

In the Matter Of:

Gerber Hearing

BOARD MEETING

January 29, 2019

Job Number: 523120

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NEVADA STATE BOARD OF
HOMEOPATHIC MEDICAL EXAMINERS
BOARD MEETING

9333 Double R Boulevard, Suite 100
January 29, 2019
Reno, Nevada

Job No. 523120

Reported by: CAROL HUMMEL, RPR, CCR #340.
Transcription --- Computer ---

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APPEARANCES

THE MEDICAL BOARD:
Bruce Fong, President
Robert Eslinger
Cora Iberra
Diane Kennedy
Don Minstrel
K.J. Smith

Nancy Eklof, Executive Director

Rosalie Bordelove
Deputy Attorney General
(Present Telephonically)
Las Vegas, Nevada

Gregory D. Ott
Deputy Attorney General

ALSO PRESENT:
Jeffrey Dickerson, Esq.
Counsel for Dr. Gerber

Dr. Michael Gerber

1 -oOo-

2 RENO, NEVADA; TUESDAY, JANUARY 29, 2019; 6:00 P.M.

3 -oOo-

4

5 PRESIDENT FONG: Welcome to the Nevada State
6 Board of Homeopathic Medical Examiners' meeting for this
7 evening.

8 Today's date is January 29th, 2019. It is
9 currently 1805 or 6:05. We are meeting here at Sierra
10 Medical Center, 9333 Double R Boulevard, Suite 100.

11 We're first here to discuss some issues that
12 have been left over, but let's move forward.

13 Should we be recording this?

14 MS. EKLOF: It is.

15 PRESIDENT FONG: I forgot, we have a court
16 reporter.

17 First off, as we always do, we'll call a roll
18 call to determine if we have a quorum. Let's have you
19 start on this end.

20 MR. MINSTREL: Don Minstrel, present.

21 MS. SMITH: K.J. Smith, present.

22 MS. KENNEDY: Diane Kennedy, present.

23 DR. IBARRA: Cora Ibarra, present.

24 DR. ESLINGER: Robert Eslinger, present.

1 PRESIDENT FONG: Bruce Fong, present.

2 And for the record, please let it show that we
3 have all the board members currently present for this
4 meeting.

5 We definitely have a quorum.

6 Any public comment before we start?

7 Whatever you guys are eating, better have
8 enough to share.

9 Item 3, I need a motion to approve tonight's
10 agenda.

11 MR. MINSTREL: I make a motion that we approve
12 tonight's agenda.

13 PRESIDENT FONG: Mr. Don Minstrel makes a
14 motion to approve tonight's agenda.

15 Do I have a second?

16 DR. IBARRA: Second.

17 PRESIDENT FONG: Cora beat you to the punch.
18 Dr. Cora Ibarra seconds the motion.

19 Do we have discussion?

20 MS. KENNEDY: I have a point of clarification.
21 In the past when we've had hearings, Dr. Eslinger has
22 recused himself because he was a patient of Dr. Gerber's
23 or his clinic. So I just want to get a clarification that
24 it's mentioned that K.J. you are a patient --

1 MS. SMITH: -- five different doctors.

2 MS. KENNEDY: But of the clinic, Dr. Gerber's
3 clinic.

4 MS. SMITH: I go to Dr. Gerber. Do you want
5 me to list the rest of them I go to?

6 MS. KENNEDY: No, no, no. I just want
7 clarification since we have precedent that was from
8 Dr. Eslinger that he recused himself because he was a
9 patient. So I would just like clarification either
10 from --

11 PRESIDENT FONG: Mr. Ott, would you give us
12 ground rules for this.

13 MR. OTT: Did you vote on the agenda yet?

14 PRESIDENT FONG: No. We're actually in a
15 discussion for the item. I can take the vote first.

16 MR. OTT: Let me clarify that when you get to
17 the agenda items. Greg Ott for the record. Let me
18 clarify that when you get to the actual item in question
19 there. You guys can proceed with the agenda at this
20 point.

21 PRESIDENT FONG: Is there discussion
22 specifically on the agenda? Seeing none, I call for a
23 vote. All in favor of approving tonight's agenda signify
24 by saying aye.

1 (All board members say aye.)

2 PRESIDENT FONG: Let the record show that that
3 was a unanimous aye.

4 Item 4. Certification of the posting.

5 Ms. Eklof, do we have everybody's certificate?

6 MS. EKLOF: Yes, they've all been posted.

7 PRESIDENT FONG: Item 5. We have an interview
8 of an advanced practice homeopathy applicant Hazel Gois.

9 MS. GOIS: Gois.

10 MR. FONG: Gois (pronouncing). Who has taken
11 the exam in Las Vegas at the Nevada Clinic and done so
12 successfully. Congratulations. And will be working with
13 her supervisor Dr. Terry Pfau. Her application was
14 reviewed and approved by the board secretary K.J. Smith.

15 Before we begin on that. K.J., would you
16 officially say everything is in order?

17 MS. SMITH: Everything has been checked.
18 You're an outstanding student. Graduated from the
19 University of California, got two degrees. I'm impressed.
20 Welcome.

21 PRESIDENT FONG: Do we have a protocol from
22 Dr. Pfau?

23 MS. EKLOF: Yes.

24 PRESIDENT FONG: Yes, we do. Good.

1 So first off, for getting this rolling, do we
2 have a motion to approve Hazel.

3 MS. EKLOF: I think you need to interview her
4 first.

5 PRESIDENT FONG: Very well. If we're going to
6 interview, does anybody have questions for the applicant?

7 DR. ESLINGER: Have you trained with Dr. Pfau?

8 MS. GOIS: I haven't trained with Dr. Pfau. I
9 had my homeopathic training at, it was the National
10 College of Natural Medicine in Portland, Oregon. It was
11 part of my education as a homeopathic doctor. I did some
12 hours with him before I graduated.

13 MS. KENNEDY: Working classical homeopathy?

14 MS. GOIS: Yes. That's what I was trained in.

15 MS. KENNEDY: Like Dr. Pfau does?

16 MS. GOIS: Yes.

17 MS. KENNEDY: I move we approve her
18 application.

19 PRESIDENT FONG: We have a motion to approve
20 Hazel's application by Diane Kennedy. Do I hear a second?

21 MR. MINSTREL: I second it.

22 PRESIDENT FONG: We have a second by Mr. Don
23 Minstrel.

24 Any other further discussion? Seeing none, I

1 call for the vote. All in favor of approving our newest
2 APH in the state of Nevada please signify by saying aye.

3 (All Board members say aye.)

4 PRESIDENT FONG: Let the record show it was a
5 unanimous vote again.

6 Welcome to the community.

7 (Applause.)

8 PRESIDENT FONG: You flew all the way up here
9 to Reno to get a certificate?

10 MS. GOIS: Actually, I ended up -- because my
11 parents are in Las Vegas as well, and they actually wanted
12 to drive up here and see what it was like, so we drove up.

13 PRESIDENT FONG: Congratulations. We'll be
14 seeing you soon.

15 Item number 6. We have the deliberation and
16 decision on what actions to take on the remand of the
17 Second Judicial Court Case number CV17-02142, which is
18 pursuant to a Petition for Judicial Review filed by
19 Dr. Michael Gerber regarding discipline issued by this
20 Board.

21 The Board will consider briefs filed by the
22 parties, and receive oral arguments in the matter.

23 Before we start, I think we had an item that
24 we began to discuss, or is there any other discussion that

1 we need to have? Any board members want to bring up
2 anything?

3 I think you wanted a clarification from
4 Mr. Ott about the recusal.

5 MR. OTT: The issue raised was a relationship
6 between a board member and Dr. Gerber. My understanding
7 is, my recollection was from the prior meeting that there
8 was no fiduciary relationship, and that Dr. Eslinger
9 previously set forth his understanding of the current
10 relationship, and then disclosed that he was not biased,
11 and he was able to be impartial in this matter.

