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8
9 **BEFORE THE NEVADA STATE BOARD OF DENTAL EXAMINERS**

10 NEVADA STATE BOARD OF DENTAL
EXAMINERS,

Case No: LL-384-14-1978

11 Complainant,

12 vs.

13 ANTONINA CAPURRO, DMD,

14 Respondent.

**OPPOSITION TO RESPONDENT'S
MOTION FOR LEAVE TO FILE
(1) MOTION TO DISMISS FOR
VIOLATIONS OF NEVADA LAW,
REGULATIONS, AND BOARD
POLICIES; (2) MOTION TO DISMISS
COUNT I FOR MOOTNESS; (3)
MOTION TO DISMISS FOR FIFTH
AMENDMENT VIOLATIONS; (4)
MOTION TO EXCLUDE EVIDENCE
NOT PRODUCED PRIOR TO
COMMENCEMENT OF HEARING;
(5) MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

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19 The Nevada State Board of Dental Examiners ("Board"), by and through its counsel of
20 record, Lewis Roca Rothgerber Christie LLP, hereby submits this *Opposition to Respondent's*
21 *Motion for Leave to File (1) Motion to Dismiss for Violations of Nevada Law, Regulations,*
22 *and Board Policies; (2) Motion to Dismiss for Count I for Mootness; (3) Motion to Dismiss*
23 *for Fifth Amendment Violations; (4) Motions to Exclude Evidence Not Produced Prior to*
24 *Commencement of Hearing; and (5) Motion to Compel Production of Documents*
25 ("Opposition").

26 This Opposition is based upon the following grounds and reasons: (1) Respondent
27 Antonina Capurro's ("Dr. Capurro") five pending motions are untimely. Dr. Capurro's
28 strategy is clear: file motion after motion to continue delaying the hearing until it can no

1 longer be adjudicated on the merits. But under Nevada Revised Statute (“NRS”) 622A.360,
2 Dr. Capurro cannot continue to stall the ongoing hearing by bringing motions before the
3 Board that she could and should have brought prior to the initiation of this hearing; and, (2)
4 alternatively, Dr. Capurro’s five pending motions are not yet ripe under NRS 622A.390. The
5 motions must not interrupt the ongoing hearing, which has been ongoing for over two (2)
6 months now. Instead, the statutory provisions allow for the Motions to be heard at the
7 conclusion of the evidence, without interrupting the scheduled witness testimony. Indeed, in
8 the related state court matter, the district court judge ruled that Dr. Capurro’s concerns are not
9 ripe (that is, the facts of the case have not yet matured into an existing substantial controversy
10 warranting judicial intervention).

11 This Opposition is supported by the Declaration of Phil Su, the Board’s general
12 counsel (“Su Decl.”), attached hereto as **Exhibit “A”**. This Opposition is further supported by
13 the following Memorandum of Points and Authorities, the pleadings and papers on file in this
14 case, and any oral argument that may be entertained.

15 DATED July 26, 2021.

16 LEWIS ROCA ROTHGERBER CHRISTIE LLP

17 By: /s/ Ogonna Brown
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. PERTINENT FACTUAL BACKGROUND**

3 Dr. Capurro first inquired into the scope of her limited license (“Limited License”),
4 issued under NRS 631.271, in October 2020. Compl. ¶ 5 (filed as amended in Apr. 2021). In
5 the same month, she learned from Board Executive Director, Frank DiMaggio (“Director”),
6 and Board Counsel, Phil Su (“Counsel”), that she likely did not qualify to hold the Limited
7 License any longer. Compl. ¶¶ 6-7. As a result and upon his good-faith belief that Dr. Capurro
8 no longer held the qualifications necessary under NRS 631.271, Director administratively
9 expired Dr. Capurro’s license in November 2020. Compl. ¶ 10.

