

NEVADA STATE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

TELEPHONE MEETING, 20 DECEMBER 2007

MINUTES

LOCATIONS OF MEETING

The Nevada Clinic 3663 Pecos-McLeod Intersection Las Vegas, Nevada 89121	AND	State of Nevada Homeopathic Medical Board Office 435 Court Street Reno, Nevada 89501
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Board Members and Staff: The following persons are either members of the Board or staff, and were absent or present for the meeting as designated:

Fuller Royal, M.D., H.M.D., Member and President—Present
Valerie Kilgore, Member and Vice President—Absent
Bruce Fong, D.O., H.M.D., Member and Secretary -Treasurer—Present
Diane Kennedy, Member—Present
Cyrus Pourzan, M.D., H.M.D., Member—Present
Leticia Gardea, Member—Present
Executive Director, Nancy Eklof—Present
Daniel Royal, D.O., HMD—Present
Keith Marcher, Senior Deputy Attorney General, Counsel to the Board—Present

MEMBERS OF THE PUBLIC: The following persons were present:

Joe Brown
James Forsythe, M.D., H.M.D.
Dennis Grover, representing Liberty and Justice for All (Public TV)
Marie Royal
Greg Olson, M.D., A.P.H.

Open Session. The meeting was called to order at 6:08 p.m. Pacific Time by President Royal. Roll call was taken and a quorum was present. The meeting was noticed and posted before 9:00 a.m., 17 December 2007. All visitors were welcomed. Mr. Marcher, Senior Deputy Attorney General was welcomed as the Board's legal counsel for the meeting. The President relinquished the Chair to Dr. Bruce Fong, Secretary-Treasurer, to conduct the business of the meeting. Adjournment of the meeting was set for 7:10 p.m.

Bruce Fong read a Memorandum he had received from the Board's Deputy Attorney General, Nancy Savage, which stated: "The Opinion of the Office is that board member Daniel Royal is allowed to call in for a telephone meeting."

The Chair stated the telephone meeting was scheduled for two locations. Dr. Dan Royal was questioned as to why he could not attend the meeting at the Las Vegas location. Dr. Royal said the location was too far for him attend due to his patient load. Questions were raised by Board members as to whether or not Dan Royal was a member of the Board. Dr. Pourzan, Diane Kennedy and Nancy Eklof had met with Mr. Joshua Hicks and Mr. Nicholas Vander Poel in the Office of the Governor approximately 2 months earlier and were told that Dr. Dan Royal had been removed from the Board. Mr. Marcher asked if the Board's Summary Suspension of Dr. Royal's license was revoked during the 18 October 2007 Emergency meeting. Diane Kennedy stated the Board did not

call the meeting, and believed the meeting was in violation of NRS 241. Mr. Marcher was told that several complaints had been filed with the Office of the Attorney General by members of the public against the Board for Open Meeting Law violations pursuant to the 18 October 2007 meeting. Therefore, the Board voted not approve the minutes of the meeting during the 26 October 2007 meeting. Discussion continued as to Dr. Dan Royal's status as a Board member, his failure to comply with the requirements of the Board's ByLaws (Article 3, Section 4) for participating in a telephone meeting of the Board from a location other than the approved locations. Mr. Marcher suggested that Dan Royal be allowed to participate in the meeting until the various concerns and questions as to his seat on the Board had been resolved. Dan Royal stated he had received a letter from Mr. Joshua Hicks within the past 6 weeks advising him that he is a member of the Board. Diane Kennedy said the Board had requested clarification from the Office of the Governor as to his Board status, but had received nothing in writing. Mr. Marcher suggests rescheduling the meeting until this matter could be resolved. The Chair asked Dr. Dan Royal to recuse himself from participating in the meeting. Dr. Dan Royal asked that the Board reschedule the meeting until the Board could verify his status by obtaining a letter from the Office of the Governor.

Motion: Fuller Royal moved that the meeting proceed in accordance with the agenda. Fuller Royal accepted an amendment to the motion for the meeting to proceed without participation by the Board member whose Board status is in question.

Second: Diane Kennedy

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan and Bruce Fong voting "Aye," and Dan Royal voting "Nay." (Leticia Gardea was not present)

Motion: Fuller Royal moved to approve the agenda.

Second: Cyrus Pourzan

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan and Bruce Fong voting "Aye." (Leticia Gardea was not present)

B. Minutes of 26 October 2007 meeting.

Motion: Cyrus Pourzan moved to approve the agenda **minutes**.

