

REGULAR MEETING

OF THE

NEVADA STATE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

NOTICE OF PUBLIC MEETING AND AGENDA

PUBLIC BODY: NEVADA STATE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

DATE OF MEETING: Friday, 26 October 2007

TIME OF MEETING: 1:00 p.m. Pacific Time

LOCATION OF MEETING: Airport Plaza
1981 Terminal Way
Reno, Nevada 89502

NOTICES POSTED: Notices of this meeting have been posted at the following locations.

Washoe County Library, 301 South Center Street, Reno, NV 89505,
Bio Health Center, 615 Sierra Rose Drive, Suite 3, Reno, NV 89511
Board of Homeopathic Medical Examiners, 435 Court Street, Reno, NV 89501
Cancer Screening & Treatment Center, 521 Hammill Lane, Reno, NV 89511
Office of the Attorney General, 100 North Carson Street, Carson City, NV 89701
Office of the Attorney General, 555 East Washington Ave., Las Vegas, NV 89101
Sierra Integrative Medical Center, 6512 South McCarran, Suite E, Reno, NV 89509
The Nevada Clinic, 3663 Pecos-McLeod Intersection, Las Vegas, NV 89121

In addition, the **Notice of Public Meeting** and **Agenda** was mailed or e-mailed to groups and individuals as requested.

AMENDED NOTICES AND AGENDA: With regard to any Board meeting, it is possible that an amended notice will be published adding new items to the original agenda. Amended notices will be posted, mailed and/or emailed in accordance with the Nevada Open Meeting Law.

NOTICE: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to participate. If special arrangements are necessary, please call Executive Director Nancy Eklof at (775) 324-3353, as soon as possible so that suitable arrangements can be conveniently made.

CONFIDENTIALITY: This meeting may concern confidential investigative or personnel matters which may be discussed in executive (closed) session. In such event, all recommendations will be voted on in the open session, which will be part of the meeting.

MEMBER ITEMS: Members of the Board may raise potential agenda items. However, no action may be taken by the Board on any such item. Any potential agenda item requiring further action must be scheduled on a future Board Agenda.

ORDER OF AGENDA ITEMS: The Board wishes to notify the public that the Board may consider agenda items out of the order presented on the written Agenda, at the discretion of the Chairperson, to promote efficiency and as an accommodation to the parties involved.

PUBLIC COMMENT: The Board welcomes public comment. It is within the Board's discretion to take public comment during a public hearing on any Agenda item(s). If the Board permits public comment on any Agenda item(s), the Board may place limits on the amount of time permitted speakers during such public comment. Persons wishing to speak during the public comment period on items not on the Agenda may speak only after receiving recognition and consent of the Chairperson. In consideration of others, please avoid repetition and limit your comments to no more than three (3) minutes total. No deliberation or action may be taken on a matter not listed on the posted Agenda until the matter has been specifically included on an Agenda as an item.

CLOSED MEETINGS: In accordance with NRS 241.030(1), except as otherwise provided by law, the Board may hold a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

CONFLICT OF INTEREST: If an applicant, a licensee or a person from the public requests a Board member's abstention on an Agenda item based upon a perceived conflict of interest, that person must state his or her objection on the record before any discussion of the particular item.

MEMBERS OF THE BOARD AND STAFF: The following persons are either members of the Board or staff, as designated:

- Dr. Fuller Royal, MD, HMD, Member and President
- Valerie Kilgore, Member and Vice President
- Dr. Bruce Fong, DO, HMD, Member and Secretary-Treasurer
- Diane Kennedy, Member
- Dr. Cyrus Pourzan, MD, HMD, Member
- Leticia Gardea, Member
- Executive Director, Nancy Eklof
- Nancy Savage, Senior Deputy Attorney General, Counsel to the Board

ALL CELLULAR PHONES AND PAGERS ARE TO BE TURNED OFF OR SET TO SILENT NOTIFICATION MODE PRIOR TO THE AGENDA PROCEEDINGS.

AGENDA

A. Open Session.

- 1. Call to order. Fuller Royal, President. Time: _____ p.m.
- 2. Roll call and determination of a quorum.
- 3. Welcome all visitors.
- 4. The Chair will set the time for adjournment. Time: _____ p.m.
- 5. Approval of the Agenda for this meeting. **(Discussion/Action)**.

B. Minutes of previous meetings.

- 1. 15 September 2007. **(Discussion/Action)**.
- 2. 18 October 2007. **(Discussion/Action)**.