10 Dr. Capurro immediately sued the Board in state court. Compl. ¶¶ 11-12. In December
11 2020, she obtained preliminary injunctive relief from the State Court, which required that her
12 Limited License be reinstated to “active” status and that she be afforded due process with a
13 hearing. Compl. ¶ 13. Specifically, the State Court reserved the Board’s ability to consider
14 revocation through a formal hearing. *See Capurro v. Nevada State Board of Dental*
15 *Examiners*, Eighth Judicial District Court, Clark County, Nevada, Case No. A-20-825438-J,
16 Prelim. Inj. Order (issued Dec. 21, 2020) (finding that “[a]lthough Nevada law has procedural
17 safeguard in place for license revocation by the Board in disciplinary matters (*see* NRS
18 631.350 *et seq.*), the Board failed to utilize any parallel safeguards when the Executive
19 Director unilaterally, and without proper notice, issued a non-disciplinary ‘expiration’ of the
20 License” and that “if the Board decides to take further **action** to revoke, suspend, annul, or
21 withdraw Dr. Capurro for the same reason the Board ‘expired’ her license, the Board must
22 provide Dr. Capurro with her due process rights.”).

23 Dr. Capurro not only demanded a hearing, but she was unequivocally on informal
24 notice of a forthcoming hearing by no later than December 2020. *See* Compl. ¶ 13. The Board
25 approved an investigation in January 2021. *See* Compl. Dr. Capurro was formally notified of
26 an investigation by no later than February 2021. Compl. ¶ 14. And she received service of the
27 formal Amended Complaint in April 2021. *See* Compl. On May 20, 2021, on the eve of the
28 public hearing scheduled before the Board, Dr. Capurro sought to stop the hearing before the

1 Board by demanding that the State Court stop the hearing based upon allegations of
2 unfairness, procedural deficiencies, even though the Board had not yet held a hearing or
3 issued a decision. The State Court rejected all of Dr. Capurro's arguments because they were
4 not yet ripe for adjudication. Despite Dr. Capurro's efforts to prevent the hearings from
5 proceeding, this instant Hearing commenced on May 21, 2021. Dr. Capurro is renewing her
6 efforts to raise issues on her motions to dismiss relating to matters that are still not ripe for
7 adjudication and not properly before this Board at this time.

8 But despite the ongoing Hearing, ever since the State Court ruled that additional due
9 process must be given prior to the expiration or revocation of Dr. Capurro's Limited License,
10 Dr. Capurro has stalled the Board from adjudicating the instant dispute on the merits. *See*
11 *Compl.* Indeed, she disputed the Board's ability to conduct certain discovery, including by
12 refusing to assist in turning over certain documents within her possession or control. *See Su*
13 *Decl.* She has also challenged the procedures taken by Director and Counsel in relation to the
14 investigation and the Hearing. *See Su Decl.* As a result, she was repeatedly informed of the
15 basis of the Board's actions in relation to the investigation and the Hearing, affording her
16 more due process than that provided to other applicants in matters arising under NRS Chapter
17 631. *See Su Decl.*

18 Regardless, Dr. Capurro now seeks permission from this Board to file five untimely
19 motions to stall, halt, terminate or dismiss the claims asserted in the Board's Amended
20 Complaint and to entirely dismiss the ongoing Hearing. Dr. Capurro's request for leave
21 should be denied as they are not yet ripe for this Board's consideration. Depending on the
22 outcome of this Board's ruling at the conclusion of the public hearing, Dr. Capurro's present
23 grievances may never become ripe should the Board rule in favor of Dr. Capurro. In the event
24 the Board makes adverse findings against Dr. Capurro, she has administrative remedies and
25 appellate review available to address the issues raised in the motions to dismiss. As for the
26 evidentiary objections, this Board can and should rule on the evidentiary objections as
27 evidence is presented in the course of these proceedings.

