

NEVADA STATE BOARD OF MEDICAL EXAMINERS

1105 Terminal Way, Suite 301
Reno, NV 89502-2144

Rachakonda D. Prabhu, M.D.
Board President



Edward O. Cousineau, J.D.
Executive Director

*** * * MINUTES * * ***

OPEN SESSION BOARD MEETING

Held in the Conference Room at the Offices of the
Nevada State Board of Medical Examiners
1105 Terminal Way, Suite 301, Reno, Nevada 89502

and teleconferenced to

the Conference Room at the Offices of the Nevada State Board of
Medical Examiners/Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

WEDNESDAY, NOVEMBER 8, 2017 – 12:00 NOON

Board Members Present at Board Office in Reno

None

Board Members Present at Board Office in Las Vegas

Rachakonda D. Prabhu, M.D., President

Ms. Sandy Peltyn

Victor M. Muro, M.D.

Board Members Present by Telephone

Mr. M. Neil Duxbury, Secretary-Treasurer

Michael C. Edwards, M.D., FACS

Weldon Havins, M.D., J.D.

Board Members Absent

Wayne Hardwick, M.D., Vice President

Ms. April Mastroluca

Aury Nagy, M.D.

Staff/Others Present at Board Office in Reno
Edward O. Cousineau, J.D., Executive Director
Jasmine K. Mehta, J.D., Deputy Executive Director
Donald K. White, J.D., Deputy General Counsel
Laurie L. Munson, Chief of Administration and Information Systems

Staff/Others Present at Board Office in Las Vegas
Robert Kilroy, J.D., General Counsel

Staff/Others Present by Telephone
Henna Rasul, J.D., Senior Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

The meeting was called to order by President Rachakonda D. Prabhu, M.D., at 12:02 p.m.

Mr. Cousineau took roll call of the Board members present at the Board offices and those present via telephone. Board members not present were Wayne Hardwick, M.D., Vice-President, Ms. April Mastroluca, Aury Nagy, M.D., and Michael C. Edwards, M.D., FACS. Mr. Cousineau announced there was a quorum.

Agenda Item 2

PUBLIC COMMENT

Dr. Prabhu asked whether there was anyone in attendance who would like to present public comment. No public comment was received.

Agenda Item 3

REQUEST FOR BOARD AUTHORIZATION TO SUBMIT AMICUS BRIEF RE *COMM'N ON ETHICS V. IRA HANSEN*, 133 NEV., ADV. OP. 39 (JUNE 29, 2017)

Dr. Edwards joined the meeting at 12:03 p.m.

Ms. Mehta asked whether all Board members had received and reviewed the material, and the Board members indicated they had. Ms. Mehta stated that staff was requesting the Board's authorization to submit an amicus brief in support of the Commission on Ethics' petition for en banc reconsideration, and if that is granted, to submit an amicus brief on the substantive issues in support of the Commission on Ethics' position regarding the ambiguities that are raised by the opinion and the scope of authority that is granted to counsel for Boards and Commissions in representing their clients. She then asked if there were any questions.

Dr. Havins said it appeared to him that if the Board was sued, Board staff must respond, generally to answer a complaint within 20 days, and if the Board were to lose a case, say, under judicial review, then it would be a Board decision whether to appeal that to the Supreme Court, and if the Board had to hold a special meeting to discuss it, it would hold one.

Ms. Mehta explained that the issue in this case is that the panel for the Nevada Supreme Court created a procedural barrier for Boards to appeal that hadn't previously existed, and the broader question for the Board is whether that applies to responsive pleadings as well. For example, the Board is often served with emergency writ petitions, and is given less than five days to respond to those. Is staff no longer authorized impliedly to respond on behalf of the Board and do we have to have an emergency meeting for the Board to authorize staff to respond to that kind of litigation?

Discussion ensued regarding the impact of the current ruling on the ability of legal counsel to represent the Board in these types of matters.

Mr. Cousineau stated the authority to determine whether it is appropriate to challenge an appeal or how to proceed with legal proceedings has been delegated to him, and is spelled out in his job description as Executive Director; however, the case law, as it currently exists, would negate that ability. Therefore, we are hoping the full Supreme Court will reverse the findings of the panel.

Dr. Muro moved that the Board authorize staff to move forward with the amicus brief. Ms. Peltyn seconded the motion.

Dr. Havins asked whether, in the event the Supreme Court agrees to go with en banc reconsideration, the Board members would be presented with the amicus brief for approval.

Dr. Muro said he didn't think the Board needed to read and approve it; that his motion would authorize legal counsel to proceed and to address the relevant issues as they deem appropriate to try to resolve this in a manner that allows the Board to function. Ms. Peltyn concurred.

Mr. Cousineau asked if he could have Ms. Mehta phrase the motion in order to ensure it is clear on the record what the Board was authorizing staff to do. Dr. Prabhu asked Ms. Mehta to proceed.

Ms. Mehta stated staff was requesting the Board to authorize it to file a motion to file an amicus brief, as well as the amicus brief in support of the petition for en banc reconsideration, and in the event en banc reconsideration is granted, to file an amicus brief in support of the Commission on Ethics' position.

Dr. Muro stated that was his motion. Ms. Peltyn seconded the motion.

Dr. Havins again asked whether, in the event the Supreme Court grants en banc reconsideration, the Board members would be provided with the amicus brief prior to it being filed with the Court.

Dr. Muro said his motion did not include a provision for the Board members to receive the amicus brief prior to it being filed, and if that provision were added to the motion, it would further delay the process.

Mr. Cousineau added the brief was due tomorrow, so there was not a lot of time to put it together.

A vote was taken on the motion, and it passed unanimously.

Agenda Item 4
PUBLIC COMMENT

Dr. Prabhu asked whether there was anyone in attendance who would like to present public comment. No public comment was received.

Agenda Item 5
ADJOURNMENT

Dr. Muro moved to adjourn the meeting. Ms. Peltyn seconded the motion, and Dr. Prabhu adjourned the meeting at 12:15 p.m.

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