

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

NEVADA BOARD OF HOMEOPATHIC MEDICAL EXAMINERS
BOARD MEETING/HEARING

Best Western Airport Plaza Hotel
1981 Terminal Way, Aztec Room
Reno, Nevada

Saturday, July 22, 2017
9:30 a.m.

25

2

1 -oOo- APPEARANCES -oOo-

2

3 BOARD MEMBERS PRESENT:

4 Diane Kennedy, President
KJ Smith, Secretary-Treasurer
5 Robert Eslinger, Member
Keith Scott Mumby, Member
6 Cora Ibarra, Member
Nancy Eklof, Executive Director

7

8 FOR THE BOARD:

9 SARAH BRADLEY, Esq.
Senior Deputy Attorney General
10 State of Nevada
Office of the Attorney General
11 100 North Carson Street
Carson City, Nevada 89701

12

13

14 FOR THE COMPLAINANT:

15 HENNA RASUL, ESQ.
Senior Deputy Attorney General
16 State of Nevada
Office of the Attorney General
17 100 North Carson Street
Carson City, Nevada 89701

18

19 FOR THE RESPONDENT MICHAEL GERBER, HMD:

20 CAVANAUGH-BILL LAW OFFICES
By: JULIE CAVANAUGH-BILL, ESQ.
21 401 Railroad Street, Suite 307
Elko, Nevada 89801

22

23

24

25

3

1

-o0o-

SATURDAY, JULY 22, 2017; 9:32 A.M.; RENO, NEVADA

2

-o0o-

3

4

PRESIDENT KENNEDY: I'd like to call the meeting to order for the hearing -- sorry -- and the time is 9:32.

6

And has everyone signed in?

7

Okay. Perfect. Let's do a roll call to determine a quorum, starting with Dr. Mumby.

9

MEMBER SCOTT-MUMBY: Keith Scott-Mumby, yes.

10

MEMBER IBARRA: Cora Ibarra.

11

PRESIDENT KENNEDY: Diane Kennedy.

12

MS. BRADLEY: Sarah Bradley, Senior Deputy Attorney General.

13

14

MEMBER ESLINGER: Robert Eslinger.

15

MEMBER SMITH: KJ Smith.

16

MEMBER MINSTREL: Dawn Minstrel.

17

PRESIDENT KENNEDY: It's determined that we have a quorum.

18

19

MS. BRADLEY: Yes.

20

MS. RASUL: Sarah, can I talk to you for a second?

21

MS. BRADLEY: Sure. But let them go ahead and do public comment.

22

23 MS. RASUL: Okay. So long as it's not about the
24 case.

25 PRESIDENT KENNEDY: Yeah.

4

1 MS. RASUL: Okay.

2 MS. BRADLEY: Go ahead and do public comment.

3 PRESIDENT KENNEDY: So is there any public comment?

4 MS. RASUL: So long as it's not about the case.

5 MS. BRADLEY: You can't provide public comment
6 regarding a pending matter before the Board. So if your
7 comment is regarding that, it can't be taken at this
8 time. But if anybody has other public comment they would
9 like to make, they can. Okay.

10 UNIDENTIFIED SPEAKER 1: It's about the case.

11 MS. BRADLEY: Okay.

12 UNIDENTIFIED SPEAKER 2: We're here in support.

13 MS. BRADLEY: Of?

14 UNIDENTIFIED SPEAKER 2: Of Dr. Gerber.

15 MS. RASUL: Yeah, that's about the case.

16 MS. BRADLEY: Okay. That's still about the case,
17 yeah. I'm sorry.

18 UNIDENTIFIED SPEAKER 2: Okay.

19 UNIDENTIFIED SPEAKER 3: Can written comments be
20 submitted?

21 MS. BRADLEY: I mean, written comments can. But not

22 about the case, no. Until the Board decides a pending
23 matter before it, no comment can be received on that
24 matter. So the Board decides pending matters based on
25 evidence presented, arguments made by attorneys. And

5

1 then once they make their decision, you can make a public
2 comment about a matter once it's resolved. But until a
3 matter is resolved before the Board no public comment can
4 be taken on it.

5 PRESIDENT KENNEDY: So at this time, since the Board
6 has just received this, they may read the Complaint?

7 MS. BRADLEY: Yeah.

8 PRESIDENT KENNEDY: And the -- from here to Exhibit
9 A?

10 MS. BRADLEY: Yeah.

11 PRESIDENT KENNEDY: So let's take a few minutes for
12 the Board to be able to read --

13 MS. BRADLEY: Yeah, my understanding -- just so the
14 attorneys are clear. There was some confusion.

15 MS. RASUL: The Executive Director, I think, should
16 be sitting next to me.

17 MS. EKLOF: Oh, I can do that.

18 MS. BRADLEY: Okay. So there was some confusion.
19 I'm not sure all the Board members have read through the
20 Complaint and the Answer and the Motion to Dismiss,

21 because I think there was some confusion about what was
22 provided.

23 MS. RASUL: Right, okay. And basically, you know --
24 and I believe, Ms. Cavanaugh, you know, she clarified
25 that the superseding document that you want to focus on

6

1 is the Amended Complaint.

2 MS. CAVANAUGH-BILL: Um-hum.

3 MS. RASUL: And the Opposition to the Amended
4 Complaint.

5 MS. BRADLEY: Yeah, yeah.

6 MS. RASUL: Okay.

7 MS. BRADLEY: So go ahead and start. I think it's
8 No. 6 through 10 in your book. So go ahead and read
9 through the Complaint and Notice of Hearing, the amended
10 one, and then the Answer. Because the Answer is
11 Dr. Gerber's response. And then I know there's also been
12 a Motion to Dismiss filed, and then an opposition.

13 MS. CAVANAUGH-BILL: And, sorry. If I may? I'm
14 Julie Cavanaugh-Bill. I represent Dr. Gerber.

15 There's also been a Motion For Continuance filed, as
16 well. We're awaiting still some documents that have not
17 apparently been in the file, so --

18 MS. BRADLEY: Okay. All right. And it's my
19 understanding that Ms. Rasul wanted to talk to me, and I

20 don't know if you were going to --

21 MS. RASUL: No, no. Well, so basically at this
22 point, there was a -- I'm going to oppose this --

23 MS. BRADLEY: Okay.

24 MS. RASUL: But a couple days prior to the hearing,
25 three -- a request for a continuation was submitted. And

7

1 in that same document she wanted to be -- let's see here.
2 Well, she also wanted the Motion to Dismiss the Amended
3 Complaint to be heard today.

4 And then, in addition, there was a supplemental -- a
5 supplement to the motion, her Motion to Dismiss, which I
6 am going to oppose, as well.

7 MS. BRADLEY: Okay.

8 MS. RASUL: Because it's not timely.

9 MS. BRADLEY: Okay. All right. So it sounds like we
10 don't need a break, then. The Board can go ahead. So
11 why doesn't the Board just take a few minutes and read
12 through the documents?

13 MS. CAVANAUGH-BILL: And, I'm sorry. I was not aware
14 that Ms. Rasul was opposing our supplement because of the
15 timeliness, and so I would just like to address that.

16 The documents we received that we filed our
17 supplement based on were received late in the day on
18 Wednesday. So we were not able to --

19 MS. RASUL: Those were exhibits. That's for the
20 hearing. So the motion is -- I mean, there's nothing
21 that provides in Statute, either 622A or the Board
22 statutes that allows for a supplement to a Motion to
23 Dismiss. So it's untimely.

24 MS. CAVANAUGH-BILL: The documents, the basis of the
25 supplement that it was on, were received late in the day

8

1 on Wednesday --

2 MS. RASUL: And again, I would ask --

3 MS. CAVANAUGH-BILL: -- and so that is what it was
4 based on.

5 MS. RASUL: And, again, I would ask that that
6 supplement be disregarded as untimely.

7 MS. BRADLEY: Okay. Well, so right now, just go
8 ahead and read the Complaint and Notice of Hearing first.
9 And then once you're done with that we'll talk about the
10 Motion to Dismiss, and I'll give you a little summary,
11 and then you should read it.