28 ///

1 **II. LEGAL ARGUMENT**

2 The Board should deny Dr. Capurro’s Motion for at least two reasons: (1) the five
3 pending motions are untimely and (2) the five pending motions are, alternatively, not yet
4 ripe.¹

5 **A. Under NRS 622A.360, Dr. Capurro Should Have Filed the Five Pending**
6 **Motions 10 Days Prior to the Beginning of the Hearing**

7 To begin, Dr. Capurro chose to file her five pending motions **after** the hearing for this
8 matter commenced. The language of NRS 622A.360 emphasizes the preference for motions to
9 be filed ten days *prior* to the date of the hearing. *See* NEV. REV. STAT. § 622A.360. Indeed,
10 the statutory scheme first requires that “a party must file a written motion with [the Board]”
11 “to request a ruling from the [Board] on any issue of law or procedure in a case[.]” NEV. REV.
12 STAT. § 622A.360(1). The statutory scheme then mandates the timing and types of motions
13 permitted, requiring that “prehearing motion[s] must be filed with the [Board] **at least 10**
14 **days before the date of the hearing.**” NEV. REV. STAT. § 622A.360(3) (emphasis added).

15 Prehearing motions include, in part:

- 16 (b) A motion requesting, for good cause, the recusal of the hearing officer, a
17 member of the hearing panel or a member of the regulatory body from
18 participation in the case”;
19 ...
20 (e) A motion requesting dismissal of the charging document for failure to state
21 facts which, if true, would form a sufficient basis for discipline”; and,
22 (f) “[w]ith leave of the regulatory body or hearing panel or officer, any other
23 motion requesting appropriate action or relief **before the date of the hearing.**”

24 NEV. REV. STAT. § 622A.360(3)(b), (e)-(f) (emphasis added). Alternatively, motions allowed
25 “**after the commencement of the hearing**” are limited to two types:

- 26 (a) After the prosecutor has concluded the presentation of his or her case in
27 chief, a motion requesting dismissal of the charging document for failure of the
28 prosecutor to meet the burden of proof.
29 (b) With leave of the regulatory body or hearing panel or officer, any other
30 motion requesting appropriate action or relief during the hearing.

¹ Ripeness, as a legal concept, means that a tribunal should generally only consider a dispute if it has
matured into an existing substantial controversy that warrants intervention by the tribunal, which these
motions have not. To be sure, Dr. Capurro’s motions are not meritorious for the reasons set forth in the
respective proposed opposition filed in response to each motion.

1 NEV. REV. STAT. § 622A.360(5) (emphasis added).

2 Dr. Capurro's pending motions are untimely because they should have been filed ten
3 days prior to the start of the Hearing. Specifically, Dr. Capurro seeks to file five (5) motions
4 *after* the commencement of the hearing:

5 (1) Motion to Dismiss for Violations of Nevada Law, Regulations, and Board
6 Policies;

7 (2) Motion to Dismiss Count I for Mootness;

8 (3) Motion to Dismiss for Fifth Amendment Violations;

9 (4) Motions to Exclude Evidence Not Produced Prior to Commencement of
10 Hearing;

11 (5) Motion to Compel Production of Documents.

12 The former three motions clearly fall within the types of motions designated as pre-
13 hearing motions by NRS 622A.360(3)(b) and (e), because the motions seek to dismiss the
14 charging document or to disqualify certain Board members. Likewise, the latter two motions
15 relate to attorney-client privileged evidence from the March 16, 2021 closed meeting (which
16 cannot be disclosed based upon privilege) and recordings of prior meetings (which have been
17 disclosed to Dr. Capurro), and evidence that Dr. Capurro seeks to exclude, which she created
18 but did not cause to be turned over to the Board relating to the BSS Forms. The BSS Forms
19 total 16 pages, which Dr. Capurro prepared and did not turn over to the Board despite
20 repeated requests. There is no surprise or prejudice to Dr. Capurro as she created the very
21 documents in November 2020 which she now seeks to exclude. The moment the Board
22 received the BSS Forms from the Department of Education, the Board turned them over to Dr.
23 Capurro's counsel immediately on July 23, 2021. Thus, the remaining issue is the motion to
24 exclude evidence, which relates to the admissibility of evidence, which this Board is well
25 equipped to decide during the proceedings when the previously withheld evidence is sought to
26 be admitted.

