



Nevada State Board of Medical Examiners

May 23, 2008

Honorable Sheila Leslie
Chairwoman, Legislative Committee on Health Care
Nevada Assembly
825 Humboldt Street
Reno, NV 89509-2009

Honorable Steven A. Horsford
Member, Legislative Committee on Health Care
Nevada Senate
1306 West Craig Road, Ste. E-310
North Las Vegas, NV 89032-0215

Dear Chairwoman Leslie and Senator Horsford:

In as much as Dr. Javid Anwar, M.D., the President of the Nevada State Board of Medical Examiners, has recused himself from any consideration or actions in the Endoscopy Center of Southern Nevada case, your letter dated May 12, 2008, has been referred to me, as Acting Chair on these matters, for response.

First and foremost, please let me assure you that all members of the Nevada State Board of Medical Examiners (the "Board"), its Executive Director, and its staff share your concern over the very serious crisis that has arisen from practices at the Endoscopy Center of Southern Nevada.

Your accusations as to the competency of the Board's Executive Director, while I am sure are well-intentioned, are based upon inaccurate information.

As you correctly pointed out in your letter, on February 27, 2008, the Southern Nevada Health District informed the public of its findings resulting from procedures performed at the Endoscopy Center of Southern Nevada. The newspaper report of this release (on February 28, 2008) was the first time the Board and its staff became aware of this crisis. The Bureau of Licensure and Certification, the Southern Nevada Health District, the Center for Disease Control and the State Nursing Board never contacted the Medical Board prior to the press release of February 27, 2008.

Upon learning of the crisis, the Board's Executive Director immediately instructed the Chief of the Board's Investigative Division to begin a full investigation. Specifically, the Chief of the Investigative Division was told to immediately: (i) open files on all of the

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Endoscopy Center's plan of corrections and given the Endoscopy Center its permission to continue treatments and procedures. In addition, the Southern Nevada Health District reported that the transmission of this disease was related to improper anesthesia administration, and not to any medical procedure. Shortly thereafter, the business licenses of the Endoscopy Center and its affiliated Centers were revoked by both the City and County where these improper practices were occurring.

I am confident that the Board's Executive Director did not mislead the public or your Committee regarding the Board's authority to immediately suspend licenses of physicians employed at the Endoscopy Center. Also, the Board's efforts to ensure that its statutory obligations concerning confidentiality were met, while not obstructing law enforcement's progress, should be commended, not criticized. There simply has been no abuse of discretion in handling this matter by any member of the Board's staff.

The Board, through its Executive Director and its staff, has pursued the investigation in this matter with the utmost urgency, integrity and professionalism, and will continue to do so. The Board's Executive Director has vast experience and knows the law well. Further, he diligently discusses and obtains input from Board officers and from the Nevada Attorney General's office prior to taking any action on behalf of the Board.

In attempting to determine what remedies are available to the Board, its Executive Director and the Board President, before the President's recusal, were in constant communication with the Nevada Attorney General's office as well as the Board's legal staff. With respect to the Board taking any action to summarily suspend the licenses of those physicians who were allegedly involved in the Hepatitis C outbreak, we could not legally pursue emergency summary license suspensions since the dangerous and improper conduct had been corrected and the Endoscopy Center (and affiliated Centers) had been closed due to the loss of its business license. All of the foregoing has been discussed with me as the acting Board chair regarding this investigation. As you are aware, any action by the Board pursuant to NRS 233B.127 requires that it make a finding that public health, safety or welfare imperatively require immediate emergency action. As I am sure you can now appreciate, the Board simply did not have sufficient evidence to support such a finding, and since the report of the Health District of Southern Nevada stated that the cause of the transmission came from the administration of anesthesia by CRNAs, there was not specific evidence to prove improper medical conduct against any doctor. Consequently, based on these facts, the Nevada Attorney General's Office agreed there was not sufficient legal ground to pursue summary suspension under NRS 233B.127. Thus, the Board's Executive Director correctly advised the Legislative Committee on Health Care (on April 21, 2008) that the Board did not have the authority to pursue summary suspensions.

The Board has and continues to engage in an aggressive investigation into this matter and is obtaining evidence to support its legal ability to take disciplinary action against any and all of the physicians who may have been involved in the tragic outbreak of Hepatitis C, despite our efforts being hindered by law enforcement's understandable seizure of all medical records and other evidence from the Endoscopy Center.

Please note that the Board effectuated the voluntary agreement for one of the principal owners of the Endoscopy Center to cease the practice of medicine in a relatively short period of time after learning of the crisis and has actively pursued injunctive relief against certain of its licensees (pursuant to NRS 630.388) by working through the Nevada Attorney General's Office; which, as you know, has resulted in two physicians being enjoined from the practice of medicine in Nevada by the Eighth Judicial District Court.

Finally, as a point of fact, the Board is the only health licensing agency that has actually filed a disciplinary complaint against an involved licensee. The six Certified Registered Nurse Anesthetists voluntarily surrendered their licenses during the pendency of the investigation into the outbreak, but no disciplinary action has been filed against any of them, or against any of the other nurse licensees who worked at the Endoscopy Center.

As I hope you can appreciate, the Board cannot respond in this letter to all the media reports; some of which are true, some of which have been taken out of context, and some of which are factually incorrect. Neither the Board nor its staff has ever interfered with or otherwise delayed any law enforcement investigation of this matter. Currently, it is my understanding that law enforcement has not even started its review of the evidence it confiscated from the Endoscopy Centers on March 10, 2008.

The Board continues to uphold its mandate to ensure the safety of the public in all that it does. Please rest assured, however, that the Board's vigorous investigation into this matter, while fully cooperating with law enforcement, remains its number one priority.

Sincerely,



Donald H. Baepler, Ph.D., D.Sc.
Secretary-Treasurer
Nevada State Board of Medical Examiners

cc: Honorable Jim Gibbons, Governor of Nevada
Honorable Catherine Cortez Masto, Attorney General of Nevada
Sohail U. Anjum, M.D., Vice President, NSBME
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