12 MS. RASUL: Well, wouldn't you want to address the
13 continuation request first?

14 MS. BRADLEY: Yeah.

15 PRESIDENT KENNEDY: What if we read this?

16 MS. BRADLEY: Well, but we want to decide the Motion
17 to Dismiss regardless of whether we continue; right?

18 Because if the Board, hypothetically, grants the Motion
19 to Dismiss, there is no need to continue, because there
20 won't be a hearing.

21 MS. RASUL: Correct. And, again, I would reaffirm
22 that the supplement is regarded -- is not allowed by
23 statute.

24 MS. BRADLEY: Well, I'll refer to the statute and
25 I'll advise the Board.

9

1 MS. RASUL: And the statute that, I mean, I'm
2 referring to is 622A.360, subsection 2, subsection 3, and
3 NAC 630A.190.

4 MS. BRADLEY: Okay. 630A.190?

5 MS. RASUL: Yes.

6 MS. BRADLEY: Perfect.

7 (Pause in proceedings.)

8 MEMBER SCOTT-MUMBY: Will someone explain to me the
9 Doctrine of Administrative Estoppel, the words?

10 MS. BRADLEY: Yes. Once everyone is done with the
11 Complaint --

12 MEMBER SCOTT-MUMBY: Thank you.

13 MS. BRADLEY: I'll be happy to explain the legal.

14 MEMBER SCOTT-MUMBY: Thank you.

15 (Pause in proceedings.)

16 MS. BRADLEY: So a Motion to Dismiss has been filed.

17 And what that means is that Dr. Gerber's counsel is
18 asking the Board to dismiss the Complaint, which means
19 that we wouldn't hear the case, and the case would be
20 closed based on that dismissal.

21 When you look at a Motion to Dismiss you assume all
22 the facts in the Complaint are true. So everything that
23 the State has alleged, you would assume is true. And if
24 that's true, does the Motion to Dismiss -- you know, how
25 do we decide the Motion to Dismiss?

10

1 So the arguments made in the motion do dismiss are
2 primarily legal arguments -- only legal arguments. And
3 so the first one is that the claims are not properly or
4 understandably pled. So they're just saying it's not
5 clear what's being alleged, and so we can't -- there
6 can't be a claim there.

7 The second part is the Doctrine of Waiver. It's
8 similar to what you asked about estoppel. So a waiver
9 says that: Hey, the Board knew that maybe those facts
10 were true. That's what they're arguing. Hey, they knew
11 or they should have known, and they didn't do anything
12 about it, so, therefore, they can't take action now.
13 That's kind of what waiver means.

14 Administrative estoppel is very similar. It's saying
15 that they knew, and by their conduct -- maybe repeatedly

16 renewing or not taking action -- that they knew and they
17 didn't take action, so, again, they can't now.

18 And they also argue laches in the motion itself. And
19 laches really just means that so much time has passed,
20 it's unfair to take action today, essentially. That's
21 kind of my summary of what that means.

22 So those are the, kind of the legal arguments. And
23 then the rest, I think, you know, they're arguing that
24 there is a valid Arizona license, and they're arguing
25 some statute distinctions in your chapter.

11

1 So I think the first question before the Board is
2 whether or not you want to grant the Motion to Dismiss or
3 not. Ms. Rasul has opposed the Motion to Dismiss, and
4 that should be included in your packet, as well. So I've
5 got the motion. And then I think it's after it, is her
6 opposition. So she has opposed the Motion to Dismiss.
7 And so we have a document there where she's doing that.
8 It looks like it's about eight pages. And then she's got
9 some exhibits included that support --

10 PRESIDENT KENNEDY: Can we look at those?

11 MS. BRADLEY: You can look at those exhibits, because
12 they're exhibits to her Opposition to the Motion to
13 Dismiss. So she's saying those exhibits help you
14 understand the legal arguments that she is making.

15 And then there's a Reply in Support of the Motion to
16 Dismiss that was filed by Dr. Gerber's attorney. And it
17 just kind of responds -- or it's supposed to respond to
18 Ms. Rasul's opposition and sort of summarize the
19 arguments. And it looks like you've got that there.

20 And then there was an additional document that I
21 don't think is in our packet. The one that you were
22 talking about, the supplemental?

23 MS. RASUL: Nancy had it. I don't know --

24 MS. EKLOF: It was too late.

25 MS. RASUL: It was too late. I guess she didn't.

12

1 MS. EKLOF: The agenda had been posted and the --

2 MS. RASUL: The packets were done.

3 MS. EKLOF: -- materials were all prepared.

4 MS. CAVANAUGH-BILL: And if I could be allowed to
5 speak to that issue? The documents that are attached to
6 the opposition filed by Ms. Rasul were just hand-picked
7 documents from the entire file for Dr. Gerber, which I
8 had been requesting since late April when I was first
9 notified by Dr. Gerber that there was some question by
10 the Board about his licensure. Those were refused to
11 me --

12 MS. RASUL: They were not refused.

13 MS. CAVANAUGH-BILL: -- on the basis -- please let me

14 finish -- on the basis that they were claimed to be
15 confidential because there was an ongoing investigation.

16 After the Complaint was then filed, I again requested
17 the documents. That was again denied, saying that I
18 would receive them as exhibits. When I did not receive
19 them and the hearing was pending, I submitted a formal
20 written discovery request, which I am hoping is also in
21 the Board's packet. It was not until I submitted that on
22 Wednesday of this week, that I then received the entire
23 file, which contains documents that contradict the
24 arguments being made by the prosecutor in this case.

25 So I think they are critical to our arguments,

13

1 especially our argument on estoppel. They evidence that
2 the Board knew of the situation of the status of
3 Dr. Gerber's office as early as 1995. So for over two
4 decades this has been the same situation. And Dr. Gerber
5 was never notified of any problem with his licensure.

6 So I think it's critical to our estoppel, and I'm
7 very concerned that it wasn't included in the Board
8 packet. I know that the executive director here is a
9 witness today for Ms. Rasul, but I think that it's
10 critical that the Board have that document.

11 MS. RASUL: And if I could resound to that? The
12 first denial was because I had not compiled any of the

13 exhibits at that point. I was preparing for the Motion
14 to Dismiss, so I had not gone through all of these
15 documents. And so I did utilize specific documents that
16 I knew would be presented to the Board, attached them to
17 the Motion to Dismiss.

18 Her second request, the written discovery request,
19 was simultaneously -- I fully intended to give her the
20 exhibit packet, which would -- which would then be what I
21 would use to -- at the hearing. And that was when it was
22 done. My email indicates that they were finalized that
23 day, and they were e-mailed to her that day.

24 So there was no -- nothing purposeful. There are no
25 time limits on when I have to provide her my packets and

14

1 what documents I intend to use to prosecute the case.

2 And so there's no timing issue at all.

3 MS. CAVANAUGH-BILL: And if I could counter-respond
4 to that?

5 The allegations against Dr. Gerber in the Complaint
6 and in the opposition to our Motion to Dismiss allege
7 that he was deceitful, misrepresented information. These
8 documents in the file that have now been produced,
9 clearly show that he was never, in fact, deceitful, and,
10 in fact, the Board knew.

11 So we actually have questions about whether the

12 Complaint was filed in good faith. And if Ms. Rasul had
13 not even gone through the entire file to determine that
14 this was actually something the Board had previously
15 looked at and verified and gone forward with Dr. Gerber's
16 licensure -- I'm very concerned about these proceedings.

17 MS. RASUL: And, again, it's not clear. There
18 were -- there were different changes of hands with
19 different executive directors. And that is why we're
20 having this hearing today, to explain the role of the
21 executive directors, especially when they come on.