Second: Fuller Royal

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan and Bruce Fong voting "Aye." (Leticia Gardea was not present)

C. Executive Business.

2. President Fuller Royal reviewed letters written to and received from Senior Deputy Attorney General Nancy Savage. President Royal received a phone call from Assistant Attorney General Randal Munn following the removal of Senior Deputy Attorney General Ned Reed with Senior Deputy Attorney General Nancy assigned as his replacement. Mr. Munn assured President Royal that Ms. Savage would have no problem carrying forth what had been set in motion with a hearing officer hearing a complaint against a licensee and any other items related to such. President Royal requested the Office of Attorney General provide the Board with copies of all material and records pertaining to Complaint Number. 2007-02. These items were necessary in order for the Board carry out its mandate to protect the public. Ms. Savage's 14 November 2007 letter to President Royal states the Board does not have a right to access any of the records. These materials and records were to be placed in the Board files, and were to be reviewed by the Board Complaint Committee. She summarizes her reasons for rejecting this request as follows:

"The investigative materials that you have requested continue to be confidential, since they have neither been filed with a pleading or a motion before the board nor have they been introduced during a disciplinary hearing. We are in the process of obtaining any files or other documents potentially encompassed by your request from the Carson City office, where your prior counsel, Ned Reed was located. Such documents were initially requested upon receipt of your initial correspondence, and we have been assured after your recent inquiry that whatever

pertinent documents there are will be provided to us in the near future. Upon receipt, we will provide you with copies of any documents requested which are not confidential.”
(Emphasis added)

President Royal stated that Ms. Savage’s response is incredulous, considering Assistant Attorney General Randal Munn’s assurances that Ms. Savage would have all necessary materials and documents in her possession for preparing and proceeding with the prosecution of the licensee in Complaint Number 2007-02 scheduled for 25 October 2007. President Royal directed the Board’s attention to his 27 October 2007 letter to Ms. Savage.

By denying materials and records necessary for the Board to proceed with the prosecution of the licensee in Complaint Number 2007-02, Mr. Munn, Ms. Savage and the Office of the Attorney General are obstructing the Board from carrying out its legislative mandate and duty to protect the public. It is his opinion that serious ethical and legal issues exist within the Office of the Attorney General. President Royal directed the Board’s attention to the last paragraph of his 21 November 2007, wherein he renewed his request for Ms. Savage to contact him immediately to “discuss how these documents will be delivered to the Office of the Executive Director of the Nevada State Board of Homeopathic Medical Examiners so that a properly noticed hearing can be held by this Board to adjudicate the matter of Complaint No. 2007-02.” Ms. Savage has never contacted President Royal as requested.

President Royal directed the Board’s attention to Ms. Savage’s 14 December 2007 letter. She continues her circuitous writing and refuses to cooperate with the Board. He said Office of the Attorney General is preventing the Board from going forward with complaints which were ready to be adjudicated. Indeed, the Attorney General appears to be acting as the defense for the licensee rather than the prosecuting attorney for the Board in her handling of Complaint Number 2007-02.

Diane Kennedy asked President Royal to verify he had received no phone calls, no communication, nothing from Ms. Savage until the Board’s agenda was posted. President Royal said, “That is correct.”

Dr. Pourzan stated the actions of the Office of the Attorney General have compromised the Board. He stated the complaints of the citizens of Nevada are not being heard because of this lack of activity or stonewalling coming from the Office of the Attorney General. He said it is the duty of the Board to take whatever action necessary to protect the public interest.

Motion: Diane Kennedy moved to authorize Nancy Eklof, Executive Director, to carry out research regarding these letters to determine if the Board has sufficient justification for filing a Bar Complaint and an ethics complaint against its legal counsel assigned by the Office of the Attorney General, and report back to the Board at its next meeting.

Second: Cyrus Pourzan

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan, and Leticia Gardea voting “Aye.”

Mr. Marcher voiced his concern that this Motion was not related to an Agenda item and that, if the Board was going to take any action against its Deputy, the Board would have to notify that individual.

3. Secretary / Treasurer Bruce Fong directed the Board’s attention to his 9 November 2007 and 30 November letters to Ms. Savage. He requested that action be taken in the District Court to protect the public. Ms. Savage’s 18 December 2007 letter stated that neither the Secretary-Treasurer nor the President was empowered to ask for the requested actions.

Mr. Marcher voiced his concern that Dr. Fong’s effort to inquire whether the Board Members still wished to take action on the complaint upon which it previously took action because such discussion was not related to the listed Agenda item and Dr. Fong’s effort to make a Motion was drifting off the Agenda, which was informational, even though the Agenda included a discussion and action. Mr. Marcher suggested that it be put on the next meeting’s Agenda.

Motion: Cyrus Pourzan moved to have an agenda item for the next meeting whereby the Board could continue its investigation and prosecution of the licensee in Complaint 2007-02.

