



Nevada State Board of Medical Examiners

May 21, 2008

Donald H. Baepler, Ph.D., D.Sc.
Secretary-Treasurer
Nevada State Board of Medical Examiners
c/o 3422 Kensbrook Street
Las Vegas, NV 89121

Dear Dr. Baepler:

This letter addresses your request to have me respond to the allegations contained in a letter sent to you by Assemblywoman Sheila Leslie and Senator Steven Horsford on May 12, 2008. The allegations can be summed up as an accusation that I do not understand the law. As you and the other members of the Board know, I have had a distinguished 29-year career in the practice of law in Nevada, in addition to my 14 years as the Adjutant General for this State. I worked in private practice for 22 years, served for 2-1/2 years as the Solicitor General for the Office of the Attorney General under Frankie Sue Del Papa, and have been with the Board for approximately 5 years. In addition to my work as an attorney, I served two 2-year terms on the Board of Governors of the State Bar of Nevada, served a term as President of the Washoe County Bar Association, served a 3-year term as a member of the State Board of Parole Commissioners and served a 3-year term as the Nevada Governor's appointee to the Governing Board of the Tahoe Regional Planning Agency. Lastly, I served for 9 years as the State Bar's appointee to the Nevada Judicial Discipline Commission.

I know Nevada law and I know our Medical Practice Act intimately.

As I see it, the first allegation is that I have placed the interests of the medical profession before the interests of the public. That is contrary to everything I, as Executive Director, and as a citizen of Nevada, believe. I think this is coming from a misunderstanding about the delayed release of Board records to law enforcement. I, and Board staff, were attempting to protect the confidentiality of patients and medical reviewers of the cases, NOT the doctors in question.

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With my background, strong working knowledge of the law, particularly the Medical Practice Act, and, most of all, experience in applying this law properly, I am most assuredly qualified to be the Executive Director of the Board of Medical Examiners.

The allegation that I made a decision to refuse to assist law enforcement is a twisting of the facts. This Board, under my administration, has never refused to assist law enforcement. In fact, we have worked often to assist law enforcement and they have assisted us. There was a delay, and only a delay. The delay was solely for the purpose of protecting the confidentiality of patients and the medical reviewers who worked on the prior cases to determine possible prosecution, and the identity of peer reviewers. The delay was due to the time it took for my conversations with the Board itself and with the Chief Deputy Attorney General, who assisted in negotiating a level of confidentiality with Metro to accomplish the patient, medical reviewer and peer reviewer confidentiality agreement. It is my understanding that the confidentiality agreement was in place even before the date that production was due. Staff negotiated the logistics for the law enforcement review, the review took place, copies of any requested documents were provided. This was a review of all of the Board's complaint files on this licensee. Nothing was held back.

Although there appears to have been a delay, I moved as quickly as possible and it was not a delay that caused any harm in the work of law enforcement. In fact, law enforcement has not yet even begun to go through all of the records it confiscated from the clinics/centers on March 10th. Thus any accusation or allegation that the Board staff or I held up, or interfered with, the law enforcement investigation is both untrue and ludicrous.

Neither Assemblywoman Leslie nor Senator Horsford seem aware that I, like the Board, and our entire staff, knew absolutely nothing about this crisis until it appeared in the newspaper. Then, as you know, law enforcement confiscated all the records at the Endoscopy Center before the Center could respond to the Board's subpoenas. This was an untenable situation for the Board and left me frustrated in our inability to obtain the evidence that was crucial to consideration of summarily suspending any licenses to practice medicine. As you know, in order to summarily suspend a license, the Board has the burden to prove that an emergency situation exists that requires immediate action by the Board in the interest of public safety.

The press, and others, seem to have forgotten that newspaper articles cannot substitute for evidence. I was exceptionally frustrated because, upon reading the newspaper article, my first reaction was that summary suspensions were probably in order, but, having not been contacted by the agencies involved, the Board had no evidence with which to proceed. I immediately set our Investigations Division in motion

and they began working within hours to attempt to serve the subpoenas for evidence. One of my duties as Executive Director is to protect the Board. The Board can be sued for proceeding to a prosecution without evidence, and rightfully so. There is a Constitutional right in our country not to be prosecuted without evidence. Newspaper articles are not evidence. Evidence from the health agencies involved might have helped, but the agencies' cases were not available to us. There simply was minimal evidence available to the Board. Due to the crisis level of this story, the press took things out of context and made the Board appear responsible. How could the Board be responsible if it did not even know about the actions until the newspaper article appeared? You will recall that, at that time, the Bureau of Licensure and Certification, the Center's licensing agency, had identified improper practices, that those practices had been corrected and the Bureau had approved the Center's Plan of Correction. Further, the Southern Nevada Health District had issued its report finding that no medical procedure was the cause of the infection, but that inoculation by employees other than doctors was the cause. Also, the City and County had revoked the business licenses of the Centers/Clinics, causing them to cease operations.

I did not, and have never, misled the media, the public or the Committee on Health Care regarding the availability of the emergency action for summary suspension of a medical license by the Board in this, or in any other, matter. The Board has imposed numerous summary suspensions to protect the public in the years I have served as Executive Director. I have consistently told the media, the public, and the Committee on Health Care that, in this case, the summary suspension procedure provided in NRS 233B.127 was not available to the Board. I have relied on the opinion of the Attorney General's office for this position. You will recall that immediately after the story broke, you and I realized we were confronted with a very serious and difficult situation. We talked to each other numerous times each day, and we talked with the Deputy Attorney General assigned to the Board numerous times each day. When we discussed what actions were available to us, the Deputy Attorney General told us that 233B summary suspension was not available because we could not sustain the evidentiary proof for the statutorily-required finding that the public safety and welfare were in imminent danger. Therefore, the Board would have to proceed under its usual investigative complaint process, although it would proceed as a very top priority.

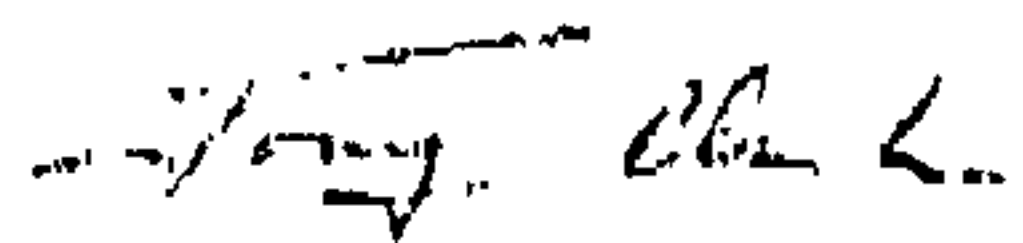
I have never said anything differently to the media, the public, the Committee on Health Care or anyone else.

It has always been my practice to consult with the Board's Deputy Attorney General on all actions that I take for and on behalf of the Board. I not only seek her advice, I follow it. I did not deviate this time.

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In summary, my actions as Executive Director were not deficient in any manner. I have full knowledge of the law, regulations and procedures to carry out my duties in a dignified and forthcoming manner. I have not impeded law enforcement agencies or any other government agencies or entities in their efforts to ensure the safety of Nevada's citizens. These allegations and accusations are false and untrue.

Sincerely,



Drennan A. Clark, J.D.
Maj Gen, USAF (Ret.)
Executive Director/Special Counsel and Acting General Counsel