22 Because Ms. Eklof came on in 2006, and she -- and to
23 impugn any wrongdoing on her part or lack of doing
24 anything is unfair, as coming on as an executive director
25 in 2006. And that's why I think it's crucial that we

15

1 have this hearing today. Because we -- once she found
2 out about the circumstances, she immediately addressed
3 the situation. And that is what we want to present
4 today.

5 MS. BRADLEY: Okay. Well, so the information that's
6 before the Board -- there's just a binder here, and I
7 wouldn't say it's exactly a Board packet. Normally we
8 don't admit exhibits or anything like that until the
9 hearing. But there is included in here the Amended
10 Complaint, Motion to Dismiss Amended Complaint, Answer to

11 Amended Complaint, Opposition to Motion to Dismiss
12 Amended Complaint, Exhibits to Opposition to Motion to
13 Dismiss, Reply in Support of Motion to Dismiss. It looks
14 like maybe that's included twice. I don't know. It's
15 listed here twice.

16 My understanding is, is the most recent document you
17 filed was just filed this week.

18 MS. CAVANAUGH-BILL: It was filed on Wednesday.

19 MS. BRADLEY: Yeah.

20 MS. CAVANAUGH-BILL: Or Thursday, right after we
21 received the documents.

22 MS. BRADLEY: Okay. So the Board doesn't have that.
23 I know Ms. Rasul is saying that it shouldn't be
24 considered anyway because it wasn't timely.

25 MS. RASUL: And it's not allowed by statute.

16

1 MS. BRADLEY: I'm sorry. Say that again.

2 MS. RASUL: It's not -- I mean, it's something that's
3 allowed by statute or the regulation.

4 MS. BRADLEY: All right.

5 MEMBER SCOTT-MUMBY: I'm having trouble with the
6 concept of timely response. This is a very serious set
7 of allegations. Surely there is no restriction on what
8 and when the respondent can defend himself. I'm troubled
9 by that.

10 MS. RASUL: Well, the NAC requires a certain time
11 period when documents have to be submitted back and
12 forth.

13 MEMBER SCOTT-MUMBY: Right.

14 MS. RASUL: And it's outside of that.

15 MEMBER SCOTT-MUMBY: If they only got the documents
16 on Wednesday, they've only had 48 hours --

17 MS. RASUL: Those documents are related to the
18 hearing.

19 MEMBER SCOTT-MUMBY: Okay.

20 MS. CAVANAUGH-BILL: And if I may? Those documents
21 are related -- directly related to Dr. Gerber's defense.
22 They're critical.

23 MS. RASUL: Which is why we have them here --

24 MS. CAVANAUGH-BILL: And I've been asking for them --

25 MS. RASUL: -- when we're having the hearing. And

17

1 that's -- typically, you know, exhibits don't have to be
2 attached to a Motion to Dismiss or an opposition to
3 dismiss. So, I mean, there's no time frame as far as
4 when -- I mean, there are hearings, administrative
5 hearings, that occur, the exhibits are given that day.
6 They're not even exchanged prior to when there is no time
7 requirement in the statutes, or --

8 MS. CAVANAUGH-BILL: And this is another --

9 MS. RASUL: -- the Board statutes.

10 MS. CAVANAUGH-BILL: This is another reason that we
11 requested the continuance, because we had not received
12 these documents. I had a telephone call with Ms. Rasul
13 as soon as I was retained hoping to seek resolution of
14 the matter, but also seeking these documents in which
15 they claim that Dr. Gerber had somehow misrepresented his
16 licensures to the Board. I never received them. These
17 were --

18 MS. RASUL: They were compiled and they were
19 confidential.

20 MS. CAVANAUGH-BILL: If I could finish?

21 These are critical. This is about revoking his
22 license. He's had an established practice in the state
23 of Nevada for over 30 years.

24 We have the former secretary of the Board here to
25 testify, Louie Test, who wrote a lot of the renewal

18

1 verification forms to Dr. Gerber. There was never a
2 question about his licensure. And now we receive these
3 documents on the eve of this hearing asking to revoke his
4 license.

5 MS. RASUL: It's not at the eve of the hearing.

6 MS. CAVANAUGH-BILL: Stopping his practice. And
7 we're being told that we can't -- we can't have time to

8 address these.

9 It's serious. It's not an administrative hearing to
10 determine if someone is going to be put on administrative
11 leave, or if they're going to be questioned. This is
12 about someone's licensure. This is about someone's
13 livelihood, their life, and all their patients connected
14 to their practice.

15 MS. BRADLEY: So just to be clear. All of the
16 exhibits you intend to use at the hearing have been
17 provided to Dr. Gerber's counsel?

18 MS. RASUL: Yes.

19 MS. CAVANAUGH-BILL: As of Wednesday.

20 MS. BRADLEY: As of Wednesday.

21 MS. RASUL: Yes.

22 MS. BRADLEY: Okay. You both agree to that. Okay.

23 MS. CAVANAUGH-BILL: But we want that addressed, our
24 Supplement to the Motion to Dismiss, because I think it
25 goes directly to the heart of the estoppel and the waiver

19

1 issue. They knew. This was known, and yet it was
2 misrepresented in the Complaint and in the Opposition to
3 the Motion to Dismiss that it was Dr. Gerber being
4 deceitful --

5 MS. RASUL: You don't happen to know what that state
6 of mind is. That's not true. And again --

7 MS. CAVANAUGH-BILL: There's handwritten notes in
8 these documents.

9 MS. RASUL: Again, there is no time requirements to
10 provide exhibits to opposing counsel with regard to an
11 administrative hearing.

12 MEMBER SMITH: Can we make a decision on that?

13 MS. BRADLEY: Yeah. So, I mean, let's -- okay.
14 Let's back up a little bit.

15 So the Board needs to decide the Motion to Dismiss.
16 This is my recommendation is that today you decide the
17 Motion to Dismiss, at least the first Motion to Dismiss.
18 Because if you grant it, obviously the case doesn't need
19 to be heard. If you don't grant it, then we still have
20 the active case. Then there's a question of the
21 supplemental Motion to Dismiss, and also the request for
22 continuance.

23 Ms. Rasul is correct that there is no timeline, at
24 least in 622A -- I didn't pull up your chapter -- but
25 622A does talk about discovery. It does state anytime

20

1 after being served they can file the request, and then
2 they, you know, they should be receiving those exhibits
3 that they intend to use. It doesn't list a timeline,
4 although I guess I would say, I think -- I mean, it's up
5 to the Board to determine if providing them on Wednesday,

6 you know, gives sufficient time. And if it doesn't, then
7 maybe that helps us decide whether we want to grant the
8 motion to continue, you know, because then that would
9 allow Dr. Gerber to have more time to prepare, so --

10 But I think the first question is the Motion to
11 Dismiss, at least as its been presented, the first motion
12 that we have in here.

13 So the Board has read that. Again, you assume that
14 all of the facts alleged in the Complaint and Notice of
15 Hearing are true. And do those facts state a claim upon
16 which the Board can go forward?

17 If you have a question about that, then probably you
18 want to deny the Motion to Dismiss. If you're sure that:
19 Yep, we've read it all, and there's no way that there is
20 a claim we can go forward on, then I think you would
21 grant the motion.

22 But, generally speaking, if you have any question
23 about that, that means you probably want to hear the case
24 or at least have more information. So that means,
25 probably deny the motion and then you'll get more

21

1 information from the parties. So I hope that makes
2 sense.

3 So I think the first thing would be is to decide that
4 Motion to Dismiss. At least that gets handled today, and

5 then we can address the continuance and then the
6 supplemental motion.