12 As long as there is no pecuniary relationship,
13 and the facts that you recited last time are true, you
14 would still be able to sit on this matter. But I'll leave
15 it to you to let us know if there's any update from the
16 last meeting or if the relationship --

17 DR. ESLINGER: No. I recused myself from the
18 original decision but felt that the current situation I
19 could provide an unbiased opinion.

20 MR. OTT: Was there a factual change between
21 the original decision and now? I thought there was a
22 factual change. Was there not? I'm misremembering?

23 MS. KENNEDY: I thought you were no longer a
24 patient.

1 DR. ESLINGER: No, I'm not.

2 MS. KENNEDY: So that's what the factual
3 change is.

4 MR. OTT: That was my recollection. Thank you
5 for the clarification.

6 MS. KENNEDY: In regard to my question, so
7 that we're totally on the same page here, with Board
8 Member Smith and her relationship.

9 MR. OTT: So there is an obligation for
10 members to recuse themselves when there is a financial
11 relationship that would render them unable to come to a
12 fair, unbiased opinion. There's also an ability to recuse
13 yourself whenever you are unable to come to a fair and
14 unbiased decision based on another relationship.

15 So I'm unaware of any financial relationship
16 that would require recusal under the statutes. If there
17 is a personal relationship that would prevent a member
18 from being unbiased, they could certainly state that and
19 recuse themselves.

20 MS. KENNEDY: Thank you. I just wanted to
21 have everything clear so that nothing could come back on
22 that.

23 PRESIDENT FONG: You're satisfied with the
24 answer?

1 MS. KENNEDY: Yes. He's our attorney.

2 PRESIDENT FONG: Sounds good. Before I allow
3 for counsels to deliberate or make their argument, is
4 there anything else that any of the board members need to
5 say or to ask anyone?

6 MS. KENNEDY: Can we ask questions?

7 PRESIDENT FONG: At this point if there is
8 anything that needs to be clarified before we get started,
9 I'll allow it.

10 MS. KENNEDY: I would like to know the status
11 of Dr. Gerber's pending renewal of his licenses. Since
12 our last meeting with him what the status of his renewal
13 in California and Washington, D.C. is.

14 MR. MINSTREL: Do you want to address that,
15 Jeff?

16 MR. DICKERSON: Sure. Can I be recognized?

17 PRESIDENT FONG: Yes, sir, please.

18 Mr. Dickerson, Dr. Gerber's counsel, will
19 address and I will allow it.

20 MR. DICKERSON: Based on Department 1's
21 decision, the aliphatic licensure is not necessary. There
22 was a withdrawal of the effort in D.C. and California to
23 obtain reinstatement of those licenses, because under her
24 order those are no longer necessary for renewals.

1 PRESIDENT FONG: Anything further?

2 MS. KENNEDY: Huh-uh.

3 PRESIDENT FONG: All right.

4 MR. MINSTREL: What position would that put
5 this board in?

6 PRESIDENT FONG: At this point it's just a
7 point of clarification.

8 If there is no other comment, I'm going to
9 allow each of the counsel to present for 15 minutes,
10 maximum.

11 Mr. Ott, is there an order I have to follow,
12 which counsel first?

13 MR. OTT: No. I think generally the party
14 bearing the burden, which would be Miss Bordelove, would
15 go first.

16 Just to note for the record, neither party
17 requested an argument, so I don't know if 15 minutes is an
18 acceptable time, or if they have even prepared anything.
19 But we did agendize it so the board could hear argument if
20 the board would like to.

21 MS. SMITH: I don't.

22 PRESIDENT FONG: Just to say that I'm true to
23 my word, since -- actually, I've never had you introduce
24 yourself.

1 THE REPORTER: I'm Carol. Carol Hummel.

2 MR. FONG: We want to make sure Carol has this
3 for the record.

4 Rosalie, would you like to go first?

5 MS. BORDELOVE: Sorry. I had you on mute. I
6 would be happy to make some arguments. I will keep it
7 fairly brief.

8 Essentially, the judge's order on the petition
9 for judicial review required the board to re-evaluate the
10 facts in the record under NRS 630A.325 as opposed to
11 630A.230 which the board had evaluated previously.

12 630A.325(1) requires to renew a license or
13 certificate on or before January 1st of each year. An
14 applicant must apply to the board for renewal, pay an
15 annual fee, submit evidence to the board regarding
16 continuing education, and submit all information required
17 to complete the renewal.

18 I would argue that that would include any
19 information requested on the renewal form. The 2017
20 renewal form at issue in this case requested, it had a
21 line to write all, to states, territories or foreign
22 countries where you currently hold a license to practice
23 medicine.

24 And I want to emphasize that language.

1 Currently hold a license to practice medicine.

2 Dr. Gerber listed his Washington, D.C. license
3 which is, I think, undisputed at this point that that
4 license was inactive, that he was and is restricted, that
5 he may not practice medicine in that jurisdiction.

6 And I want to point the board still to NRS
7 630A.350 which was alleged, a violation of that statute
8 was alleged in the first claim for relief under the
9 original complaint in this matter. And that is the
10 board's primary disciplinary statute.

11 Subsection 3 of that statute lists grounds for
12 discipline, including obtaining, maintaining, or renewing
13 or attempting to maintain or renew a homeopathic license
14 by bribery, fraud, misrepresentation, or by any
15 misleading, inaccurate or incomplete statement.

16 And I believe, and I would like you to decide
17 for yourself, that listing the D.C. license under that
18 line without any note, which would have been easy to add
19 to it regarding the restricted and inactive nature of the
20 license is, at a minimum, a misleading and inaccurate or
21 incomplete statement which is grounds for discipline.

22 And I respectfully request that the board find
23 that there is a violation of the law there, and then issue
24 discipline accordingly.

1 I would just want to point to a couple of
2 arguments that Dr. Gerber's counsel made in the past
3 regarding the board's knowledge of the -- the board
4 staff's knowledge of the nature of the Washington, D.C.
5 license over 10 years ago.

6 And I want to point to the fact that there is
7 no evidence in the record that Dr. Gerber ever had any
8 knowledge that the board was in any way aware of this.
9 And his choice to neglect to make a note or inform the
10 board regarding the Washington, D.C. license was because
11 he hoped the board would never find out.

12 But whether or not the board knew in the past,
13 there is significant case law to show that the board is
14 not stopped from enforcing the law in the future. I want
15 to kind of clarify that. Otherwise, I would ask that the
16 board still find there is a violation here, and then
17 decide the discipline from there.

18 PRESIDENT FONG: Thank you, Rosalie. Does
19 that conclude your comments?

20 MS. BORDELOVE: Yes, it does.

21 PRESIDENT FONG: Mr. Dickerson, would you like
22 to make any comments to the board?

23 MR. DICKERSON: Thank you, Mr. President.

24 PRESIDENT FONG: Please.

1 MR. DICKERSON: Thank you. The board should
2 revisit the amended complaint in this matter. That
3 complaint says nothing about the renewal statute and says
4 nothing about the circumstances of answering this question
5 to which Ms. Bordelove is referring. This is not at issue
6 in this proceeding.

7 What is at issue in this proceeding is the
8 original Amended Complaint in this matter which was based
9 on the wrong statute as Department 1 found. That has not
10 changed. That Amended Complaint still stands as the
11 operative pleading in this case. That is the charging
12 document against which Dr. Gerber has to defend himself.

13 Dr. Gerber made a motion to dismiss based upon
14 the same arguments that Judge Drakulich adopted. Those
15 arguments having been adopted, meaning that that motion to
16 dismiss should have been granted in the first instance.

17 The board should vacate its prior order that
18 was remanded, and should vote to grant that motion to
19 dismiss, and dismiss the Amended Complaint with prejudice.
20 That is how this is easily resolved, and how Department
21 1's order, Judge Drakulich's order, is easily satisfied.

22 This idea of converting what isn't there into
23 what the district attorney or the deputy attorney general
24 wants to be there, can't be done. It just can't be done

1 at this stage of the proceedings.

