31 The opinion affirms the Attorney General's interpretation of the OML as
32 providing a complete exemption for administrative investigations and related
33 processes listed in NRS 241.016(3) that are declared to be confidential. The
34 opinion states that:

1 As set forth in NRS 241.016(3), the list of statutory exemptions
2 to the OML was added by Senate Bill (S.B.) 70 of the 2015
3 Session of the Nevada Legislature. NRS 241.016(3), as amended
4 by S.B. 70, makes it clear that the OML has no application to
5 proceedings governed by NRS Chapter 630. *Hearing on S.B. 70*
6 *before the Senate Committee on Government Affairs*, 2015 Leg.,
7 78th Sess. 3 (February 25, 2015). The legislative history of S.B.
8 70 further indicates that the list of statutory exemptions was a
9 clarification of rather than a substantive change to the OML.
10 Therefore, pursuant to NRS 241.016(6(3) the provisions of NRS
11 630.311 and 630.336 prevail over the provisions of Chapter 241
12 in its entirety. As a result, the requirements of NRS 241.033,
13 241.034, and 241.035 are not applicable to the investigative
14 committee meetings of the Board.

15 *Id.* at 3.

16 Submitted this 26th day of February, 2018.

17 Respectfully,

18 NEVADA COMMISSION ON ETHICS

19 /s/ Tracy L. Chase

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21 Commission Counsel
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Dated: 2/26/18

/s/ Darci Hayden
DARCI HAYDEN

Exhibit List

Exhibit A Open Meeting Law Opinion, Complaint No. 13897-193 (2010)

EXHIBIT A



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT
Attorney General

WESLEY K. DUNCAN
First Assistant Attorney General

NICHOLAS A. TRUTANICH
First Assistant Attorney General

June 28, 2016

VIA FIRST CLASS MAIL

Harold G. Albright
10079 E. Desert Canyon Drive
Reno, Nevada 89511

Re: Open Meeting Law Complaint A.G. File No. 13897-193
State of Nevada Board of Medical Examiners

Dear Mr. Albright,

The Office of the Attorney General is in receipt of your complaint alleging a violation of the Nevada Open Meeting Law (OML) by the State of Nevada Board of Medical Examiners (Board) at meetings of the investigative committees of the Board on various dates going back to August, 2014.

COMPLAINT ALLEGATIONS

In your complaint you allege that the Board violated the OML in connection with regular meetings of its investigative committees. More specifically, you allege that the Board violated NRS 241.033 and NRS 241.034 for failure to give notice to licensees of meetings to consider their misconduct, and NRS 241.035 for failure to record the meetings or publish detailed minutes of the meetings including the substance of any comments by the general public.

The complaint also alleges that the Board violated NRS 630.311 because the investigative committee meetings convened despite the absence of the committee member who was appointed to represent the interests of the general public. Finally, the complaint alleges that the Board falsified public records in violation of NRS 239.300 because the Board published summaries of meetings wherein it ostensibly listed the public member as a participant in meetings that he or she did not attend. These allegations do not allege a violation of NRS Chapter 241 and are beyond the scope of this OML opinion.

DISCUSSION AND ANALYSIS

The investigative committees of the Board are formed pursuant to NRS 630.311 and consist of three members of the Board. The committees are tasked with reviewing and investigating complaints against Nevada-licensed physicians. If the committee determines there is a reasonable basis for a complaint and that a violation of NRS Chapter 630 has occurred, the committee may file a formal complaint with the Board. NRS 630.311(1) & (2). All of the proceedings before the

committees are confidential including all of the documents and information received with the complaint as well as all documents and information compiled during the investigation. NRS 630.311(3); NRS 630.336(4).

Once filed with the Board, a formal complaint initiates disciplinary action against the licensee who is the subject of the complaint. The Board's disciplinary proceedings are governed by NRS Chapter 630 as opposed to the OML. In fact, all proceedings before the investigative committees and the Board pursuant to NRS 630.311 and 630.336 are exempt from the OML.

