

December 10, 2012

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN	)	
MEETINGS COMPLAINT 12-02	)	FINDINGS OF FACT, CONCLUSIONS
SOUTH DAKOTA BOARD	)	OF LAW, AND DISMISSAL
OF MEDICAL AND OSTEOPATHIC	)	
EXAMINERS	)	

FINDINGS OF FACT

1. On March 27 and 28, 2012, the South Dakota Board of Medical and Orthopedic Examiners held a board meeting to conduct disciplinary hearings for physicians and their regular scheduled meeting.
2. The board properly posted their agenda in excess of 24 hours before the meeting.
3. The meeting materials were available to the public at the board's office 48 hours in advance.
4. On March 27, Mr. Chad Haber arrived at the board meeting and was informed that part of the initial meeting would be closed to the public pursuant to SDCL 36-4-31.5.
5. Mr. Haber was given the option of two locations to wait in the building, and was told he could leave his cell phone number and he would be called at a time when the public portion of the meeting was to begin.
6. Mr. Haber remained at the board's office and was called and informed, on March 28, at the beginning of the public portion of the board meeting.

7. The Medical and Orthopedic Examiners did not hold any executive session.

8. The Medical Board of Orthopedic Examiners on March 27 and 28 closed the hearing for discipline of a physician according to SDCL 36-4-31.5, by publicly stating that there would be a closed hearing and citing to the statute.

9. During the public portion of the meetings on March 28, the meeting materials were projected onto a screen so that the attending public could follow along with the same information provided to the board.

10. The materials for the meeting were available to the public in two binders which were present during the meeting.

11. On April 6, 2012, Chad Haber filed a verified complaint with the state's attorney's office, alleging violations of the open meetings laws.

12. On June 25, 2012, the Minnehaha County State's Attorney forwarded his findings to the Open Meetings Commission.

13. On October 29, 2012, at 10:00 a.m., the Open Meetings Commission heard this matter.

#### CONCLUSIONS OF LAW

1. The complainant bears the burden of proof in this matter.
2. The Open Meetings Commission finds no evidence supporting any of the alleged violations.
3. SDCL 36-4-31.5 specifically prohibits the disclosure of testimony or documented evidence in licensing or disciplinary proceedings involving the

cancellation, revocation, suspension or placement of conditions or limitations on a physician's license. The physician has the right to contest the case proceedings, and such an action be closed to the public.

4. The Board of Medical and Osteopathic Examiners posted its agenda in excess of 24 hours prior to meeting in compliance with SDCL 1-25-1.1, which requires that a public meeting provide public notice, with a proposed agenda, of their meetings. There was no evidence to support that the agenda was not appropriately posted.

5. The Board of Medical and Osteopathic Examiners had a single agenda and projected their meeting materials upon a screen so that the public could view all of the meeting materials. There was no second agenda that was posted and the board complied with SDCL 1-25-1.1. The Open Meetings Commission finds no violation of law.

6. The Open Meetings Commission finds the Board of Medical and Osteopathic Examiners did not enter into executive session and the closed portions of the meeting were conducted in accordance with SDCL 36:4:31.5 which supersedes SDCL 1-25-2. The Open Meetings Commission finds no violation of SDCL 1-25-2.

7. As to the complaint concerning SDCL 1-27-1.16 and the provision to the public of printed material that has been provided to members of the governing body, the Commission finds no evidence to support that the meeting materials were not available to the public at the same time they were available to board members. Further, SDCL 1-27-1.16, cited by the state's attorney's

office does not fall within the jurisdiction of the Open Meetings Commission which solely has jurisdiction under SDCL ch. 1-25. As such the Open Meetings Commission finds no violation of law.

Issued by Commissioners Rothschadl (Chair), Reedstrom, Sovell and Brenner.

Commission Steele did not participate in the consideration of this matter.