2 So even if it could be done, however, Judge
3 Drakulich has already addressed the issue of the
4 untruthfulness allegation. And she went to the root of
5 it. She didn't just talk about what statute applied, she
6 went to the root and heart of the matter and said that
7 substantial evidence does not support the board's
8 conclusion of law that he was untruthful on his renewal
9 applications.

10 Even if Ms. Bordelove is correct in the fact
11 that those questions on the application were not
12 accurately answered, that doesn't end the inquiry, because
13 Department 1 has found that those questions were
14 immaterial to the decision to renew under the renewal
15 statute.

16 The board can ask all the questions it wants
17 on an application form, the falsity of which has to be
18 material to the decision of whether to grant or deny a
19 renewal. And because of Department 1's ruling that those
20 questions and the answers to them are not pertinent to the
21 renewal process, there is no material falsehood, there's
22 no material untruthfulness, there's no material
23 misrepresentation, and therefore there is no basis upon
24 which to impose discipline for what Ms. Bordelove is

1 contending should be done.

2 The board has already been through this
3 administratively, has spent three days on this before, and
4 since spent a few hours. And here we are about to embark
5 on a consideration of a proposal that is simply going to
6 lead to another petition for judicial review and other
7 consequences, possibly.

8 And Department 1 is set up. She is not going
9 to go against her order. She is not going say, well,
10 maybe I was wrong on that, no substantial evidence to
11 support the finding of untruthfulness. She is not going
12 to do that. She is going to say, that's what I said
13 before. I remanded it to you to comply with my order.
14 You didn't comply with my order, and therefore I'm
15 reversing you again.

16 And in that instance I think she will probably
17 put an end to it with an order of reversal with
18 instructions on remand that you do what I'm asking you to
19 do, and which Dr. Gerber is asking you to do, which is to
20 vacate the prior order of October 24th of 2017, put that
21 out of the way.

22 The Amended Complaint still exists, go back
23 and grant the motion that Judge Drakulich agreed with, the
24 reasons of which Judge Drakulich agreed with, adopt that

1 reasoning, grant that motion with prejudice, and dismiss
2 the Amended Complaint.

3 As I have also argued, and the deputy attorney
4 general does not argue otherwise, Nevada law is clear that
5 the \$30,000 paid by Dr. Gerber should be paid back for the
6 reasons stated in our brief. We maintain that the
7 imposition of restrictions, including the supervision by
8 Dr. Dublin at \$2,000 a month should be reimbursed as well.

9 But I would leave that later part to your
10 discretion. But I don't think there's any discretion as
11 to the \$30,000.

12 Based upon that, we would ask that the board
13 act accordingly. Thank you.

14 PRESIDENT FONG: Thank you both for keeping
15 comments brief. You both got done under five minutes.

16 I'm opening up to discussion. But, Rosalie,
17 do you have anything else that you want to rebut? I'll
18 give you both a chance to do that.

19 MS. BORDELOVE: I have a couple comments,
20 nothing extensive. But I would like to point you, I think
21 in your board packet is the original Complaint. And the
22 first claim for relief states by falsely indicating that
23 he was licensed in good standing to practice allopathic or
24 osteopathic medicine in any state or country, the District

1 of Columbia or territory or possession of the United
2 States, Respondent provided an untrue statement to the
3 board on his renewal licensure application in violation of
4 NRS 630A.350, and which is grounds for disciplinary
5 action.

6 And I understand that opposing counsel thinks
7 that that is somehow tied to the licensing statute, and
8 because it doesn't specifically mention the renewal
9 statute it somehow is invalid. That argument just doesn't
10 have a lot of base.

11 The district court made no reading or mention
12 even of the disciplinary statute which is the most
13 important statute here. It's the statute that gives the
14 board the statutory authority to issue discipline. And in
15 this case under 630A.350(3) it allows for discipline for a
16 false, misleading -- it goes for the full range from fraud
17 down to simply an inaccurate statement.

18 And I want to point that his statements on the
19 applications were at a minimum inaccurate and misleading.

20 The other thing I'll just mention is on the
21 attorney's fee issue with reimbursement. Counsel
22 continues to argue that his client should be reimbursed
23 for costs and all sorts of things, including interest, but
24 has listed absolutely zero case law or statutory authority

1 that the board even has the power to reimburse those
2 things.

3 So the board's first decision here is whether
4 there was a violation of the law. I think after that the
5 board can make any decision regarding the attorney's fees
6 issue. But I just wanted to point that part out.

7 PRESIDENT FONG: Thank you.

8 Mr. Dickerson, any rebuttal?

9 MR. DICKERSON: Department 1 did address
10 discipline, found that there was no basis to support a
11 finding of untruthfulness. End of story on discipline.
12 Nothing further.

13 PRESIDENT FONG: Thank you, sir.

14 Board members, discussion.

15 MS. SMITH: We have discussed this several
16 times. I think that everyone pretty well -- if they have
17 done their homework would be able to make a motion and
18 vote correctly. That's my personal opinion, because we
19 have discussed this and studied this numerous times.

20 MS. KENNEDY: How much -- does everyone
21 understand the judge's order? Has everyone read it,
22 dissected it, and understands the judge's order?

23 I think it's extremely important to understand
24 exactly what this order is talking about.

1 MS. EKLOF: All items being discussed here,
2 the documents are all in your packets.

3 MS. KENNEDY: Plus, they were previously sent
4 to us over time. So everyone on the board should have
5 gone through, looked through and determined, and
6 especially based on written arguments from both sides of
7 the parties to dissect as far as what their arguments are,
8 according to what the judge is saying, and then augmented
9 today by oral arguments.

10 PRESIDENT FONG: I believe there's
11 clarification on the floor here. I haven't heard anybody
12 answering Ms. Kennedy.

13 First off, let me just ask as the chair, has
14 everybody actually read this?

15 (All board members respond yes.)

16 PRESIDENT FONG: So everyone has read this.
17 Do you understand what is in this document?

18 (All board members respond yes.)

19 PRESIDENT FONG: For the record, we do
20 understand that.

21 So now we have before us arguments on this
22 matter. Are there discussions further that people want to
23 bring up points for?

24 DR. ESLINGER: I have a question about how can

1 a judge say that an application for license, there's no
2 question that it was inaccurate when it was pointedly
3 inaccurate?

4 MS. KENNEDY: If you read through it, Bob,
5 you'll see some conflicts of her opinion in here. And if
6 you read through, there are conflicts within her order to
7 that.

8 DR. ESLINGER: Can you explain to me how a
9 judge can say this didn't happen when in point of fact
10 it's in print that it did happen?

11 PRESIDENT FONG: Mr. Ott, I'm going to ask you
12 to render an opinion about possibly the difference in what
13 Judge Drakulich's take on the issue was versus apparently
14 what has been put on a form.

15 MR. OTT: Deputy Attorney General Greg Ott.
16 The judge was able to review all of the evidence before
17 the board, as well as its findings and conclusions, and
18 the judge issued the order that she did.

19 It's not uncommon for one side or another to
20 disagree with the court's order. But a lower court or a
21 lower administrative body doesn't have the ability to
22 overturn that ruling. You have to act in accordance with
23 it.

24 I have seen orders that are inconsistent or

1 that I didn't necessarily agree with completely, but the
2 job of the lower body is not to question the order, it's
3 to comply with it the best way that it can.

4 I don't know if that fully answers your
5 question.

6 DR. ESLINGER: No, it doesn't.

7 MR. OTT: Perhaps also if you were to point
8 out the inconsistencies, the board could help come to a
9 conclusion as to the proper interpretation. It might be a
10 subject for deliberation.

11 PRESIDENT FONG: I guess he's basically asking
12 where do you see the conflict between these two things?

13 DR. ESLINGER: How can a judge look at an
14 application that is pointedly been shown to be inaccurate
15 and say this is not inaccurate? That's my question. How
16 can any legal opinion founded upon that faulty reasoning
17 ever hold water?