Second: Diane Kennedy

Action: No action taken. Mr. Marcher volunteered to assist the Board in the proper wording needed for the next meeting.

4. Complaint Committee Chairman Cyrus Pourzan stated he has had no response to his 10 December 2007 letter mailed to the Board's legal counsel, Senior Deputy Attorney General Nancy Savage. Her lack of response and cooperation is seriously interfering with the Board's ability to review and investigate complaints. Without the Board's approval, Ms. Savage cancelled the hearing before a hearing office of one complaint ready to be adjudicated. She failed to notify witnesses, including Dr. Pourzan, that the hearing had been cancelled. Neglecting these complaints puts the public at risk and possible harm. Ms. Savage has demonstrated her lack of understanding of chapter 630A statutes and codes, unfamiliar with our minutes, unfamiliar with the Open Meeting Law, and is therefore uncooperative with members of the Board in conducting Board business. The Board needs to continue in its efforts to obtain, review and investigate complaints.

Nancy Eklof advised the Board there were 3 outstanding complaints, and the Board Office has 4 calls and 1 email from the public stating frustration over Ms. Savage's lack of response when contacted for information about complaints. She forwarded the email to Ms. Savage. Ms. Savage sent an email to Ms. Eklof requesting assistance as to what she (Ms. Savage) should do. Ms. Eklof sent the procedures for handling a complaint and the Board's Policy and Bylaws Manual to Ms. Savage. Diane Kennedy asked that the email communications between Ms. Eklof and Ms. Savage be redacted and added to the minutes of this meeting. Prior to Ms. Savage's appointment as the Board's legal counsel, members of the public had good communication with Senior Deputy Attorney General Ned Reed. Ms. Savage has not provided the same service to the public. Ms. Eklof advised the Board that 2 of the complainants are taking their cause to the media. President Fuller Royal asked Ms. Eklof not to send copies—but not original—complaints to the Office of Attorney General.

Motion: Cyrus Pourzan moved that the Board authorize the Chairman of the Complaint Committee to take any and all action, including taking legal action, in order to obtain a copy of every Complaint that has been filed with the Board that still remains outstanding and unresolved.

Second: Fuller Royal

Motion restated by Bruce Fong: We have a Motion to empower Dr. Pourzan as the Chairman of the Complaint Committee to pursue any and all avenues, including potential legal ones, to obtain copies of all pending complaints to be able to do further investigation and allow the Board to function as its....Dr. Pourzan clarified that he wanted to be empowered as a representative of the entire Board, not as an individual.

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan, and Leticia Gardea voting "Aye."

Motion: Cyrus Pourzan moved that the Board authorize the Chairman of the Complaint Committee to take any and all action, including taking legal action, in order to obtain a written summary from the Office of the Attorney General setting forth the current status of any Complaint that still remains outstanding and unresolved.

Second: Diane Kennedy

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan, and Leticia Gardea voting "Aye."

Motion: Cyrus Pourzan moved that the Board authorize the Chairman of the Complaint Committee to take any and all action, including taking legal action in order, to obtain a written summary of the work, to date, of the Office of the Attorney General in relation to any Complaint that still remains outstanding and unresolved.

Second: Diane Kennedy

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan, and Leticia Gardea voting "Aye."

Mr. Marcher restated his concern for the record that this Motion was not related to an Agenda, which he stated earlier at the time it was made a voted upon. "If you want to be on the safe side, again, you could reagendaize it at another meeting, make it specific, list your options, and then vote that way."

Motion: Cyrus Pourzan moved that the Board authorize the Chairman of the Complaint Committee to take any and all action, including taking legal action, in order to obtain Copies of all investigative and evidentiary materials, of any nature whatsoever, that have been developed by the Office of the Attorney General that relate to any Complaint that still remains outstanding and unresolved.

Second: Diane Kennedy

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan, and Leticia Gardea voting "Aye."

Motion: Cyrus Pourzan moved that the Board authorize the Chairman of the Complaint Committee to take any and all action, including taking legal action, in order to obtain a list of any and all witnesses or persons who have provided information, of any nature whatsoever, to the Office of the Attorney General in relation to any Complaint that still remains outstanding and unresolved. This list must contain contact information for all such persons so that the Complaint Committee is able to contact them directly, *which action is within the limits of the applicable statutes governing such.* (Added by Leticia Gardea and approved by Cyrus Pourzan and Fuller Royal)

Second: Fuller Royal

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan, and Leticia Gardea voting "Aye."