27 Indeed, with the exception of the BSS Forms, which will be presented for the Board to
28 decide on admissibility grounds, each of the other four motions concern disputes that were

1 already at issue prior to the start of the Hearing. *See* Su Decl. Thus, under NRS 622A.360(3),
2 Dr. Capurro both could have, and, more importantly, should have filed the motions as pre-
3 hearing motions by no later than May 11, 2021—ten days prior to the start of the Hearing. By
4 failing to file the motions before the start of the Hearing, Dr. Capurro waived her right to have
5 the motions be considered. *See United States v. Godbey*, No. 11-CR-00292-RJA-JJM, 2012
6 WL 4061215, at *4 (W.D.N.Y. Aug. 27, 2012), *report and recommendation adopted*, No. 11-
7 CR-292A, 2012 WL 4061085 (W.D.N.Y. Sept. 14, 2012) (finding the failure to raise an
8 argument in a pre-hearing motion resulted in a waiver of the argument); *see also State v.*
9 *Cantsee*, 130 Nev. 210, 216, 321 P.3d 888, 892 (2014) (untimely motions or oppositions
10 results in a waiver of the argument unless the argument is raised in a hearing prior to trial).

11 Indeed, on May 17, 2021, Dr. Capurro elected to submit a Motion before the State
12 Court to stop the proceedings before the Board, instead of filing the pre-hearing motions
13 before the Board commenced the May 21, 2021 public hearings. After losing in State Court,
14 Dr. Capurro brought a number of oral motions to dismiss the proceedings at the beginning of
15 the May 21, 2021 public hearings, all of which were denied by the Board and caused
16 tremendous delay to the proceedings because none of the pre-hearing motions were filed with
17 the Board in advance of the public hearing on May 21, 2021.

18 Nevertheless, the Board still considered each of the improperly presented oral motions
19 presented by Dr. Capurro on May 21, 2021. Indeed, Dr. Capurro’s timing in seeking to file
20 the motions now only further demonstrates her intent to systematically delay the Hearing,
21 which is equivalent to a trial, until it can no longer be adjudicated on the merits. Her Motion
22 should be denied as untimely accordingly.

23 **B. Under NRS 622A.390, Dr. Capurro’s Motions May Be Considered After**
24 **the Hearing Concludes**

25 Alternatively, Dr. Capurro should not be permitted to delay the Hearing again by filing
26 these five motions that should have been filed prior to the start of the Hearing, because the
27 statutory scheme allows for such motions to be heard “after the close of the hearing.” NEV.
28 REV. STAT. § 622A.360(6) (“A party may file only the motions set forth in NRS 622A.390

1 after the close of the hearing.”). The statutory scheme explicitly allows for a party to file the
2 following motions after the close of a hearing:

- 3 (a) A motion requesting a rehearing.
- 4 (b) A motion requesting reconsideration of the findings and recommendations
of the hearing panel or officer or the final decision of the regulatory body.
- 5 (c) A motion requesting that the final decision of the regulatory body be
vacated or modified.
- 6 (d) With leave of the regulatory body or hearing panel or officer, any other
motion requesting appropriate action or relief after the close of the hearing.

7 NEV. REV. STAT. § 622A.390(1)(a)-(d). Further, the statutory scheme explains that a motion
8 requesting reconsideration may be based on:

- 9 (a) Newly discovered or available evidence.
- 10 **(b) Error in the hearing or in the findings and recommendations or the
decision that would be grounds for reversal of the findings and
recommendations or the decision.**
- 11 (c) The need in the public interest for further consideration of the issues or
evidence, or both.

12
13 NEV. REV. STAT. § 622A.390(5) (emphasis added). (“A party may file only the motions set
14 forth in NRS 622A.390 after the close of the hearing.”).