18 PRESIDENT FONG: I'm going to ask you to be
19 careful about your language on that one, please. We're
20 going to be respectful of Judge Drakulich one way or the
21 other.

22 DR. ESLINGER: I want to be respectful. I'm
23 just wondering how can any judge -- I'm not talking about
24 her in particular. I'm saying how can any judge look at

1 specific written evidence on paper that is shown to be
2 inaccurate purely by its existence and determine that that
3 is okay or that is correct when it is not correct?

4 PRESIDENT FONG: If I could ask a question
5 here. Before Judge Drakulich were you able to make
6 deliberations or, Rosalie, were you guys able to make any
7 argument in front of this judge?

8 MR. DICKERSON: Yes. We appeared in front of
9 her and orally argued it for about an hour, hour and a
10 half.

11 MS. KENNEDY: Both of you did?

12 MR. DICKERSON: Yes.

13 PRESIDENT FONG: I just wanted to clarify
14 that.

15 MR. DICKERSON: She had lots of questions.
16 The judge did.

17 PRESIDENT FONG: Does anybody have other
18 comments?

19 MS. KENNEDY: I just caution everyone to
20 carefully read this order and make your mind up based on
21 what this order says, knowing that it was sent back to
22 this board with the idea this board has the ultimate say.

23 PRESIDENT FONG: Any more comments? None on
24 this end. Dr. Ibarra, anybody?

1 DR. IBARRA: No comment.

2 PRESIDENT FONG: Anybody from this end?

3 MR. MINSTREL: No.

4 PRESIDENT FONG: As the president of this
5 board I have a few things I'm going to say. One, I do
6 understand the judge's order is that we have to base our
7 decision, since this was remanded back to us on
8 specifically the subsections of 630A that are supposed to
9 apply to renewals.

10 I would bring up one fact against this though
11 is the fact that under subsection 230, although this is in
12 regard to a new applicant, there is a subsection G which
13 says -- again 630A230(G). It actually says for somebody
14 -- just to paraphrase. Somebody who is applying for such
15 license subsection G specifically reads, "Meets any
16 additional requirements established by the board
17 including, without limitations, requirements established
18 by regulations adopted by the board."

19 MS. SMITH: That says that?

20 PRESIDENT FONG: I know this is not where I'm
21 going to be basing my argument on here. However, the
22 board has adopted a renewal form.

23 MS. KENNEDY: It's in our bylaws.

24 PRESIDENT FONG: Right. That clearly states

1 that you have to have a stated licensure.

2 And do you have that bylaw? Can you read it
3 into the record, please.

4 Specifically under Section 3 of our bylaws
5 there is under, and it's about renewal of applications. I
6 don't want to waste everybody's time, but the line that
7 comes down, here about halfway down the paragraph it says,
8 "To verify the license certificate holder is in good
9 standing with other State Boards."

10 So basically we have to actually have a
11 verification of the other licensure. So although this is
12 a shortfalling in our statutes right now, this can be
13 basically an understanding that makes the argument that we
14 as a body have adopted all of these procedures to renew a
15 license. And when you accept that you're going to get
16 licensed by this board, you accept these additional
17 requirements.

18 I'm just quoting here, "established by the
19 board, including, without limitation," all of these
20 additional things that you need to do.

21 From that standpoint the understanding also
22 moves forward that this board has to determine the
23 qualifications. And this is under our duties under
24 subsection 155. Determining the qualifications of an

1 exam, the application is obviously for licensure, et
2 cetera, and that includes the methods of checking for
3 background.

4 If I go to 630A.135, we have an acknowledgment
5 of statutory ethical standards. And each member of the
6 board shall comply with the provisions of NRS 281A.500.
7 If you don't know what that is, it means that we can't
8 necessarily accept falsehoods -- not necessarily known
9 falsehoods, but things that are in error on these
10 applications or on these renewal forms.

11 Basically what we have here is we do have an
12 order from a district judge saying that we have to follow
13 a very specific subsection of 630A that only deals with
14 renewals.

15 However, I submit to my fellow board members
16 that although subsection 230A was ordered for us not to be
17 looked at in regard to qualifying of somebody who was only
18 applying initially, that there are extensions from that
19 subsection that reach into the renewal process.

20 In the original arguments for this particular
21 case, the understanding is that the homeopathic board when
22 you actually have to have an M.D. or a D.O. to have a
23 qualification to become an HMD, that is a qualification
24 that should be by -- I shouldn't say by assumption, but

1 it's understood that should be required.

2 In one essence, as somebody has described to
3 me, this board is essentially a subspecialty board that
4 happens to have the power to license. Any other
5 subspeciality board you need to maintain that license.

6 Looking at everything that's in front of me
7 tonight, I unfortunately have to turn around and say that
8 there is a shortfalling still. And at this point I will
9 have to say that that shortfalling, under my personal
10 review of thing, puts this board at a bit of crossroads
11 here.

12 We need to decide is only the decision by
13 Judge Drakulich, who we respectfully appreciate, and we
14 respectfully accept as essentially the rule of law here,
15 but does it have shortfalls? Based on what I've said, I
16 think I have actually applied some of the shortfalls to
17 this.

18 I'm asking members of the board now to
19 determine whether or not what I've given you as
20 shortfallings are enough to say that we still have enough
21 of an issue that we should move forward with restoring of
22 the license or should we not restore the license, should
23 we keep things the way they are now? That is what I
24 propose to you.

1 So I'm opening this up now for further
2 discussion.

3 MS. KENNEDY: You should read this into the
4 record.

5 PRESIDENT FONG: Miss Kennedy has handed me --
6 this is Judge Drakulich's order?

7 MS. KENNEDY: Yes.

8 PRESIDENT FONG: Judge Drakulich's order on
9 Page 8, line 22. "Importantly, the application of which
10 the decision was based was Gerber's 2017 application to
11 renew," underline renew, "his license ROAA (411). It is
12 one of many that he filed annually since obtaining his
13 original license in 1984."

14 You wanted me to read that into the record.

15 MS. KENNEDY: Yes, I did. It states that she
16 was basing it on the renewal which is contradictory to
17 other parts of the order.

18 PRESIDENT FONG: So you guys all read this?

19 MS. SMITH: We have all read it. We're all
20 aware of what everything says, and we're just going around
21 in a circle now, Bruce. I seriously apologize, but we
22 need to bring this to a head and make our decision.

23 Do we need to correct things down the road or
24 do we not, but we do need to bring a conclusion to this.

1 PRESIDENT FONG: More discussion?

2 DR. ESLINGER: What about the discussion of
3 the fact that this has not been a settled issue yet?

4 PRESIDENT FONG: I think that we'll go ahead
5 and shelve that temporarily for right now. There was some
6 discussions, prior to my walking into here, with Dr.
7 Eslinger about the applicability of the order here, but I
8 think we're not going to bring that up tonight.

9 I do have one thing that I do want to bring
10 up. Again, I certainly don't want this to come out as
11 being insulting or otherwise. But I'm just applying my
12 research into what I have read here.

13 A law dictionary by Steven Gifis, and forgive
14 this terminology, but the word perjury falls under a
15 saying in here I've underlined. "Today's statutes have
16 broadened the offense so that some jurisdictions and any
17 false swearing in a legal instrument or legal" -- I'm
18 having a hard time reading -- "the settling is perjury,
19 even if there is no malice or other precedent in a
20 judicial proceeding."

21 It also goes on to say that basically, in
22 paraphrasing, that even without full knowledge of
23 something that you're attesting to, it would fall under
24 that legal precedent unfortunately.

1 Under the Nevada Supreme Court, the definition
2 of moral turpitude is perjury. Unfortunately, as we go
3 forward through this, the board has to establish also the
4 grounds of a good moral character.

5 Now, I think Dr. Gerber is a great guy. I
6 think he's a great person. I don't think he's a poor
7 character. But in the strictest interpretation of the law
8 there is an issue that there may have been a perjury,
9 because he did attest to having a license. Even though he
10 didn't understand the fact that apparently an inactive
11 license didn't match that, it still matches the definition
12 in the legal jargon as perjury.