7 MEMBER SMITH: It's a separate motion?

8 MS. BRADLEY: That will be a separate thing, yeah.

9 PRESIDENT KENNEDY: So we need a motion to either
10 accept or deny the -- which one are we doing?

11 MS. BRADLEY: The Motion to Dismiss the
12 Administrative Complaint.

13 PRESIDENT KENNEDY: -- the Motion to Dismiss the
14 Administrative Complaint.

15 MEMBER SCOTT-MUMBY: I propose we deny it. It's too
16 complex. We need to hear it.

17 MS. BRADY: A second?

18 MEMBER ESLINGER: I'll second.

19 PRESIDENT KENNEDY: Okay. All those in favor?

20 (Ayes voted.)

21 PRESIDENT KENNEDY: The motion carries.

22 MS. BRADLEY: Okay. So that motion has been denied.
23 So then the matter is still pending before the Board, the
24 Amended Complaint. It does say -- let me just double
25 check.

22

1 So NRS 622A talks about motions. And this is
2 considered -- a motion to continue is a pre-hearing
3 motion. So I don't know if --

4 MS. RASUL: It must be filed within --

5 MS. BRADY: It does say seven days prior, but -- I
6 mean, it says it must be filed at least ten days before
7 the date of the hearing, and then the opposition party
8 files seven days.

9 But I think if documents were provided on Wednesday,
10 and I think if everybody agrees that the full file was
11 provided on Wednesday, there wouldn't have been the ten
12 days for them to file the continuance.

13 MS. CAVANAUGH-BILL: And I actually don't agree that
14 the full file was provided on Wednesday. There's
15 actually some attachments that are still apparently
16 missing.

17 MS. RASUL: That is all that was provided to me by
18 the Board, and that's all the Board has. So you have the
19 full file, all the exhibits that are going to be
20 presented.

21 MS. BRADLEY: Okay. So on the record you're saying
22 that you don't have anything else?

23 MS. RASUL: That is everything that is in the Board's
24 possession that was handed down to Nancy in 2006. This
25 Board existed prior to then. So we don't know how the

23

1 files were kept, you know. So this is what she has.

2 MS. BRADLEY: Okay. So that's a complete -- and you

3 don't have any other exhibits that Ms. Cavanaugh-Bill has
4 not seen?

5 MS. RASUL: No.

6 MS. BRADLEY: Okay. I just want to make sure we're
7 clear. All right.

8 MEMBER MINSTREL: May I make a --

9 MS. BRADLEY: Yes.

10 MEMBER MINSTREL: I think due to the seriousness of
11 the Complaint and stuff, I think it is actually wise that
12 it, you know, be further reviewed. And I would like to
13 have had an opportunity to have read all of this before
14 the meeting, you know.

15 MS. BRADLEY: Well, you get to read the Complaint and
16 Notice of Hearing and any pending motions prior.

17 MEMBER MINSTREL: Can we do that during the
18 continuance, or is it also restricted until we come back
19 and --

20 MS. BRADLEY: Well, you can read the Complaint --

21 MEMBER MINSTREL: Okay.

22 MS. BRADLEY: -- as many times as you want to outside
23 of the meeting. But you can't review any evidence
24 outside of a meeting until it is admitted before you.

25 Yes, sir.

1 MEMBER ESLINGER: Is it not true that we were denied
Page 24

2 the ability to read the Complaint?

3 MS. BRADLEY: I don't know. I mean, I didn't deny
4 you --

5 MEMBER ESLINGER: We were told that the attorney
6 general said we were not entitled to see it until the
7 meeting.

8 MS. BRADLEY: Well, you don't get to see a consumer
9 complaint. I mean, I'm not sure. But the Complaint and
10 Notice of Hearing hearing should be included in your
11 Board packet. So prior to a meeting you should get like
12 an agenda, you should get a board packet that would
13 have -- if there's ever a case -- a Complaint, Notice of
14 Hearing there, any answer that the respondent filed. And
15 then if there's motions, like this Motion to Dismiss, you
16 should get that plus the opposition prior.

17 MEMBER ESLINGER: We did not get any of that.

18 MS. BRADLEY: Okay. Okay.

19 MEMBER ESLINGER: We got an agenda.

20 MS. BRADLEY: Okay. I don't know what to say about
21 that. I mean, I apologize that that happened. Those
22 things should be in your Board packet.

23 What you don't get are the exhibits that we've been
24 talking about, until they're admitted. Because Ms. Rasul
25 is probably going to ask for things to be admitted.

1 Ms. Cavanaugh-Bill may object to them. We want to make
2 sure that before you look at them those objections have
3 been made and they've been admitted.

4 PRESIDENT KENNEDY: Can we proceed with the hearing
5 and then after still do the continuance?

6 MS. BRADLEY: Not really. If you are going to allow
7 a continuance for them to review the documents they
8 received, I think you would just grant a continuance now
9 and they would have a set time to prepare.

10 MEMBER SMITH: So do we need a motion?

11 MS. BRADLEY: And we do have it on the record that
12 all of the exhibits Ms. Rasul has, anything she intends
13 to admit, is in the possession of Ms. Cavanaugh-Bill.
14 Even if it may appear incomplete, she is saying, you
15 know, on the record as an officer of the court that
16 you've got a complete copy.

17 MS. CAVANAUGH-BILL: And I understand that. But we
18 are continuing our investigation to see if we can find --

19 MS. BRADLEY: Sure. Got it.

20 MS. CAVANAUGH-BILL: -- those original attachments.

21 MS. BRADLEY: Okay. And then I would hope, as an
22 officer of the court, you would provide those to
23 Ms. Rasul.

24 MS. CAVANAUGH-BILL: We would produce those to
25 Ms. Rasul immediately.

1 MS. BRADLEY: Yes. Thank you.

2 MS. RASUL: And, you know, the whole purpose of her
3 request for a continuation is because she intends to file
4 a writ of prohibition in District Court, because she
5 doesn't feel or believe that this body has jurisdiction
6 over revoking Dr. Gerber's license, which is very untrue.

7 MEMBER SMITH: Are you speaking for her or for --

8 MS. RASUL: I'm talking about the supplement, you
9 know, basically the intention of the continuance.

10 MS. CAVANAUGH-BILL: That's one of our arguments for
11 the continuance --

12 MS. RASUL: So she can be -- she's focusing on the
13 evidence.

14 MS. CAVANAUGH-BILL: -- as well as for discovery.

15 MS. RASUL: But that's the purpose. And this Board
16 does have jurisdiction. And, I mean, you know, with the
17 concept of exhausting all of your administrative
18 remedies, you have to follow all the administrative
19 remedies here. And it's within your statutes.

20 MEMBER SCOTT-MUMBY: May I say something? It's not a
21 legal argument. This is to fellow board members, and
22 this is from the heart. I think two days is unreasonable
23 for someone to prepare a defense for something so
24 serious, even if it seems cut-and-dried. It doesn't by
25 the way. But I don't think it's reasonable.

1 So by a continuance is that -- as an Englishman,
2 would I recognize the word as an adjournment? Is that
3 what you mean by a continuance?

4 MS. BRADLEY: I guess so. I don't know. I haven't
5 heard that. But the continuance just means if you grant
6 the continuance, we would set the matter for a hearing in
7 the future. We would talk about the date right now with
8 both of the attorneys present. That's my recommendation,
9 so that we get a new date on the record. That way they
10 both know. They both have it on their calendars. Also
11 the audience knows. You all know. We'll set a date
12 today that everybody can do in the future.

13 MEMBER SCOTT-MUMBY: Okay.

14 MS. BRADLEY: And I think -- I mean, you know, of
15 course it's your decision to make. But if you think it's
16 unreasonable, then I think that's your reason for saying:
17 Yeah, I want to continue the matter. I think we should.

18 PRESIDENT KENNEDY: I would like to hear --

19 MEMBER SCOTT-MUMBY: Yes, I would.

20 PRESIDENT KENNEDY: Well, let me just hear -- if
21 we're the governing board, and it goes -- and something
22 gets filed in court, what happens then?