15 If the Board is inclined to consider these motions, then Dr. Capurro’s motions must be
16 heard at the time allowed for by the statutory scheme: after the close of this formal hearing.
17 Although Dr. Capurro should have brought her five pending motions at least ten days prior to
18 the start of the Hearing, she waived that opportunity by waiting to file the motions concerning
19 the disputes until after the Hearing began. As a result, her motions should now be heard, if at
20 all, as post-hearing motions under NRS 622A.360(6) and 622A.390(1)-(5). Stated otherwise,
21 this Hearing should not continue to be delayed by procedural tactics. Instead, Dr. Capurro’s
22 motions should be heard as post-Hearing motions given Dr. Capurro’s opting to hold the
23 motions until after the Hearing began on May 21, 2021.

24 **V. CONCLUSION**

25 For the foregoing reasons, Dr. Capurro’s Motion for Leave to File the three pending
26 motions to dismiss should be denied in light of her failure to timely raise the existing disputes
27 prior to the beginning of the Hearing on May 21, 2021, and Dr. Capurro instead should be
28 required to file her motions as post-hearing motions. The motions to exclude evidence should

1 be entertained during the hearing if and when the evidence is sought to be admitted by the
2 Board, and the compel evidence has been addressed by the Board's turnover of the recordings
3 requested by Dr. Capurro.

4 DATED July 26, 2021.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6 By: /s/ Ogonna Brown

Ogonna M. Brown, Esq.

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Attorney for Complainant

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, NRCF 5(b), and EDCR 7.26, I certify that on July 26, 2021, I
3 served a copy of **OPPOSITION TO RESPONDENT’S MOTION FOR LEAVE TO FILE**
4 **(1) MOTION TO DISMISS FOR VIOLATIONS OF NEVADA LAW, REGULATIONS,**
5 **AND BOARD POLICIES; (2) MOTION TO DISMISS COUNT I FOR MOOTNESS;**
6 **(3) MOTION TO DISMISS FOR FIFTH AMENDMENT VIOLATIONS; (4) MOTION**
7 **TO EXCLUDE EVIDENCE NOT PRODUCED PRIOR TO COMMENCEMENT OF**
8 **HEARING; (5) MOTION TO COMPEL PRODUCTION OF DOCUMENTS** on all
9 parties in the following manner(s):

10 Electronic Service – By serving a copy thereof through the Court’s
11 electronic service system; and/or

12 E-mail – By serving a copy thereof at the email addresses listed below;
13 and/or

14 Sklar Williams PLLC
15 Nadia Janjua Ahmed, Esq.
16 Crane M. Pomerantz, Esq.
17 David B. Barney, Esq.
18 Email: nahmed@sklar-law.com
Email: CPomerantz@sklar-law.com
Email: dbarney@sklar-law.com

19 U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class
20 postage prepaid and addressed as listed below.

21 _____
22 */s/ Nicole Lord*
23 An employee of Lewis Roca
24 Rothgerber Christie LLP
25
26
27
28

EXHIBIT “A”

1 Ogonna M. Brown, Esq.
Nevada Bar No. 7589
2 Adrienne Brantley-Lomeli, Esq.
Nevada Bar No. 14486
3 Chelsee Jensen, Esq.
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7 *Attorney for the Nevada State Board of Dental Examiners, Complainant*

8 **BEFORE THE NEVADA STATE BOARD OF DENTAL EXAMINERS**

9
10 NEVADA STATE BOARD OF DENTAL
EXAMINERS,

Case No: LL-384-14-1978

11 Complainant,

12 vs.

13 ANTONINA CAPURRO, DMD,

14 Respondent.

**DECLARATION OF PHIL SU, ESQ. IN
SUPPORT OF OPPOSITION TO
RESPONDENT’S MOTION FOR LEAVE
TO FILE (1) MOTION TO DISMISS FOR
VIOLATIONS OF NEVADA LAW,
REGULATIONS, AND BOARD POLICIES;
15 (2) MOTION TO DISMISS COUNT I FOR
MOOTNESS; (3) MOTION TO DISMISS
FOR FIFTH AMENDMENT VIOLATIONS;
16 (4) MOTION TO EXCLUDE EVIDENCE
NOT PRODUCED PRIOR TO
17 COMMENCEMENT OF HEARING;
18 (5) MOTION TO COMPEL PRODUCTION
OF DOCUMENTS**

19
20 I, PHIL SU, ESQ., declare and state as follows:

21 1. I am general counsel for Complainant Nevada State Board of Dental Examiners (the
22 “Board”) in the above-captioned matter.