C. Executive Business.

- 1. Today's meeting is to be conducted under **Robert's Rules of Order, 10th Edition**, in all business of the Board in which those Rules are not in conflict with any part of NRS 241, NRS 630A, NAC 630A, or any other provision of the Nevada Revised Statutes. The Chair or Board members may vote to suspend the Rules for taking Agenda items out of order if circumstances require such. **(Discussion/Action)**.
- 2. The Executive Director has confirmed that Dr. Daniel Royal has been removed as a Member of this Board by the Office of the Governor of the State of Nevada contrary to the statements of Senior Deputy Attorney General Nancy Savage and Chief Deputy Attorney General Christine Guerci-Nyhus. Should the Board solicit eligible licensees in good standing to apply to fill this vacancy? **(Discussion/Action)**.
- 3. Change in the Board's Legal Counsel. Edward T. Reed, Senior Deputy Attorney General, was removed as the Board's legal counsel by the Office of the Attorney General on October 10, 2007 without prior notice to the Board. Nancy Savage, Senior Deputy Attorney General in Las Vegas has been assigned to replace Mr. Reed as the Board's legal counsel. Ms. Savage, accompanied by Chief Deputy Attorney General Christine Guerci-Nyhus, met with Board members and former Temporary Board member Robert Eslinger, D.O., H.M.D., 18 October 2007 to discuss legal matters pertaining to complaint 2007-02.
 - (a) Has the unilateral action of the Office of the Attorney General deprived the Board of effective legal counsel in regards to the Board's prosecution of a physician licensed under Chapter 630A of NRS,

whose practice the Board feels is endangering the public? What action, if any, should the Board take in protecting the public? **(Discussion/Action)**.

- (b) A third party hearing officer had been scheduled to hear a complaint on October 25, 2007. The Board's former legal counsel stated to those Board members eligible to hear and take action in regards to the licensee in complaint 2007-02 that the complaint presented a serious concern as to the protection and safety of the citizens of the State of Nevada. The complaint is about a Doctor, licensed by this Board allowing a non-licensed individual to engage in the practice of homeopathic medicine, as defined in NRS 630A.040 and pursuant to NAC 630A, in that Doctor's office. The licensee in question was summarily suspended on September 15, 2007 by the Board members eligible to vote (two regular and two temporary Board members). The Board has since learned that the Office of the Attorney General unilaterally vacated this hearing following the October 18, 2007 Emergency Meeting. What actions, if any, should this Board take in response to the unilateral actions of the Office of the Attorney General? **(Discussion/Action)**.
- (c) During the 18 October 2007 meeting with Senior Deputy Attorney General Nancy Savage and Chief Deputy Attorney General Christine Guerci-Nyhus, Board members believed they were being coerced into breaking the Open Meeting Law by holding an emergency meeting with the understanding that if the Board did not rescind the summary suspension issued on 15 September 2007 the Office of Attorney General would not defend the Board members if the licensee filed suit against the Board and the Board members. One of the two Temporary Board members, Dr. Robert Eslinger, attended the meeting at the invitation of legal counsel. Dr. Eslinger stated his term as a Temporary Board member ended on 30 September 2007. Chief Deputy Attorney General Christine Guerci-Nyhus told him to "vote anyway" during the emergency meeting. Only two (2) Board members were eligible to vote, one of whom legal counsel said showed prejudice toward the licensee in complaint 2007-02 from comments made during previous Board meetings. Dr. Eslinger was also told by legal counsel that he made prejudicial comments about the licensee in complaint 2007-02 when making a public comment during a prior Board meeting. Dr. Eslinger and the two Board members did not form a quorum of the Board. Legal counsel strongly recommended the action that was carried out by the Board, which resulted in an illegal vote. The action taken by the Board to vacate the summary suspension is most likely illegal. Has the Board been deprived of effective legal counsel in regards to the counsel provided by Senior Deputy Attorney General Nancy Savage and Chief Deputy Attorney General Christine Guerci-Nyhus during the 18 October 2007 meeting? Should the Board obtain additional private legal counsel? What action should the Board take in regards to the "Order Vacating Summary Suspension" received from legal counsel? (See Exhibit C3c) **(Discussion/Action)**.
- (d) Was the scheduled 25 October 2007 hearing cancelled by the Office of the Attorney General without the knowledge or the consent of the Board? What action should the Board take, provided the action taken during the 18 October 2007 emergency meeting was illegal and the hearing was never held as originally scheduled? What experience does Ms. Savage have in prosecuting complaints of this nature? **(Discussion/Action)**.
- (e) What will be the additional costs incurred by this Board due to the untimely and unilateral actions of the Office of the Attorney General in removing Mr. Reed as its legal counsel? If the Board must schedule a new hearing pursuant to complaint 2007-02, can the suspension be continued? If the suspension cannot be continued beyond a set time, how can the Board fulfill its legislative mandate to protect the public? **(Discussion/Action)**.
- (f) Due to the unilateral actions of the Office of the Attorney General, what will be the additional costs incurred by this Board in the future given the location of the replacement Deputy Attorney General being in Las Vegas with the Board Office in Reno? **(Discussion/Action)**.
- (g) What additional costs may be incurred by this Board due to the unilateral actions of the Office of the Attorney General in the future in terms of any and all costs that may be incurred by the replacement Deputy Attorney General in the course of familiarizing herself with all existing Board matters? **(Discussion/Action)**.
- (h) If the 25 October 2007 hearing was not held, should the October 25, 2007 hearing on the complaint set forth in paragraph 3 (b) be rescheduled until such time as there can be adequate preparation to prosecute the licensee on the part of Attorney General's Office? **(Discussion/Action)**.