23 MS. BRADLEY: Well, I would have to fight it in
24 court. I've had that happen before with an

25 administrative case that I was not prosecuting, but I was

28

1 board counsel on. So the two parties were disagreeing
2 about whether the matter could be heard by the Board.
3 They filed a writ of prohibition. I basically appeared
4 on behalf of the Board as Board counsel, and just said,
5 "The Board will abide by what you want. We think we have
6 jurisdiction." But I really didn't want to get into the
7 fight because it's not really -- the Board will do what
8 the court says.

9 In that case I think they ended up resolving it. But
10 it has happened before. It's only happened once to me in
11 ten years. And basically, the court gets to look at it
12 and decide whether or not it's something that should be
13 before the Board.

14 It sounds like there's a possibility of that being
15 raised. It may not be raised, but it is maybe a
16 possibility.

17 MS. CAVANAUGH-BILL: And if I may? It's always a
18 possibility.

19 MS. BRADLEY: Yeah.

20 MS. CAVANAUGH-BILL: I mean, as attorneys we look at
21 all different options. It's not, you know, mandated that
22 we do one or the other. But it has to be done in good
23 faith. And, you know, if Ms. Rasul's argument is correct

24 that administrative remedies have to be exhausted, then
25 it would be proceeded. But it is -- it's always a

29

1 possibility, so -- and we've done both writs of
2 prohibition, as well as writs of mandamus which say, you
3 know, an agency or a board is required to take action.

4 So in this instance the question would be: Is the
5 Board -- can the Board take action?

6 MS. BRADLEY: Yeah.

7 MS. CAVANAUGH-BILL: But it's not before any court
8 right now.

9 MS. BRADLEY: Yeah.

10 MS. RASUL: And in all my years -- I've been
11 representing boards since 2005 -- I've never encountered
12 it, so --

13 MEMBER MINSTREL: Well, given the nature of the
14 fighting talk, I would like to fully understand the
15 ramifications on both sides, and -- because, I mean --

16 MEMBER SMITH: Very serious charges.

17 UNIDENTIFIED SPEAKER 4: Ms. Bradley? If the Board
18 is considering a continuance, and the public is at risk
19 with this continuance of Mr. -- Dr. Gerber's continued
20 practice, would the Board invite public comment before
21 making a decision on that continuance?

22 MS. BRADLEY: No.

23 UNIDENTIFIED SPEAKER 4: The Board should be aware of
24 that issue.

25 MS. CAVANAUGH-BILL: I object. I thought public

30

1 comments weren't allowed.

2 MS. RASUL: They're not.

3 UNIDENTIFIED SPEAKER 4: That's actually not true
4 under the open meeting law.

5 MS. RASUL: It is true under the open meeting law.

6 MS. BRADLEY: NRS 233B.126 says that the Board is to
7 make decisions on contested cases based on the evidence
8 before them, and they're not -- they don't allow public
9 comment during that decision.

10 UNIDENTIFIED SPEAKER 4: Correct.

11 MS. BRADLEY: You are correct, though, that obviously
12 he will be allowed to continue practicing during the time
13 of the continuance. I think the Board knows that, and
14 they -- but they can note that for the record that his
15 license would be active during the continued period.

16 MS. RASUL: His license is unaffected at this time.

17 MS. BRADLEY: Yeah. It's currently active right now.

18 (Multiple conversations between board members.)

19 MS. BRADLEY: So you want -- if possible, you want to
20 talk so that the court reporter can pick you up. We want
21 to have all the discussion on the record.

22 MEMBER ESLINGER: Okay. I --

23 MS. BRADLEY: That's okay.

24 And so the question is whether the Board wants to
25 continue. And so what you're kind of weighing is, you're

31

1 weighing the fact that this is -- like I heard you say --
2 a serious charge. The documents, they both agree, were
3 provided in full on Wednesday. Should a motion to
4 continue be granted? If that's true, you agree, then
5 we'll set a date. But, of course, Dr. Gerber's license
6 is active until that time period that the case is --

7 MEMBER SMITH: Can I put a motion on the table now to
8 continue?

9 MS. BRADLEY: You absolutely can.

10 MEMBER SMITH: All right. I put a motion on the
11 table that this continues until we have more accurate
12 information.

13 MEMBER MINSTREL: And I would like to second that
14 motion, as well.

15 MEMBER SCOTT-MUMBY: Second.

16 PRESIDENT KENNEDY: Discussion?

17 MS. BRADLEY: I'm not sure it would be more accurate
18 information, but just giving them additional time --

19 MEMBER SMITH: Additional time, yes, for preparation.

20 MS. BRADLEY: -- to prepare, given the time period

21 that the exhibits were provided, I think.

22 PRESIDENT KENNEDY: Counsel, what exposure does this
23 Board have by continuing this as far as our charter with
24 public safety?

25 MS. BRADLEY: Well, the allegations in the Complaint

32

1 are not public-safety related. The allegation -- I mean,
2 they are in that the allegations are that he doesn't have
3 the qualifications for licensure, and that the underlying
4 licenses were not valid, and maybe incorrect information
5 was provided to the Board. That's the underlying.
6 There's not a patient care, patient protection issue
7 articulated in the Complaint. And, you know, the Board
8 has to kind of weigh due process for the licensee, as
9 well as --

10 MEMBER MINSTREL: I'm sorry. Did you say there is a
11 Complaint in it or no? The Complaint --

12 MS. BRADLEY: No. The facts in the Complaint, in the
13 Complaint and Notice of Hearing are regarding incorrect
14 and -- you know, an allegation that incorrect information
15 was provided, and an underlying license was not maybe
16 described correctly to the Board. And so those are the
17 allegations. It's not alleging a patient-care issue, at
18 least at this point.

19 MEMBER MINSTREL: Okay.

20 MS. BRADLEY: That's not in the Complaint. So, you
21 know, as far as exposure -- you know, your job is to try
22 to protect the public as best you can, and your job is
23 also to, you know, make sure that due process is afforded
24 to licensees. And so you're kind of balancing two issues
25 here.

33

1 MEMBER SCOTT-MUMBY: Well, a motion was proposed and
2 seconded. Are we going to vote on it?

3 PRESIDENT KENNEDY: No, we have the discussion first.

4 MEMBER SCOTT-MUMBY: Oh.

5 MS. BRADLEY: And the question is does it pose a
6 liability to the Board if you continue it?

7 MEMBER SCOTT-MUMBY: Yes, okay.

8 PRESIDENT KENNEDY: Any other discussion?

9 Okay. All those in favor say aye.

10 (Aye votes.)

11 PRESIDENT KENNEDY: Oppose?

12 Motion carries.

13 MS. BRADLEY: Okay. So then the Board has granted
14 the motion to continue. So then I think now would be the
15 appropriate time to set a new date so maybe everybody, if
16 you have access to your calendars. I don't know. I'm
17 guessing we're thinking a Saturday.

18 PRESIDENT KENNEDY: Yes, it has to be a Saturday.

19 MS. BRADLEY: And are we thinking like a month from
20 now?

21 PRESIDENT KENNEDY: That seems like a good time.

22 MS. BRADLEY: Okay. Whichever you all think. I
23 would put on the record that I'm not going to be
24 available for the first two Saturdays in August. Not
25 that my availability is totally key, but --

34

1 MS. RASUL: But I think it's better because you're
2 familiar, so --

3 MS. BRADLEY: Yeah. And right now we're at the 22nd.
4 So a week from now would be the end of July. Probably
5 not enough time. And so the soonest I could be available
6 on a Saturday, I think would be the 19th of August.