13 And you're not necessarily, we're not
14 necessarily saying that this is something that is a wholly
15 punishable offense. But that's something that needs to be
16 brought up in this. And I believe Ms. Bordelove is
17 alluding to that.

18 So again, I do put these arguments out there
19 simply because I think everybody has to understand that
20 both sides of this, both Judge Drakulich's opinion and
21 also in my review of the law, we want to have a little
22 more complete picture.

23 With that, I would like to have further
24 discussion or somebody at this point to make a motion.

1 MS. SMITH: I make a motion that we dismiss
2 these charges against Dr. Gerber. What you want to do --
3 no, I can't put that in the motion. And refund to him the
4 30,000.

5 PRESIDENT FONG: I'm going to hold you on
6 that.

7 MS. SMITH: Put me back to I make a motion
8 that we recuse Dr. Gerber of these charges.

9 PRESIDENT FONG: So a motion has been made
10 that we find -- that we're -- can I ask you, would you
11 agree with the following. That you agree with Judge
12 Drakulich's decision, and that Dr. Gerber should be --
13 that we should find that there's no fault to proceed with
14 in this case. Is that what your motion is?

15 MS. SMITH: That is correct. That is my
16 motion. K.J. Smith.

17 PRESIDENT FONG: Carol, did you get all that?

18 THE REPORTER: I did. Thank you.

19 PRESIDENT FONG: May I have a second for the
20 motion.

21 MR. MINSTREL: I would like to second the
22 motion.

23 But I did want to make a comment. I don't
24 understand why Gerber would actually abandon the licensure

1 since the date is coming up, the 30th of June, in getting
2 that licensure. That seems to be a little bit cart before
3 the horse already deciding that we would rule entirely
4 with the judge, abandoning some of our own statutes.

5 PRESIDENT FONG: I'm sorry?

6 MS. KENNEDY: What he's saying is from the
7 question I asked -- I want to clarify. What you are
8 saying is that they abandoned any further applying for
9 licenses in other states prior to this board --

10 MR. MINSTREL: Making a decision.

11 MS. KENNEDY: -- making a decision?

12 MR. MINSTREL: Right.

13 MS. SMITH: But there's a motion on the floor.

14 MS. KENNEDY: We're having discussion.

15 There's a first and a second.

16 PRESIDENT FONG: Discussion is open.

17 MS. KENNEDY: Mr. Minstrel brought up a point
18 which I think I clarified for you. He did. According to
19 his attorney he has abandoned any further --

20 MR. MINSTREL: Proceedings for licensure by
21 this board.

22 MS. KENNEDY: To go through other states,
23 specifically Washington, D.C. and California, and have
24 abandoned those pursuits to obtain a license from either

1 state, and in both of those pursuits; is that correct?

2 MR. DICKERSON: Asked and answered.

3 MS. KENNEDY: Pardon?

4 MR. DICKERSON: Asked and answered.

5 MS. KENNEDY: Okay.

6 DR. IBARRA: Does it mean that he stopped
7 pursuing license?

8 MR. DICKERSON: Yes.

9 DR. IBARRA: License in those states?

10 MR. DICKERSON: Yes.

11 MR. MINSTREL: So he has not abandoned it or
12 he's still pursuing?

13 MS. KENNEDY: He has abandoned it.

14 MR. MINSTREL: Okay.

15 PRESIDENT FONG: Further discussion?

16 MS. KENNEDY: I think that we need to make
17 this clear, because it's been a point of contention prior
18 to this proceeding, not involving this matter, but in
19 years past.

20 "Any license or certificate issued pursuant to
21 NRS 630A.80 is a revokable privilege, and no holder of
22 such license or certificate acquired therein any vested
23 rights." It's a privilege to have a license, it's not --
24 period.

1 PRESIDENT FONG: Ladies and gentlemen on my
2 board, I want to put it out to you right there that when
3 we put this forward, as Miss Kennedy said, there is a
4 privilege to have a license, it's not a right to have a
5 license.

6 However, in all fairness, I do read Judge
7 Drakulich's order. I do know that we do have
8 shortfallings in our own statutes. And I'm going to make
9 it aware to you, no matter what's happening in this vote
10 that's coming up, that this board is going to correct
11 those statutory shortfalls.

12 So I would recommend if you have ceased your
13 efforts to try to obtain these licensures, that you
14 actually resume those, because it will be corrected. And
15 it is only a matter of, shall we say time, before that
16 correction occurs. But the bottom line is that there is
17 clearly an order here by Judge Drakulich. It does point
18 out the shortfallings of the NRS.

19 MS. KENNEDY: It basically points out that the
20 original petition -- is that the correct word -- that was
21 filed by the AG's office, and I think it needs to be made
22 very clear here at this point so everyone understands.

23 This board did not bring about this action.
24 This board was forced into this action. We did not start

1 it, and we were put in the position to be where we are
2 right now. And what the judge has said is that in the
3 original complaint that the wrong statute was entered into
4 by the AG's office, and that's what she is stating in
5 here. Therefore, she is putting it back to this board to
6 say it's up to you.

7 PRESIDENT FONG: I would actually agree with
8 that analysis that this decision has been placed back on
9 this board. You guys should actually be feeling some
10 pressure right now. This is a big deal. We are talking
11 about a man's life here. But we're also talking about we
12 have to serve the public interest and serve the public
13 safety, that all things are said and properly done.

14 At this point we have a motion on the floor to
15 say that there is no additional findings that this board
16 has against Dr. Gerber. That has been seconded. That is
17 the first point that I'm going to ask for --

18 MS. KENNEDY: I don't think that's how the
19 motion -- it did not say there was no additional finding
20 in the motion. Can you read back the motion to us,
21 please.

22 (Record read by the reporter.)

23 PRESIDENT FONG: I think there were some
24 corrections after that.

1 (Record read by the reporter.)

2 PRESIDENT FONG: Since that's on the record, I
3 think as a board we can dissect this a little bit.

4 The first thing we need to do is, I believe
5 Mr. Ott will agree with me, is find whether or not the
6 board agrees with Judge Drakulich's findings. But then
7 the action that we take based on that decision should be
8 another vote.

9 MS. KENNEDY: We have a motion on the floor.
10 So we either have to rescind the motion and create a new
11 motion or you vote on this motion, have further discussion
12 regarding this motion.

13 MR. OTT: Member Kennedy is correct. There is
14 a properly-made motion on the floor that has been
15 seconded. There was some confusion because I believe
16 Member Smith's motion was amended by President Fong. She
17 accepted that amendment, and that was then seconded by
18 Mr. Minstrel.

19 So the proper motion is the one that was
20 restated by Dr. Fong, and then agreed to by Miss Smith.

21 MS. SMITH: So we have the motion on the floor
22 to dismiss, abiding by the rules of the judge.

23 MR. OTT: My recollection of the motion was
24 that you used the word dismiss. Dr. Fong said it was a

1 motion to find a non violation of any law based on the
2 order and the facts before you. But again, we can reread
3 the motion if necessary.

4 PRESIDENT FONG: For clarification would you
5 mind restating your motion and --

6 MS. KENNEDY: I don't think we need to do
7 that. I think we have --

8 MS. SMITH: I don't want --

9 MS. KENNEDY: -- a motion on the floor. And I
10 think it's not a matter of whether this entity, this board
11 agrees with the judge. It's been placed back in front of
12 this board as to what action we need to take.

13 And the motion on the floor is that does this
14 board want to dismiss everything and move on, and take all
15 the trees we have cut down and move on or do we want to
16 take it to a point where we have dissected, reviewed, and
17 looked at what this information really is saying to us?

18 PRESIDENT FONG: As chairman I would allow for
19 that to go forward. But I think for a point of
20 clarification, my personal feeling is we should kind of
21 actually dissect it out just a bit more as to which, each
22 part that we're all voting on.