NRS 241.016(3) provides:

3. Any provision of law, including without limitation, NRS 91.270, 219A.210, 239C.140, 281A.350, 281A.440, 281A.550, 284.3629, 286.150, 287.0416, 288.220, 289.387, 295.121, 360.247, 385.555, 388.261, 388A.495, 388C.150, 392.147, 392.467, 394.1699, 396.3295, 433.534, 435.610, 463.110, 622.320, 622.340, 630.311, 630.336, 639.050, 642.557, 686B.170, 696B.550, 703.196 and 706.1725, which:
 - (a) Provides that any meeting, hearing or other proceeding is not subject to the provisions of this chapter; or
 - (b) Otherwise authorizes or requires a closed meeting, hearing or proceeding,prevails over the general provisions of this chapter.

NRS 630.311 provides:

1. A committee designated by the Board and consisting of members of the Board shall review each complaint and conduct an investigation to determine if there is a reasonable basis for the complaint. The committee may issue orders to aid its investigation including, but not limited to, compelling a physician to appear before the committee.
2. If, after conducting an investigation, the committee determines that there is a reasonable basis for the complaint and that a violation of any provision of this chapter has occurred, the committee may file a formal complaint with the Board.
3. The proceedings of the committee are confidential and are not subject to the requirements of NRS 241.020. Within 20 days after the conclusion of each meeting of the committee, the Board shall publish a summary setting forth the proceedings and determinations of the committee. The summary must not identify any person involved in the complaint that is the subject of the proceedings.

NRS 630.336(3) & (4) provides:

3. Except as otherwise provided in NRS 239.0115, the following may be kept confidential:
 - (a) Any statement, evidence, credential or other proof submitted in support of or to verify the contents of an application;
 - (b) Any report concerning the fitness of any person to receive or hold a license to practice medicine, perfusion or respiratory care; and
 - (c) Any communication between:

- (1) The Board and any of its committees or panels; and
 - (2) The Board or its staff, investigators, experts, committees, panels, hearing officers, advisory members or consultants and counsel for the Board.
4. Except as otherwise provided in subsection 5 and NRS 239.0115, a complaint filed with the Board pursuant to NRS 630.307, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.

As set forth in NRS 241.016(3), the list of statutory exemptions to the OML was added by Senate Bill (S.B.) 70 of the 2015 Session of the Nevada Legislature. NRS 241.016(3), as amended by S.B. 70, makes it clear that the OML has no application to proceedings governed by NRS Chapter 630. *Hearing on S.B. 70 before the Senate Committee on Government Affairs*, 2015 Leg., 78th Sess. 3 (February 25, 2015). The legislative history of S.B. 70 further indicates that the list of statutory exemptions was a clarification of rather than a substantive change to the OML.¹ Therefore, pursuant to NRS 241.016(3) the provisions of NRS 630.311 and 630.336 prevail over the provisions of Chapter 241 in its entirety. As a result, the requirements of NRS 241.033, 241.034, and 241.035 are not applicable to the investigative committee meetings of the Board.


In summary, the confidentiality afforded to the Board by NRS 630.336 extends to any and all conversations, documentation and any other information compiled during an investigation of a complaint. This provision necessarily precludes any publication of detailed minutes of the investigative committee meetings. Likewise, since it precludes public access to the meetings, it necessarily supersedes any obligation to publish summaries or transcripts of public comment.

CONCLUSION

No violation of NRS Chapter 241 occurred. The Office of the Attorney General will be closing its file on this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 
Julie A. Slabaugh
Senior Deputy Attorney General
Bureau of Government Affairs
Health and Human Services Division

JAS/pks

cc: Michael J. Fischer, M.D., President, Board of Medical Examiners
Robert Kilroy, Esq., General Counsel, Board of Medical Examiners

¹ Senate Bill 70 compiled in one place all of the exemptions that already existed in law. The list was compiled by the Legislative Counsel Bureau's Legal Division. *Hearing on S.B. 70 Before the Assembly Committee on Government Affairs*, 2015 Leg., 78th Sess. 5 (May 11, 2015).