7 MS. RASUL: Let's see. We could also do the 26th.

8 DR. IBARRA: I think the 26th --

9 MS. CAVANAUGH-BILL: We're not available on the 26th.

10 MS. BRADLEY: Okay. And we don't have to do a
11 Saturday, although I think -- I thought the Board liked
12 Saturdays.

13 MS. EKLOF: Because of the doctors primarily, yes.

14 (Multiple discussions between the Board members.)

15 MS. BRADLEY: Yeah, yeah. So if that's the date you
16 guys like, then, yeah.

17 MEMBER ESLINGER: Is anybody opposed to the 19th?

18 MS. CAVANAUGH-BILL: The 19th does not work for me.

19 MS. BRADLEY: It does not work for you?

20 MS. CAVANAUGH-BILL: No.

21 MS. BRADLEY: Okay.

22 MEMBER SMITH: It's vacation time. September, we
23 should do it.

24 MS. BRADLEY: The 26th doesn't work for you, as well;
25 right?

35

1 MS. CAVANAUGH-BILL: Right.

2 MS. BRADLEY: Okay.

3 MS. CAVANAUGH-BILL: The doctor is out of town.

4 MS. BRADLEY: We're talking August.

5 MS. CAVANAUGH-BILL: Yeah.

6 MS. BRADLEY: So then it looks like September 2nd,
7 but I guess I'm hoping not. That's Labor Day weekend.

8 MS. RASUL: September 2nd, is a Wednesday?

9 MS. BRADLEY: It's a Saturday.

10 PRESIDENT KENNEDY: It's a Saturday. It's Labor Day
11 weekend.

12 MS. RASUL: Oh, I'm sorry. I'm on the wrong --

13 MS. BRADLEY: So what about September 9th?

14 MEMBER SMITH: When?

15 MS. BRADLEY: September 9th.

16 MEMBER SMITH: I would have to check my calendar. I

17 have one other conflict on there. But let's mark it for
18 that.

19 (Multiple conversations between board members.)

20 MS. BRADLEY: Okay. September 9? I mean, if that
21 doesn't work for you, we can -- I don't want you to have
22 to --

23 MEMBER ESLINGER: I will have to check my calendar.

24 (Multiple conversations between board members.)

25 MS. BRADLEY: Okay. How many board members do we

36

1 have?

2 MS. EKLOF: Seven, seven board members.

3 MS. BRADLEY: Okay. So if we have two people that
4 have a conflict on the 9th of September, that may not be
5 the best day.

6 (Multiple conversations between board members.)

7 MS. BRADLEY: Oh, okay. Okay.

8 MEMBER SMITH: Or September 9th, I will --

9 MS. BRADLEY: Is it possible -- and I know this maybe
10 won't be the most fun -- like later in the day on a
11 Saturday? Is that better? Like, would your conflict be
12 a morning one, both of you?

13 MEMBER SMITH: Out of town.

14 MS. BRADLEY: Oh, okay.

15 MEMBER ESLINGER: Yeah.

16 MS. BRADLEY: I was just wondering --

17 MS. EKLOF: We could do an evening meeting, a 6:00
18 o'clock p.m., evening meeting.

19 MEMBER SMITH: Will that work for you?

20 MEMBER MINSTREL: Well, I have to close in order to
21 be here anyway, so it doesn't matter.

22 MS. RASUL: I don't know how long it will take.

23 MEMBER MINSTREL: Unless you want to do it on a
24 Sunday, and I don't think so.

25 MS. BRADLEY: I don't know --

37

1 (Multiple conversations between board members.)

2 MEMBER MINSTREL: There's nobody there, and that's
3 just the way it is. Put a sign on the door.

4 MEMBER ESLINGER: I wouldn't mind an evening meeting.

5 MS. BRADLEY: An evening meeting? Okay.

6 (Multiple conversations between board members.)

7 MS. BRADLEY: If we're going to do an evening
8 meeting, we may want to try to do like two evenings. I'm
9 just thinking aloud. And that way, if it does go past
10 the one evening, we have a second evening reserved. I
11 mean, it's really what works best for you, and I know
12 you're all busy, so --

13 MS. CAVANAUGH-BILL: A Saturday morning doesn't work?

14 MS. BRADLEY: Well, it sounds like we have, on that

15 September 9th, we have two board members that have
16 conflicts. And so my concern was, with a seven-member
17 board, if we know two can't show up, we have to have --

18 MS. RASUL: I have a board meeting that day.

19 MS. BRADLEY: Okay.

20 MS. CAVANAUGH-BILL: How about September 23rd,
21 Saturday morning?

22 MS. BRADLEY: September 23rd?

23 MS. CAVANAUGH-BILL: No?

24 MS. BRADLEY: No.

25 MS. CAVANAUGH-BILL: Okay.

38

1 MEMBER SMITH: I think most of us that are working,
2 evening meetings will work.

3 MS. BRADLEY: Okay.

4 MEMBER SMITH: That's speaking for myself.

5 MS. BRADLEY: Yeah.

6 PRESIDENT KENNEDY: So then we can go back to August?

7 MEMBER SMITH: Yeah.

8 MS. BRADLEY: Yeah.

9 MEMBER ESLINGER: Yes.

10 MS. BRADLEY: So I'm gone the 5th of August through
11 the 14th, and then I have -- so probably for me it would
12 be starting on the 16th in the evening.

13 MEMBER SMITH: The 16th of August?

14 MS. BRADLEY: Yeah. But I kind of -- that's a
15 Wednesday. I think it might be best to give them a
16 month, if you're all in agreement with that. So that
17 would really be starting like the evening of the 22nd,
18 which is a Tuesday.

19 MEMBER SCOTT-MUMBY: I don't know what he said.

20 MS. BRADLEY: And so what I would propose, if it
21 works, maybe we do like the 22nd and the 23rd, both, say,
22 at 6:00 o'clock, 5:30. I don't know what works for you.

23 MEMBER ESLINGER: 5:30 works for me.

24 MS. CAVANAUGH-BILL: And I'm out on the 22nd.

25 MS. BRADLEY: You're out? Okay. What about the

39

1 23rd?

2 MS. CAVANAUGH-BILL: The 23rd I'll be here in Reno.
3 I'm traveling from Elko, but I'll be in Reno the 23rd.

4 MS. BRADLEY: So if we do the 23rd and the 24th?

5 MS. CAVANAUGH-BILL: I have a hearing in the morning
6 of the 24th. Are you talking about the evening?

7 MEMBER ESLINGER: Evening.

8 MS. BRADLEY: I'm talking about trying to do two
9 evenings back to back just in case we need them. I mean,
10 it's possible -- I don't know what you guys think --

11 MS. RASUL: No. I think that's a good idea. That
12 works for me.

13 (Multiple conversations between board members.)

14 MS. BRADLEY: Yeah. I mean, it's certainly possible
15 that one evening might be enough if we have four hours.

16 MS. RASUL: Yeah. But just to be safe, we should
17 have both of those blocked out, and then have the agenda
18 state that.

19 MS. BRADLEY: Yeah, we'll send -- yeah, exactly.

20 MS. RASUL: So are you talking like for 5:00?

21 PRESIDENT KENNEDY: 5:30.

22 MEMBER SMITH: 5:30.

23 MEMBER ESLINGER: 5:30.

24 MS. BRADLEY: I think 5:30 is what I heard.

25 MS. RASUL: Okay.

40

1 MS. BRADLEY: 5:30 on the 23rd and the 24th, is that
2 what you all are saying?

3 And does that work for you, Ms. Cavanaugh-Bill?

4 MS. CAVANAUGH-BILL: Yeah.

5 MS. BRADLEY: You do have a hearing, but your hearing
6 is not in Elko?

7 MS. CAVANAUGH-BILL: My hearing is here in Reno on
8 the 24th at 9:30 in the morning.

9 MS. BRADLEY: Okay. Good, good.

10 MS. CAVANAUGH-BILL: So I'll be here anyway.

11 MS. BRADLEY: Good.

12 MEMBER SMITH: So I'm going to put it on my calendar,
13 just to be safe.

14 MS. CAVANAUGH-BILL: And may I speak? Given that --
15 I think I heard one Board member say that they had moved
16 to deny the Motion to Dismiss because it was just too
17 complicated. It sounds like it was just received today.
18 We may renew it so that the Board has time and an
19 opportunity to look over that. Because if it's not
20 necessary to go through the whole evidentiary hearing, I
21 think it would be in everyone's best interests to -- if
22 they have time to review that prior to.