23 It's a very nebulous thing that we're actually
24 voting on right now, because there are several parts to

1 this.

2 MS. SMITH: So I retract it and reput the
3 motion in place, is that what you are saying?

4 PRESIDENT FONG: My personal feeling, I think
5 that will add for the clarification.

6 MR. MINSTREL: I have one more thing I want to
7 mention.

8 PRESIDENT FONG: Let her restate the motion
9 first.

10 MS. KENNEDY: Still we haven't rescinded it.
11 We don't have a new motion, we have discussion. He should
12 be allowed to ask the question.

13 PRESIDENT FONG: Go ahead.

14 MR. MINSTREL: My question was, I am unaware
15 of this board holding the money on the -- I believe the
16 AG's office actually collected that money. So do we have
17 any money?

18 MS. KENNEDY: That has nothing to do with the
19 motion.

20 MR. MINSTREL: I know you held that, but I'm
21 just not clear.

22 MS. KENNEDY: Wait until we get to that point.

23 PRESIDENT FONG: That's why I want to separate
24 this out. There's too many items all at once, and I want

1 to do this. If you would not mind, simply rescind that
2 motion, and let's go ahead and restate these.

3 MS. SMITH: I will rescind the motion, K.J.
4 Smith, and put a motion on the floor that we return the
5 rightful license to Dr. Michael Gerber.

6 PRESIDENT FONG: I'll take that. Stop you
7 there.

8 So we have a motion on the floor to restore
9 the medical license to full standing for Dr. Gerber. Do I
10 hear a second for that?

11 MR. MINSTREL: I would second that.

12 PRESIDENT FONG: Now we can have discussion,
13 Don.

14 MR. MINSTREL: With discussion, as we have
15 just stated that he could have his license back, does that
16 come up for review at the end of this year again? In
17 which case I would think that he should have his ducks in
18 order by then.

19 PRESIDENT FONG: That is not part of the
20 motion, Don. The motion is strictly to restore a full --
21 I assume you mean a full license with all the privileges.

22 MS. SMITH: I do.

23 PRESIDENT FONG: So everybody understands
24 that's what you're discussing.

1 Any more comments from this side of the
2 gallery?

3 MS. KENNEDY: Out of the application, a
4 license that is on file now, meaning 2018 -- or no, 2017.
5 He's not had a full license since 2017.

6 So what license are we restoring?

7 MS. SMITH: His full license.

8 MS. KENNEDY: Which one?

9 MS. SMITH: The one he had all along or should
10 have had. That's a smart remark, and I -- his full
11 license he had in 2017.

12 PRESIDENT FONG: Would you accept an amendment
13 to your motion to say that we're restoring Dr. Gerber's
14 full HMD license with all privileges as associated?

15 MS. SMITH: That's too many words.

16 PRESIDENT FONG: Whatever. A full HMD license
17 with no -- an unrestricted license.

18 MS. SMITH: Dr. Michael Gerber's in full in
19 all content, and in all ways.

20 PRESIDENT FONG: Can I have a second for that
21 amendment.

22 MR. MINSTREL: Again, I would love to second
23 that.

24 PRESIDENT FONG: We have a motion on the floor

1 to restore Dr. Gerber's full licensure. Any further
2 discussion? Without seeing any of that, I call for the
3 vote. All in favor of restoring Dr. Gerber's full
4 licensure indicate by saying aye.

5 MR. MINSTREL: Aye.

6 MS. SMITH: Aye.

7 PRESIDENT FONG: Just for the sake of the
8 record, please state your name and say aye.

9 MR. MINSTREL: My name is Don Minstrel. Aye.

10 MS. SMITH: K.J. Smith. Aye.

11 PRESIDENT FONG: All opposed to the motion
12 please signify with your name and nay.

13 MS. KENNEDY: Diane Kennedy. Nay.

14 DR. IBARRA: Cora Ibarra. Nay.

15 DR. ESLINGER: Robert Eslinger. Nay.

16 PRESIDENT FONG: For the record, please let it
17 be stated we have three nays and two ayes, and the motion
18 does fail.

19 MS. KENNEDY: You have to vote.

20 MS. SMITH: It's not a tie.

21 MS. KENNEDY: He has to vote regardless.

22 PRESIDENT FONG: Based on the qualifications
23 and everything else that I have reviewed in the law --
24 this is Dr. Fong. Unfortunately, I would also have to

1 vote nay.

2 So at this point we move on.

3 We have a second issue, because the board has
4 chosen not to restore Dr. Gerber's license --

5 MR. OTT: Mr. Chair.

6 PRESIDENT FONG: Yes.

7 MR. OTT: You have voted down the motion that
8 was put forth. There has not been any motion or any
9 finding to find him in violation. So at this point it is
10 unclear whether such a motion would pass. There are many
11 reasons why members might have voted against that other
12 motion.

13 So before you move on to anything else, you
14 need to address the issue of whether he is in violation or
15 not to make sure the record is clear.

16 PRESIDENT FONG: I will entertain any motion
17 that suggests that Dr. Gerber is still in violation of all
18 of our statutes or our codes in the failure of his renewal
19 of his license.

20 MR. OTT: One other thing. I would hope that
21 any motion would have some sort of citation to the statute
22 that was violated or the reason.

23 DR. ESLINGER: I would make that motion based
24 on the regulation that you read that are part of our

1 regulations.

2 MS. KENNEDY: And bylaws.

3 DR. ESLINGER: And bylaws.

4 PRESIDENT FONG: We have a motion on the floor
5 that states by Dr. Eslinger that we do find that there
6 still are issues in regard to Dr. Gerber in regard to NRS
7 630A.230(G), the bylaws of the board, and also I believe
8 the renewal form that the board has adopted as part of its
9 requirements.

10 Would that suffice for you?

11 DR. ESLINGER: Yes.

12 PRESIDENT FONG: Do I have a second to that
13 motion?

14 DR. IBARRA: I second.

15 PRESIDENT FONG: Dr. Ibarra seconds. Any
16 discussion? Seeing no discussion -- sorry, Don.

17 MR. MINSTREL: I was simply curious about,
18 again, the licensing procedures again. When this comes up
19 again, and everything, I believe in grace. You know, give
20 him the grace considering. Because it is a very minor
21 mistake. Whether it was intentional or unintentional, I
22 think we do have the ability to extend grace over
23 something like that.

24 MS. KENNEDY: If you want to read the judge's

1 order, she states in the order that -- let me find it for
2 you.

3 PRESIDENT FONG: Just for the record, this is
4 actually a discussion about whether we're still finding
5 there is fault here.

6 MR. MINSTREL: Right.

7 PRESIDENT FONG: In regard to what we do with
8 that very likely should be our next action, but I'll allow
9 this.

10 MS. KENNEDY: According to the judge, he filed
11 annually since 1984. And if you go back through the
12 evidence of the hearing, you find out this is not just a
13 one-time clerical error, it also has gone on for quite
14 some time.

15 MS. SMITH: And we knew it.

16 MS. KENNEDY: I can tell you as a board
17 member, I never knew it.

18 PRESIDENT FONG: I did not.

19 MS. SMITH: I just wonder.

20 PRESIDENT FONG: That's enough.

21 Does that answer your question?

22 MR. MINSTREL: Yes, it does. Thank you.

23 PRESIDENT FONG: Is there any further
24 discussion? Seeing none, I would like to have a vote.

1 All those that find there is still a cause of action here
2 against Dr. Michael Gerber, please signify by saying aye.

3 DR. ESLINGER: Aye

4 DR. IBARRA: Aye.

5 MS. KENNEDY: Aye.

6 MS. SMITH: Nay.

7 MR. MINSTREL: Nay.

8 PRESIDENT FONG: For the record, we have three
9 ayes by Dr. Eslinger, Dr. Ibarra, Miss Kennedy. Two nays
10 by K.J. Smith and a nay by Mr. Minstrel. I, as president,
11 will have to join with the yays-- or the ayes, I'm sorry.