23 2. I make this declaration in support of the Opposition to Respondent’s Motion to
24 Dismiss for Violations of Nevada Law, Regulations and Board Policies (“Opposition”).

25 3. I have personal knowledge of the facts and circumstances set forth in this declaration
26 and could and would competently testify thereto in a court of law.

27 . . .

1 4. On October 26, 2020, Dr. Antonina Capurro (“Dr. Capurro”) contacted me by email
2 to request clarification of her scope of practice under her limited license pursuant to NRS
3 631.271(3)(a), as it related to language in her 2020-2021 employment agreement with the University
4 of Las Vegas School of Dental Medicine (“UNLV SDM”), to fulfill Nevada System of Higher
5 Education’s contract with Nevada Health and Human Services (“DHHS”) for dental director
6 services, pursuant to an interagency contract, and specifically, regarding her ability to practice
7 outside of the physical UNLV SDM campus under the limited license.

8 5. This communication was the very first time Dr. Capurro’s employment position
9 with UNLV SDM, or the arrangement between the school and DHHS, had been brought to my
10 attention.

11 6. Her communication seemed to request of me a legal opinion, which I could not
12 provide since I was not her attorney. Therefore, I did not provide her with any opinion one way or
13 another regarding her initial query: whether her limited license permitted her to practice outside of
14 the physical UNLV SDM campus.

15 7. In reviewing the employment agreement she provided, the contract noted that “You
16 have no teaching responsibilities at UNLV School of Dental Medicine.”

17 8. Board Executive Director Frank DiMaggio (“Director”) and I called Dr. Capurro on
18 October 28, 2020 to inform her of Director’s concern that she might not qualify for the limited
19 license she held pursuant to NRS 631.271, and, specifically, NRS 631.271(1)(c)(1-2), and NRS
20 631.271(1)(e)(1-4), because she had no teaching responsibilities and was holding her limited
21 license based on her position as “Visiting Assistant Professor” with UNLV SDM.

22 9. During that call Director invited her to provide documentation and records to
23 substantiate that she presently met the requirements of the statute.

24 10. It was, and is, my understanding that this initial inquiry was administrative in nature,
25 pertaining to licensure only, and was not a board-authorized investigation as defined by NRS
26 631.360, et. seq.

27 . . .

28

1 11. It is also my understanding that Director, as the Executive Director of the Board, is
2 empowered by NAC 631.023(3)(c) to “ensure that the provisions of this chapter which relate to
3 licensure are observed by applicants and licensees.”

4 12. As a result of his good-faith belief, Director placed Dr. Capurro’s Limited License
5 in the status of “administratively expired” in November 2020.

6 13. Dr. Capurro filed suit against the Board in the Eighth Judicial District Court of the
7 State of Nevada, seeking injunctive relief, including a motion for preliminary injunction. I prepared
8 pleadings and represented the Board at the subsequent hearing.

9 14. Following a December 8, 2020, hearing on Dr. Capurro’s motion for injunctive
10 relief, the District Court Judge ordered, among other things, that the Board provide Dr. Capurro
11 with her due process rights, including notice and a hearing, if the Board decides to take further
12 action to revoke, suspend, annul or withdraw Dr. Capurro’s license for the same reason the Board
13 “expired” her license for failing to hold the necessary qualifications.

14 15. While the Board does not concede that Dr. Capurro is entitled to a hearing, in order
15 to comply with the District Court Judge’s order, I prepared a request for an authorized investigation
16 for the Board to consider at a duly noticed and posted January 20, 2021 board meeting. The
17 investigation was authorized by vote and assigned to me, as the Board’s General Counsel, for
18 further handling.