- (i) If the 25 October 2007 hearing was not held, should the October 25, 2007 hearing on the complaint set forth in paragraph 3 (b) be rescheduled until such time as the Board can engage legal counsel outside the Office of Attorney General to prosecute the complaint? **(Discussion/Action)**.
 - (j) If the 25 October 2007 hearing was not held, should the 25 October 2007 hearing on the complaint set forth in paragraph 3 (b) be rescheduled to be heard by this Board without the use of a third party hearing officer? **(Discussion/Action)**.
 - (k) If the 25 October 2007 hearing was not held, should the 25 October 2007 hearing on the complaint set forth in paragraph 3 (b) be rescheduled to be heard by this Board using outside counsel to prosecute the complaint? **(Discussion/Action)**.
 - (l) If the 25 October 2007 hearing was not held, should the licensee that is the subject of the complaint set forth in paragraph 3 (b) which was set to be heard on 25 October 2007 continue to be suspended from the practice of homeopathic medicine by this Board to the extent allowed under the laws of the State of Nevada? **(Discussion/Action)**.
 - (m) Should the Board authorize a letter to be drafted and sent to the Office of the Attorney General requesting that an Attorney General other than Nancy Savage or Christine Guerri-Nyhus be assigned as its legal counsel until complaint 2007-02 has been adjudicated by a hearing officer? **(Discussion/Action)**.
 - (n) The President of the Board has written to the Office of the Attorney General to obtain copies of all files, investigatory materials, witness interviews and any and all other information without limitation pertaining to the complaint set forth in paragraph C3 (b) as well as copies of all such materials that are developed in the future. If the Office of the Attorney General refuses to honor this request, what specific action should be taken? **(Discussion/Action)**.
 - (o) It has come to the attention of this Board that the licensee who was suspended on 15 September 2007 continues to represent himself as a licensed homeopathic physician and a practitioner of homeopathy on his website. Should this Board take all available actions against this non-licensed individual? See: Exhibit C3 (o) for illustrations of this conduct. **(Discussion/Action)**.
4. POLICY AND BYLAWS MANUAL: Suggested Additions, deletions, and new language in the Policy and Bylaws Manual were introduced during the 15 September 2007 meeting for review, discussion and action during this meeting. These changes are necessary in order to comply with parts of the Legislative Counsel Bureau audit's nine (9) recommendations. (See Exhibit C4 Bylaws, C4 Policy. C4 Policy). **(Discussion/Action)**.
 5. DECLARATION OF ALL MEMBERS: Should the Board approve a Declaration that will be signed by all Members, in the form displayed in Exhibit C5, to be released to the public? Should the Board authorize the President of the Board to make any required corrections, additions and/or deletions prior to the publication of this Declaration? **(Discussion/Action)**.
- D. Executive Director's Report. **(Discussion/Action)**.
 - E. Public Comment. **(Discussion only)**
 - F. Announcements; Set the Date, Time and Location of the next 2007 Board Meeting **(Discussion/Action)**.
 - G. Adjournment **(Discussion/Action)**. (Time: _____ p.m.)