12 MS. KENNEDY: Motion carries.

13 PRESIDENT FONG: Motion carries. Thank you.

14 With that, we now as a board have to decide
15 what action to take on this. So what do we feel should be
16 the next step for Dr. Gerber? I'm not leaving him hanging
17 here.

18 MS. SMITH: I don't know.

19 PRESIDENT FONG: You have every avenue open to
20 you at this point for what you would like to do. Simply
21 deny the license altogether. You can take a different
22 tack on this. You can extend a limited license again with
23 all the options back where we were back in September or
24 October of last year or the year before.

1 DR. ESLINGER: I think extending a limited
2 license with the proviso that pursuit of these other
3 reinstatements of State licenses is resumed.

4 PRESIDENT FONG: So would you make that a
5 motion?

6 DR. ESLINGER: I'll make that a motion.

7 PRESIDENT FONG: Dr. Eslinger has proposed a
8 motion to the board that we continue to allow Dr. Gerber
9 to have a limited license.

10 I assume with all the current stipulations?

11 DR. ESLINGER: Exactly.

12 MR. MINSTREL: I will second that.

13 PRESIDENT FONG: Let me restate that.

14 All the current stipulations with the proviso
15 that he continues to seek a restoration of an MD license
16 at either one of the 50 states or the District of
17 Columbia.

18 MS. KENNEDY: What time frame?

19 PRESIDENT FONG: What time frame would you
20 like to give him?

21 DR. ESLINGER: Six months.

22 MS. SMITH: That's pretty short when you're
23 working with the government.

24 MR. MINSTREL: Yeah, it is pretty short.

1 DR. ESLINGER: 12 months is fine with me.

2 MS. SMITH: A year.

3 PRESIDENT FONG: Sounds like everybody wants a
4 year. Let's make it for a year.

5 Do I have a second on this motion?

6 DR. IBARRA: I second.

7 PRESIDENT FONG: Second by Dr. Ibarra. Any
8 discussion on this? Seeing no discussion, I call for the
9 vote.

10 All in favor of allowing Dr. Gerber to have a
11 limited license with the current stipulations, with the
12 proviso that he seeks out and restores his M.D. license
13 within the next 12 months, signify by stating aye.

14 MR. MINSTREL: Aye.

15 MR. ESLINGER: Aye.

16 MS. KENNEDY: Aye.

17 MS. SMITH: Aye.

18 PRESIDENT FONG: That, for the record, is
19 unanimous so I will also state aye.

20 Dr. Gerber, sorry to bring you in here to just
21 spin our wheels, but apparently we are in the same place.
22 But you do have 12 months to please, please restore your
23 other license.

24 Item 7, public comment. Any more?

1 DR. DUBLIN: Yeah, I would like to make a
2 comment. This is Dr. Dublin for the record.

3 I have been working with this gentleman for
4 two years. I've actually had the pleasure of working with
5 a couple of these board members, and honestly to say I
6 worked with any physician that was comparable to him would
7 be a lie. Okay. Above and beyond. He is magnanimous in
8 giving away care, he's a team player, he's always
9 cooperative, and he studies every night. He actually
10 reads up-to-date. I introduced both you and Dr. Bob to
11 up-to-date.

12 And what frustrates me is that for a minor
13 error, as Don says, he's been punished. Not only that, in
14 a sense I'm being punished because I'm supervising him.
15 I'm an independent practitioner. It's not my goal to go
16 around supervising people 30 years my senior,
17 significantly more experienced, more well versed in the
18 topic of integrative medicine.

19 And I think it's an absolute travesty, it's an
20 absolute travesty. It's embarrassing. Did you hear that?
21 It's absolutely embarrassing. And to put any of us in
22 this position -- raise your hand. Who here wants to
23 supervise? If I step down, I don't want to supervise
24 Dr. Gerber, who wants to supervise him?

1 Dr. Bob, do you want to supervise him?

2 MS. KENNEDY: The board can't respond.

3 PRESIDENT FONG: She's actually right, I can't
4 respond.

5 DR. DUBLIN: Good. You don't have to respond,
6 because you have been responding very well for the past
7 few months. And it's a shame. Because what you put him
8 and his family through is heartbreaking. And to come in
9 here and hear this, it's mind boggling.

10 So shame on you guys. Poop or get off the
11 pot. Don't torture him. If you want to sever his
12 license, you should have done it tonight. You should have
13 been man enough to end his license, end his career here
14 and now.

15 But no, it's gamesmanship, and it's just
16 absolute ignorance, in my opinion, for you guys to
17 continue to play this game.

18 So now he has to jump through a bunch of
19 hoops, spend another 50 or \$60,000 on legal fees in an
20 effort to try to secure a license that he held for years
21 that went inactive. He didn't know it.

22 Even on the Website. I looked tonight.
23 Granted in 1983. Expiration date is blank. We don't see
24 an expiration date. There is no conclusion. So he easily

1 could have gone on the Website and made the same
2 conclusion. I still have the license, I've been paying
3 the fees.

4 As far as I know, he's paid the fees every
5 single year, has canceled checks from Washington, D.C.

6 This is preposterous, absolutely preposterous.
7 I hope God has mercy on your souls. This decision is very
8 poor.

9 DR. ESLINGER: Can I say something?

10 MS. KENNEDY: No.

11 PRESIDENT FONG: Thank you, Doctor.

12 Any further public comment?

13 MR. OTT: I wanted to go back. You'll have to
14 take public comment, but the doctor reminded me. The
15 board did not make any ruling about the attorney's fees
16 that were previously charged. You probably should address
17 that since it was specifically addressed in the motion and
18 order.

19 PRESIDENT FONG: Okay. So do we have a motion
20 regarding the returning of the \$30,000 to Dr. Gerber?

21 MS. SMITH: I'll make a motion that we should
22 return it.

23 PRESIDENT FONG: There's a motion by K.J.
24 Smith to return the \$30,000. Do I have a second on that?

1 MR. MINSTREL: I would second it. I believe
2 it was unfair to make him jump through this many hoops. I
3 really do.

4 PRESIDENT FONG: Mr. Minstrel seconds it. Any
5 further discussion? Seeing none, I call for the vote.
6 All in favor of --

7 DR. ESLINGER: Is it still open for
8 discussion?

9 PRESIDENT FONG: Absolutely.

10 DR. ESLINGER: I believe the board is one of
11 the victims in this process.

12 MR. MINSTREL: I agree.

13 DR. ESLINGER: The board is backed in a corner
14 to apply the letter of the law. And if we want to look at
15 the records and see how many physicians in Nevada have a
16 license in other states, and how many don't, and we're
17 being asked to make an exception for one individual who we
18 all agree is a great guy, he's a good physician, practices
19 quality of medicine.

20 But, the law is the law. And there is no
21 exception to that. And I believe that is what we're
22 applying to.

23 So I believe the board was backed in a corner
24 by the AG's office by a complaint from a member of the

1 public who was his patient, and that's what set this whole
2 thing in motion.

3 This is not us grinding an axe against Dr.
4 Gerber. He's certainly caught up in it. But the issues
5 are far bigger than that. And if we don't decide this
6 properly, long after we're gone there is going to be
7 ramifications in this state to our profession. That is
8 what is at stake here.

9 PRESIDENT FONG: Thank you, Dr. Eslinger.
10 Anybody else?

11 MR. MINSTREL: I feel that the patient
12 actually was --

13 PRESIDENT FONG: No, that's nothing to do with
14 this. Please.

15 MR. MINSTREL: Thank you. Withdraw.

16 PRESIDENT FONG: I appreciate you always
17 bringing up stuff. Let's be careful with that.

18 Seeing no further discussion, we have a motion
19 on the floor that we return \$30,000 to Michael Gerber, and
20 all in favor of that motion please signify by saying aye.