19 16. I thereafter assigned outside counsel Ogonna Brown, Esq., of Lewis Roca (“Counsel
20 Brown”), to issue the Board’s Notice of Complaint and Request for Records, which were served
21 upon Capurro through her then-counsel, Attorney Maria Nutile, on February 19, 2021.

22 17. I also assigned Counsel Brown to serve Dr. Capurro with the formal Amended
23 Complaint, which was served on Dr. Capurro through her counsel in April 2021.

24 18. The Amended Complaint set the instant hearing for a beginning date of May 21,
25 2021.

26 . . .

27 . . .

28

1 19. However, the day before the hearing was set to begin, Dr. Capurro filed an
2 emergency motion with in the Eighth Judicial District Court proceeding to stop the hearing, alleging
3 an unfair investigation and proceeding as well as procedural deficiencies in the investigation and
4 instant hearing. The Board had not yet held a hearing or issued a decision. Thus, the State Court
5 Judge denied the emergency motion, finding that Dr. Capurro’s arguments were not ripe for
6 adjudication. Ripeness, as a legal concept, means that a tribunal should generally only consider a
7 dispute if it has matured into an existing substantial controversy that warrants intervention by the
8 tribunal, which these motions have not.

9 20. The Hearing thereafter commenced on May 21, 2021.

10 21. Throughout this matter, the investigation, and the related state court proceeding, Dr.
11 Capurro has: challenged the Board’s ability to conduct certain discovery; refused to turn over
12 certain documents believed to be within her possession or control; and, criticized the procedures
13 taken by Director and myself in relation to the investigation and the Hearing.

14 22. As a result, Dr. Capurro has been repeatedly informed, by myself or Counsel Brown,
15 of the basis of the Board’s actions in relation to the investigation and the Hearing. These additional
16 efforts are not typical in proceedings before the Board, and Dr. Capurro has been afforded more
17 due process than required and more due process than that provided to other applicants in matters
18 arising under NRS Chapter 631.

19 23. She now seeks to file five motions in the middle of the hearing despite all of the
20 issues raised in the three motions to dismiss were disputes at issue prior to the start of the hearing
21 on May 21, 2021.

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1 24. The only new dispute concerns (i) Dr. Capurro’s demand for turnover of evidence,
2 which recordings have been turned over, with the exception of the attorney client privileged 3/16
3 closed meeting information, and (ii) evidence called the “BSS Forms,” which are documents that
4 Dr. Capurro created but did not cause to be turned over to the Board during the investigation despite
5 Dr. Capurro’s obligation to turn over relevant information relating to the investigation and the
6 Board’s repeated requests for the turnover of the BSS Forms.

7 25. \The Board has made requests to third parties and Dr. Capurro since May of 2021
8 for the turnover of the BSS Form.

9 26. The Board eventually obtained the forms from the Department of Education
10 (“DOE”) on July 23, 2021, by way of a subpoena (to which subpoena Dr. Capurro never once
11 objected).

12 27. Once the DOE turned over the BSS Forms to the Board, the Board immediately
13 shared the forms with Dr. Capurro.

14 28. Dr. Capurro now challenges the admissibility of the BSS Forms, which total sixteen
15 (16) pages.

16 29. It appears that Dr. Capurro caused the BSS Forms to be created, and she therefore
17 knew of the existence of the BSS Forms, and is not prejudiced by the efforts by the Board to admit
18 the BSS Forms.

19 30. Most importantly, the issue of the BSS Forms being admitted into evidence will be
20 presented for the Board to decide in the ordinary course of the hearing, should the Board seek to
21 admit the BSS Forms into evidence.

22 I declare under penalty of perjury under the laws of the United States that the foregoing is
23 true and correct.

24

25 DATED this 26th day of July, 2021.

26

27

/s/ Phil Su
PHIL SU, ESQ.

28