23 MEMBER ESLINGER: The question I have is: Are we
24 going to have access to those records you say refute the
25 charges before the meeting?

41

1 MS. CAVANAUGH-BILL: Those would be part of our
2 Motion to Dismiss. They were part of our supplement,
3 which sounds like it didn't make it into your Board
4 packet this time. But that's why I was inquiring -- or
5 informing the Board, I guess, that we would, you know,
6 probably be re-filing that so the Board has an
7 opportunity to review it.

8 MS. EKLOF: Well, just for the record, we do have
9 No. 9, Opposition to Motion to Dismiss Amended Complaint,
10 and then Exhibits to Opposition to Motion to Dismiss

11 Amended Complaint. So there is all of your material
12 up -- except for the final document that you provided.

13 MS. CAVANAUGH-BILL: Those were not -- those were not
14 our materials. Those were the materials that Ms. Rasul
15 pulled out of here. And that's what we claimed in our
16 supplement, that other documents which contradicted the
17 arguments, were not included. And those are what, it
18 sounds like, did not make it to the Board packet.

19 MS. EKLOF: Okay.

20 MS. CAVANAUGH-BILL: And so I just want to inform the
21 Board that we would, you know, re-file or renew that so
22 that there's an opportunity to review it before the Board
23 meeting.

24 MS. EKLOF: The Motion to Dismiss are your documents,
25 though, in this packet?

42

1 MS. CAVANAUGH-BILL: Correct. But we didn't have any
2 of these exhibits --

3 MS. EKLOF: Prior to that.

4 MS. CAVANAUGH-BILL: -- prior to that. The exhibits
5 that were included came from --

6 MEMBER SCOTT-MUMBY: So in answer to Dr. Bob's
7 question, definitively. Are we going to see these
8 materials in the interim or not?

9 MS. CAVANAUGH-BILL: I would hope so. But it doesn't

10 sound like I have any control over that.

11 MS. BRADLEY: Well, if --

12 MS. CAVANAUGH-BILL: I sent it to Ms. Eklof,
13 everything.

14 MS. BRADLEY: Well, if you --

15 MEMBER SCOTT-MUMBY: -- before, do you know what I'm
16 saying?

17 MS. BRADLEY: Well, wait, wait, wait.

18 MEMBER SCOTT-MUMBY: Yeah.

19 MS. BRADLEY: If you both agree that the Board should
20 review the exhibits prior to the meeting, you both
21 stipulate to that, then they would be admitted right now.
22 The Board can review them.

23 MS. CAVANAUGH-BILL: I would stipulate that both our
24 packet and Ms. Rasul's packet be submitted to the Board
25 so they can thoroughly review this.

43

1 MS. RASUL: I have objection to a couple of the
2 documents, just -- and I'll explain.

3 MS. BRADLEY: Because if they agree they be admitted,
4 then you all can look at them now. The issue is just, if
5 they're not admitted, you can't look at them.

6 MEMBER SMITH: We need to look at them.

7 (Multiple discussions between the Board members.)

8 MS. RASUL: So if I could just address the documents

9 that I just have a question about? Basically, if you
10 could provide -- because it looks like there's only half
11 of a copy for Bates stamp 17. So I'll be okay with that
12 exhibit if we can get a full -- so I would have that
13 removed from the packet.

14 MS. BRADLEY: Okay.

15 MS. RASUL: And then just one more that I'm going to
16 object to, is Bates stamp 19. This is referencing a case
17 that's a separate case that's pending before the Board,
18 and names the complainant. And I would request that this
19 document be removed.

20 MS. BRADLEY: So Ms. Cavanaugh-Bill --

21 MS. RASUL: Otherwise I'm okay with the rest of them.

22 MS. BRADLEY: -- do you have an objection to that?

23 MS. CAVANAUGH-BILL: No.

24 MS. BRADLEY: Or my other thought is, what we could
25 do is we could just agree to admit everything except for

44

1 Bates stamp page 17 and Bates stamp page 19, and the
2 Board can review everything except for those prior to the
3 hearing.

4 MS. RASUL: So then I can give them copies of all of
5 them.

6 MS. BRADLEY: And then the two of you can work out
7 the issues regarding Bates stamp 17 and Bates stamp 19.

8 Unless you really want Bates stamp 19 in, of course, you
9 could argue that at the hearing.

10 MS. CAVANAUGH-BILL: No. No, we don't need to
11 include Bates stamp 19.

12 MS. BRADLEY: Okay. So you agree with that?

13 MS. RASUL: So, Nancy, do you have that?

14 MS. EKLOF: Pardon me?

15 MS. RASUL: Remove 19.

16 MS. EKLOF: Yes.

17 MS. RASUL: Because you have copies of this.

18 And then if you could just provide a full copy of
19 Bates stamp 17, I'm fine with it.

20 MS. CAVANAUGH-BILL: And that may be the only copy
21 that we had. I think it was e-mailed to Ms. Eklof. I
22 can check with our client. DC Messenger. Because I
23 noticed that it was blacked out on the bottom, as well.

24 MS. RASUL: Yeah. And I would just like to see the
25 whole document. So that's the only issue I have. So is

45

1 it okay if I provide them my exhibit packet?

2 MS. CAVANAUGH-BILL: Absolutely. I have an extra
3 one, if you want me just to take out those two pages.

4 MS. BRADLEY: And that's your exhibit packet?

5 MS. CAVANAUGH-BILL: Yes. And I brought a couple
6 extra for the Board.

7 MS. BRADLEY: Okay. Perfect. And so just for the
8 record, what is your exhibit -- like how many exhibits,
9 and what are the Bates stamped numbers?

10 MS. CAVANAUGH-BILL: I labeled them A through O.

11 MS. BRADLEY: Okay.

12 MS. CAVANAUGH-BILL: So we're going to remove L.

13 MS. BRADLEY: Okay.

14 MS. CAVANAUGH-BILL: And we're going to just wait for
15 a better copy of K.

16 MS. BRADLEY: Okay.

17 MS. CAVANAUGH-BILL: I'm sorry. A better copy of J.

18 MS. RASUL: J, yeah.

19 MS. BRADLEY: Okay. Okay. So then that means --
20 and, Ms. Rasul, you don't have any objections to that?

21 MS. RASUL: No.

22 MS. BRADLEY: So then, Madam Chair, you would then
23 admit A through O, removing L, and waiting for a better
24 copy of J.

25 PRESIDENT KENNEDY: So do we need a motion?

46

1 MS. BRADLEY: You can just make the choice to admit
2 based on their stipulation.

3 PRESIDENT KENNEDY: Okay.

4 MS. RASUL: Yeah, just the chair.

5 PRESIDENT KENNEDY: Okay. We will admit the

6 exhibits.

7 MS. BRADLEY: Okay. So then the record should show
8 that those are admitted.

9 And then, Ms. Rasul, what are your exhibit numbers
10 and your -- I just want to make sure the record shows
11 what we're admitting.

12 MS. RASUL: One through 14.

13 MS. BRADLEY: Okay. So then Exhibits 1 through 14
14 from the State would be admitted without objection.

15 Correct, Ms. Cavanaugh-Bill?

16 MS. CAVANAUGH-BILL: The only objection that I have
17 is Exhibit 5. We believe it is incomplete. We believe
18 there's some attachments. I understand Ms. Rasul's
19 statement that that's all she got. But we are continuing
20 some investigation to see if we can find those additional
21 attachments.