Mr. Marcher voiced his concern for the record that the Board was "wildly deviating from the Agenda". Nobody from the public could read that Agenda item and assume that the Board was going to come up with 6-8 motions. "It's just not reasonable". His advice was that the Board "reagendize for a future meeting these specific Motions so that the public could have input on them, in theory, as opposed to doing it the way you're doing it." Cyrus Pourzan said that, as Complaint Committee Chairman, he had a duty to report to the Board and the public. Mr. Marcher replied, "And you've done that. You're going above and beyond the reporting, which is what the Agenda was talking about, to the point where you're making several Motions with regard to what you now are going to do in the future. I think it would be safer to put these particular items in the form of Agenda items on a future Agenda and take them one at a time and have the Board vote on them. If you don't want to do it that way you don't have to do it that way. That's just my advice." Cyrus Pourzan said, "You're advice is taken."

The Board's legal counsel, Keith Marcher, advised the Board to consider placing these and similar motions on an agenda of a future meeting because they appear to be moving too far from the current agenda. Cyrus Pourzan and Diane Kennedy expressed frustration with the current lack of support within the Office of the Attorney General in investigating and acting upon the complaints. Mr. Marcher explained his role was to advise the Board as to matters pertaining to the Open Meeting Law. He did not have any understanding of the Board's problem with Ms. Savage or the Office of the Attorney General. He recommended finishing the meeting.

Motion: Cyrus Pourzan moved that the Board authorize the Chairman of the Complaint Committee to take any and all action, including taking legal action, in order to obtain a written opinion from your office setting forth the position of the Office of the Attorney General in relation to any Complaint that still remains outstanding and unresolved. This opinion shall set forth not only the opinion of the Office of the Attorney General as to the validity of any such Complaint but also the course of action that the Office of the Attorney General intends to take in relation to any such Complaint.

Second: Diane Kennedy

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan, and Leticia Gardea voting "Aye."

Mr. Marcher: Typically, the way it would work is that, if you're worried about an Open Meeting Law Concern: (a) Someone would have to file a complaint against the Board; (b) It would have to be investigated, it would have to be timely, and if it was within the 60-day time period with the Open Meeting Law and it was determined there was some sort of Open Meeting Law violation, then your actions at this meeting would be considered void and you'd be required to do them over again. That generally would be the way it would work. If it wasn't within that 60-day time period, we'd still look at it and then issue some sort of advisory opinion for you in the future. I've put what I thought on the record. You guys have made several Motions already. So, it's really up to you if determine if you just want to continue at this point. Just go ahead and finish up and get the

meeting finished. Again, there aren't going to be any Open Meeting Law concerns if there isn't any kind of complaint filed.

Leticia Gardea: We all know who's going to file a complaint?

Diane Kennedy: [Laughing] What's new?

Motion: Cyrus Pourzan moved that the Board authorize the President and/or the Secretary-Treasurer to act in concert with the Chairman of the Complaint Committee in the event that legal action is taken.

Second: Diane Kennedy

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan, and Leticia Gardea voting "Aye."

Motion: Cyrus Pourzan moved that the Board authorize the engagement of outside legal counsel in the event that the Office of the Attorney General continues to be unresponsive.

Leticia Gardea suggested tabling this motion. Dr. Pourzan explained the importance of his motion. After further discussion, Dr. Pourzan withdrew his motion.

D. The Executive Director stated that much of her report had already been included during the discussion of the Board. She requested Mr. Marcher to ask the Attorney General to appoint a Deputy Attorney General in the Carson City area, making it possible to have better communication with the Board's legal counsel, and reducing the Board's expense. Diane Kennedy reminded the Board that this request had been made through Senior Deputy Attorney General Gina Sessions during the 26 October 2007 Board meeting, but nothing has happened. Mr. Marcher stated he would communicate the Board's request to the Chief of his bureau.

Diane Kennedy reminded the Board that Chief Deputy Attorney General Christine Guerci-Nyhus and Senior Deputy Attorney General Nancy Savage told the Board on 18 October 2007 that a second opinion was needed in the matter of Complaint 2007-02. The Board needs the records pertaining to Complaint 2007-02 for obtaining a second opinion. Although Ms. Eklöf requested the materials and records of the complaint in a letter to Ms. Savage, she has never received a response from Ms. Savage.

E. Public Comment. None

F. Announcements; Set the Date, Time and Location of the next Board Meeting. Fuller Royal stated the Board needs to have a meeting in early January, 2008, to address any unfinished business from this meeting. The Secretary and Executive Director will set the time and date and notify the Board.

G. Adjournment.

Motion: Fuller Royal moved to adjourn the meeting.

Second: Cyrus Pourzan

Action: Passed with Fuller Royal, Diane Kennedy, Cyrus Pourzan, and Leticia Gardea voting "Aye."

Time of Adjournment: 7:38 p.m. Pacific Time

Dated: _____

Bruce Fong, Secretary-Treasurer