21 MS. SMITH: Aye.

22 MR. MINSTREL: Aye.

23 PRESIDENT FONG: We have two ayes by K.J.
24 Smith and Don Minstrel.

1 All opposed to return the 30,000 please
2 signify by saying nay.

3 MS. KENNEDY: Nay.

4 DR. IBARRA: Nay.

5 DR. ESLINGER: Nay.

6 PRESIDENT FONG: Three votes against, so the
7 motion fails.

8 So any additional public comment?

9 Seeing none, I make a motion to adjourn

10 MR. OTT: Again, before you adjourn. There's
11 been a rejection of the motion to deny. There has been no
12 finding the attorney's fees were warranted or they should
13 be taken based on the new violation.

14 I think in order to make sure the record is
15 clear the board could hear from Mr. Dickerson or Ms.
16 Bordelove if they wanted to on this issue. It's an
17 important issue, and I think the board needs to make a
18 motion affirmatively finding whatever they want to find,
19 not just relying on a rejected motion.

20 MS. SMITH: Where did the 30,000 go?

21 MS. KENNEDY: To the AG's office.

22 PRESIDENT FONG: Is that a motion?

23 MS. KENNEDY: No. I would say I would like to
24 hear from Ms. Bordelove on this issue.

1 PRESIDENT FONG: Rosalie, would you like to
2 make any comments?

3 MS. BORDELOVE: Regarding attorney's fees? I
4 mean, I can -- it's really up to the board what it would
5 like to do. I can give you a bit of a rundown, if you
6 like, on where those attorney's fees came from. I've had
7 a look at the work that Ms. Risoul, the deputy attorney
8 general that prosecuted this matter originally. I've had
9 a look at what hours were expended, and a little bit of
10 what they were.

11 If you would like a little bit of a rundown, I
12 guess, of where the attorney's fees came from, is that
13 what you're looking for?

14 MS. KENNEDY: My question really is, the
15 30,000 does not even begin to cover all of the attorney
16 fees and the board fees in this matter. Is that correct?

17 MS. BORDELOVE: That's correct. From what
18 I've looked at, the total amount of fees in the matter
19 through the hearings, this does not include the remand
20 hearing and things, but I don't know if you want to
21 include that.

22 But through the original hearing there were, I
23 think, over \$40,000 in attorney fees. That included both
24 Ms. Risoul's fees and fees to the AG's office for Miss

1 Bradley acting as board counsel, because the board does --
2 at any point, as you do right now, you have two deputy
3 attorneys general present, because it's a conflict to have
4 the same one be both a prosecutor and board counsel at the
5 same time.

6 The board has the ability to keep to
7 basically -- you're going to have to clear one with
8 attorney fees right now, I believe. I can tell you it
9 was, I think, over \$40,000 in fees originally, but you may
10 make your own determination of a number if you want to
11 order fees right now, or do no fees. It's your choice.

12 MS. KENNEDY: I make a motion that because the
13 board has fees, the attorney's fees were obviously not
14 adequately covered in the initial asking of the money, and
15 I would like to have an accounting so that we can divvy up
16 the money as to where it needs to go appropriately.
17 That's my motion.

18 PRESIDENT FONG: We have a motion on the floor
19 for -- Diane Kennedy has stated for additional fees. Is
20 there a second?

21 DR. ESLINGER: Second.

22 PRESIDENT FONG: So we have a second by Dr.
23 Eslinger. Any discussion on this issue?

24 MR. MINSTREL: I believe that we did decide on

1 30, and I thought that was --

2 MS. KENNEDY: We were advised by our attorney
3 who --

4 MR. MINSTREL: Who said it was higher, but --

5 MS. KENNEDY: No. She said --

6 MR. MINSTREL: We agreed to that.

7 MS. KENNEDY: No. She told us, and you can go
8 back and look at the transcript. She said that's going to
9 be the cap of my fees. And we were advised by Bradley
10 that we had to put a cap, we couldn't let this ongoing
11 amount go on and on, and she did not -- and Miss Eklof in
12 that meeting stated what our fees were. And the
13 prosecuting attorney general stated the wrong fees that
14 were not adequate.

15 MR. MINSTREL: Right. But if they make a
16 statement, it is basically what they had agreed to. And
17 so I don't believe they have a right to come back --

18 MS. KENNEDY: I'm not suggesting that we go
19 after anybody for money. I am saying that this board
20 needs to do our fiduciary homework and figure out what the
21 board's out, and what the AG's office is out, and figure
22 out how that money needs to be disbursed.

23 MR. MINSTREL: Well, I know the citizens of
24 the state of Nevada pay a lot in tax, so I think some of

1 that should be covered by themselves.

2 Honestly, they're not operating without money.
3 They don't have to get money from these cases.

4 MS. KENNEDY: Yes, they do. Yes, they do.
5 The attorney general's office is paid by the entity that
6 they represent.

7 MR. MINSTREL: That would be a conflict then.
8 That would be like a kangaroo court, because they need
9 their fees.

10 MS. KENNEDY: We don't need their fees.

11 MR. MINSTREL: Right. We don't get anything
12 for this.

13 MS. KENNEDY: We have a right to not use the
14 attorney general's office. There are many boards that
15 have their own in-house legal counsel.

16 PRESIDENT FONG: Let's stay on topic here.
17 We have a motion on the floor that the costs
18 of all these proceedings should basically be reassessed,
19 and that fair amounts, essentially, be assigned to the
20 parties forgoing here.

21 So is there any further discussion?

22 MR. OTT: I'm not sure that I understand the
23 motion. Is it a request for a continuance to a future
24 date so you can get more information?

1 MS. KENNEDY: Yes. Thank you. In other
2 words, I don't think tonight we have enough information to
3 say \$30,000 should go to the AG's office.

4 MR. OTT: Understood. And so you would be
5 requesting like a detailed billing?

6 MS. EKLOF: We have that.

7 MS. KENNEDY: She's not prepared tonight to
8 present to this board.

9 MR. OTT: I just wanted to make sure that I
10 understood.

11 MR. DICKERSON: Would Dr. Gerber get a chance
12 to look at that material too?

13 PRESIDENT FONG: Absolutely.

14 MR. DICKERSON: And comment upon it?

15 PRESIDENT FONG: Yes.

16 MS. KENNEDY: It's all public record.

17 MR. DICKERSON: I understand. I just want to
18 make it clear.

19 PRESIDENT FONG: Without any further
20 discussion, I call for a vote on this item, that we ask
21 for a stay until we can further address this. All in
22 favor of that please signify by saying aye.

23 DR. ESLINGER: Aye.

24 DR. IBARRA: Aye.

1 MS. KENNEDY: Aye.

2 MR. MINSTREL: Nay

3 MS. SMITH: Nay.

4 PRESIDENT FONG: So we have three ayes, two
5 nays, motion carries.

6 Any further public comment? If not, can I
7 have a motion to adjourn.

8 DR. ESLINGER: So moved.

9 PRESIDENT FONG: Thank you, Dr. Eslinger. Do
10 I have a second to adjourn?

11 DR. IBARRA: Second.

12 PRESIDENT FONG: Second by Dr. Ibarra.

13 All in favor of adjourning please say aye.

14 (All board members say aye.)

15 PRESIDENT FONG: The meeting is adjourned. It
16 is 7:25.

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1 STATE OF NEVADA.)

2) ss.

3 COUNTY OF WASHOE)

4

5 I, CAROL HUMMEL, a notary public in and for
6 the County of Washoe, State of Nevada, do hereby certify:

7 That on Tuesday, the 29th day of January,
8 2019, I reported the proceedings in the matter entitled
9 herein;

10 That said transcript which appears
11 hereinbefore was taken in verbatim stenotype notes by me
12 and thereafter transcribed into typewriting as herein
13 appears to the best of my knowledge, skill and ability and
14 is a true record thereof.

15 I further certify that I am not an attorney or
16 counsel for any of the parties, nor a relative or employee
17 of any attorney or counsel connected with the action, nor
18 financially interested in the action.

19

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24



CAROL HUMMEL, CCR #340

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