22 MS. BRADLEY: Okay. Okay. But you don't have a
23 problem with the Board looking at that as is --

24 MS. CAVANAUGH-BILL: No.

25 MS. BRADLEY: -- and then you can supplement it if

47

1 you find --

2 MS. CAVANAUGH-BILL: Correct.

3 MS. RASUL: You just want to supplement it. So it's
4 okay if they look at it?

5 MS. CAVANAUGH-BILL: Correct. Yes, absolutely.

6 MS. BRADLEY: Okay. So then, Madam Chair,
7 Exhibits 1 through 14 would be admitted, then, without
8 objection?

9 PRESIDENT KENNEDY: Yes.

10 MS. BRADLEY: Okay. So then the Board members can
11 review those exhibits prior to the hearing, as well as
12 the Complaint and Notice of Hearing, and any other motion
13 that the Board or the respondent files, and any other
14 oppositions. Okay?

15 MS. RASUL: Okay. Then I don't have to carry all
16 this back. That's great.

17 MS. BRADLEY: So please do, you know, obviously hang
18 onto those and keep good track of them, because you'll
19 probably want to bring them with you to the hearing.

20 (Multiple conversations between board members.)

21 MEMBER SCOTT-MUMBY: Are we still not supposed to
22 read the initial five documents?

23 MS. RASUL: You can read them. You've already ruled
24 on them.

25 MS. BRADLEY: Well, the original five were exhibits.

48

1 MS. RASUL: The Complaint and the Amended Complaint
2 you want to review.

3 MEMBER SCOTT-MUMBY: Yeah.

4 MS. BRADLEY: Well, the original five were --

5 MS. RASUL: And their answer.

6 MS. BRADLEY: No, no. The original five was the
7 California 1984 revocation, California 1988 denial, D.C.
8 revocation, D.C. Consent Order of Candidate Stipulation.
9 That's what the first five were. And I thought those
10 were exhibits that hadn't been admitted yet.

11 PRESIDENT KENNEDY: But you just said we could.

12 MS. BRADLEY: But now I think they are, if those are
13 in your packet.

14 MS. RASUL: Yeah.

15 MEMBER SCOTT-MUMBY: Yeah, okay.

16 MS. CAVANAUGH-BILL: And then our supplement, our
17 other filings that were filed this week, will be
18 provided, as well?

19 MS. BRADLEY: Yeah. Those will be provided to the
20 Board.

21 MS. CAVANAUGH-BILL: And would that be sometime like
22 next week or --

23 MS. EKLOF: As early as I can. Probably Monday.

24 MS. CAVANAUGH-BILL: Okay. Thank you.

25 Do you want this, Nancy?

49

1 MS. EKLOF: Yes.

2 MS. BRADLEY: So, Board Members, so what I want --

3 MS. RASUL: So those will be -- I mean, they'll be
4 admitted, but that motion is in relation to a motion that
5 was denied.

6 MS. BRADLEY: Yeah. They'll just review them and it
7 sounds like she may renew her Motion to Dismiss the
8 hearing.

9 MS. RASUL: Right.

10 MS. BRADLEY: And we'll deal with it then.

11 MS. CAVANAUGH-BILL: But I would like all of our
12 filings to be --

13 MS. RASUL: To be part of it.

14 MS. CAVANAUGH-BILL: Yeah. So there's a complete
15 record for the Board.

16 (Multiple conversations between board members.)

17 MS. EKLOF: Julie?

18 MEMBER MINSTREL: -- issues involved, I just think we
19 should really --

20 MS. EKLOF: There's a binder up there, too, of this,
21 up in front for you.

22 MS. CAVANAUGH-BILL: Okay. Thank you.

23 MEMBER MINSTREL: -- be able to --

24 MS. BRADLEY: Sure.

25 MEMBER MINSTREL -- review and understand what we're

50

1 ruling on.

2 (Multiple conversations.)

3 MS. BRADLEY: Yes. So I would just remind you, Board
4 Members, you're receiving exhibits, and like I said, you
5 know, keep track of them, because you're going to want to
6 bring them to the hearing.

7 The other thing, too, to keep in mind is definitely
8 review them. You can make notes on them. But please
9 don't discuss with anybody else the case or your review
10 or what you think. Okay? Keep that just to yourself.

11 And also, you know, don't do any investigation of
12 your own. What I mean by that is, you know, don't --
13 don't talk to people about it. Don't look on the
14 Internet for what you can find. Just review the exhibits
15 that you're provided. Okay? And you can always, of
16 course, review your statute.

17 MS. RASUL: Sarah, do you have a copy of the
18 exhibits?

19 MS. BRADLEY: No. So I hope that makes sense.

20 MEMBER ESLINGER: I am going to need a truck to haul
21 all this stuff around.

22 PRESIDENT KENNEDY: So back to the agenda.

23 MS. BRADLEY: I think so.

24 PRESIDENT KENNEDY: So we're back to public comment.

25 (Multiple conversations.)

1 MEMBER MINSTREL: No kidding. Quite a bit.

2 PRESIDENT KENNEDY. So no one can discuss --

3 MS. BRADLEY: Well, let's just make sure the
4 attorneys -- you don't have anything more that you need
5 to put forward today?

6 MS. CAVANAUGH-BILL: No. Just that, you know, as I
7 continue our investigation, we -- if we have -- if we
8 discover any additional documents we'll supplement that
9 as soon as possible.

10 MS. BRADLEY: Perfect. Thank you.

11 MS. CAVANAUGH-BILL: Yeah. And provide Ms. Rasul
12 copies.

13 MS. BRADLEY: Thank you. Okay.

14 And then it sounds like Ms. Eklof is going to provide
15 the Board copies of the respondent's exhibits as early as
16 she can. I'm guessing by e-mail. Is that --

17 MS. EKLOF: Well, they'll have to be scanned, unless
18 you have them electronically, as well.

19 MS. CAVANAUGH-BILL: We e-mailed them originally to
20 you.

21 MS. EKLOF: Okay. All right.

22 MS. BRADLEY: Okay. So you'll receive those very
23 soon. And just remember that L is being removed.

24 MS. CAVANAUGH-BILL: And I marked that on yours.

25 MS. EKLOF: Okay.

1 MS. BRADLEY: And then J is also being removed.

2 MS. CAVANAUGH-BILL: For now. And we'll get a better
3 copy.

4 MS. BRADLEY: For now, until we get a better copy.

5 MS. CAVANAUGH-BILL: We should have that by Monday.

6 MS. BRADLEY: Okay. Okay. So, Ms. Eklof, please
7 don't give them L. L should be taken out completely.

8 MS. CAVANAUGH-BILL: I took them out.

9 MS. EKLOF: Right.

10 MS. BRADLEY: Okay. So you'll receive those. Again,
11 don't talk to anybody about it, but definitely review
12 them.

13 All right. So, yeah, I think we're back on the
14 agenda.

15 PRESIDENT KENNEDY: Public comment?

16 No public comment? Okay. May I have a motion to
17 adjourn?

18 MS. RASUL: You can just adjourn.

19 PRESIDENT KENNEDY: I can just adjourn? Okay.
20 We're adjourned.

21 MS. BRADLEY: And it is, for the record, 10:36.

22 (Proceedings concluded.)

23

24

25

1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)

3

4 I, MARIAN S. BROWN PAVA, Certified Court Reporter in
5 and for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me at
7 the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my supervision;
10 that the foregoing is a full, true, and correct
11 transcription of the proceedings to the best of my
12 knowledge, skill, and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am I
15 financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws of
17 the State of Nevada that the foregoing statements are
18 true and correct.

19 Dated this 26th day of July 2017.

20

/s/ Marian S. Brown Pava

21

Marian S. Brown Pava, CCR #169

22

23

24

