

**In the Matter Of:**

Nevada State Board of Dental Examiners vs Capurro, Antonina, DMD

**PHIL SU**

*May 17, 2021*

*Job Number: 760332B*

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STATE OF NEVADA

BEFORE THE BOARD OF DENTAL EXAMINERS

NEVADA STATE BOARD OF DENTAL )  
EXAMINERS, )  
Complainant, )  
vs. )  
ANTONINA CAPURRO, DMD, )  
Respondent. )  
\_\_\_\_\_ )

CASE NO: LL-384-14-1978

DEPOSITION BY ZOOM OF PHIL SU

LAS VEGAS, NEVADA

MONDAY, MAY 17, 2021

REPORTED BY: VANESSA LOPEZ, CCR NO. 902

JOB NO.: 760332B

1 DEPOSITION BY ZOOM OF PHIL SU held remotely before  
2 me, Las Vegas, Nevada, on Monday, May 17, 2021, at 1:52  
3 p.m., before Vanessa Lopez, Certified Court Reporter, in and  
4 for the State of Nevada.

5

6

7 APPEARANCES:

8 Via Zoom for Respondent:

9

SKLAR WILLIAMS PLLC  
BY: NADIA AHMED, ESQ.  
410 South Rampart Boulevard, Suite 350  
Las Vegas, Nevada 89145  
(702)360-6000

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13 Via Zoom for Complainant Nevada State Board of Dental  
14 Examiners:

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LEWIS ROCA  
BY: OGONNA BROWN, ESQ.  
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I N D E X

WITNESS: PHIL SU

EXAMINATION

By Ms. Ahmed

PAGE

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E X H I B I T S

NUMBER

PAGE

Exhibit 1 (Not attached.)

1 LAS VEGAS, NEVADA; MONDAY, MAY 17, 2021

2 1:52 P.M.

3 -oOo-

4 (The Reporter was relieved of her duties  
5 under NRCP 30(b)(4).)

6 Whereupon,

7 PHIL SU,

8 having been first duly sworn by the court reporter to  
9 testify to the truth, the whole truth, and nothing but the  
10 truth, was examined and testified under oath as follows:

11

12 EXAMINATION

13 BY MS. AHMED:

14 Q. Good afternoon, Mr. Su.

15 A. Good afternoon.

16 Q. You are Phil Su. Correct?

17 A. I am.

18 Q. And are you here today pursuant to a subpoena  
19 issued by the Nevada State Board of Dental Examiners?

20 A. I am.

21 Q. And that's in relation to Case No. LL-384-14-1978?

22 A. That's it, yes.

23 Q. And you are here with counsel, Ogonna Brown, who  
24 is outside counsel for the board. Correct?

25 A. Yes.

1 MS. BROWN: Ogonna Brown on behalf of the Nevada  
2 State Board of Dental Examiners. I'll state for the record  
3 that Mr. DiMaggio is not in the room, and I don't believe  
4 he'll be attending.

5 Q. (By Ms. Ahmed) Now, Mr. Su, you were in  
6 attendance at Mr. DiMaggio's deposition that occurred  
7 earlier today. Correct?

8 A. Correct.

9 Q. In fact, you've attended all of the depositions  
10 that have taken place in this case?

11 A. Yes, in my capacity as board counsel.

12 Q. Now, let's just start with -- ease into it with  
13 some background information.

14 Have you ever been deposed before?

15 A. I have not.

16 Q. But you're an attorney. Correct?

17 A. I am.

18 Q. And we've established that you sat in on  
19 depositions in this case. Have you ever -- outside of this  
20 case, have you attended depositions?

21 A. Oh, yes.

22 Q. So you understand that you're under oath and that  
23 your answers are being transcribed today. Correct?

24 A. Correct.

25 Q. And that, because you are under oath, you have a

1 legal obligation to tell the truth. Correct?

2 A. Correct.

3 Q. And, again, I know I talk too fast and it can be  
4 hard to hear, so let me know if you cannot hear me or if you  
5 cannot catch the question because I've -- for whatever  
6 reason. Okay?

7 A. Yeah, got it.

8 Q. Now, you have already indicated that you are  
9 general counsel for the board. Correct?

10 A. Yes.

11 Q. How long have you held that position?

12 A. Since very late April of 2020.

13 Q. Prior to that position, the position that you hold  
14 now, had you ever done any work for the board?

15 A. I had not.

16 Q. Do you have prior work experience with  
17 administrative law in Nevada?

18 A. In the limited context of assisting with  
19 employment law or as a litigator, generally speaking,  
20 representing my clients, I had some interactions with  
21 regulations.

22 Q. Is this your first extensive experience as a  
23 lawyer dealing with administrative proceedings --  
24 procedures?

25 A. That's a fair statement, yes.

1           **Q.    When you came in as general counsel, were you**  
2 **advised what your duties are in the position?**

3           A.    Well, I -- I independently researched the  
4 requirements and qualifications for the job posting, and so,  
5 in essence, I -- yeah, I don't know if anybody spoke to me  
6 about that, but I, myself, did my due diligence as I was  
7 going to apply for the position.

8           **Q.    And who -- to the extent that you know, who was**  
9 **involved in your hiring?**

10          A.    I spoke with a couple board staff members after  
11 they selected me for an interview, and I had an interview  
12 with the employment committee. And after they chose to  
13 recommend me to the board, I also went before the full board  
14 (unstable Zoom connection) candidacy.

15                   (Reporter requested clarification.)

16          THE WITNESS: Went to the full board with my  
17 candidacy.

18          **Q.    (By Ms. Ahmed) Did -- prior to your employment**  
19 **with the board, did you have any personal relationships with**  
20 **anybody that is now sitting on the board?**

21          A.    No.

22          **Q.    Since becoming board general counsel, have you**  
23 **developed any friendships with anybody sitting on the board?**

24          A.    No.

25          **Q.    In your position as general counsel, who is your**



1 **supervisor?**

2 A. That would be -- nominally, it would be Frank  
3 DiMaggio, because he's the executive director.

4 **Q. And who is his supervisor?**

5 A. I believe the board would be his supervisor and,  
6 to an extent, because I was hired by the board, the board  
7 would also be my supervisor.

8 **Q. Is there -- what are your duties as general  
9 counsel, generally?**

10 A. Probably similar to how other attorneys work  
11 within organizations. I -- board -- regarding legal issues  
12 that may come up. I -- that includes licensing and  
13 discipline. I take the lead as far as coordinating the  
14 investigations, disciplinary and otherwise. I also assist  
15 in drafting regulations. I advise the board regarding  
16 legislative developments. Those are probably some of the  
17 major issues.

18 **Q. In your position as general counsel, did you ever  
19 have an opportunity to work with Antonina Capurro?**

20 A. I did.

21 **Q. And what was the nature of your dealings with  
22 Dr. Capurro in this role as general counsel?**

23 A. Sure. First -- first time I interacted with  
24 Dr. Capurro was in relation -- I don't know if I actually  
25 interacted with her, but she had drafted, on behalf of the

1 Department of Health and Human Services, a memorandum for  
2 the re-opening of dental settings. And the DHHS memo was  
3 actually one of the first issues that the board dealt with.  
4 And I sat in on that meeting right after I was confirmed.

5 So I -- in that sense, I spoke with Dr. Capurro.  
6 I don't know how many times, but at least once regarding the  
7 DHHS memo and then with her on and off, intermittently in  
8 the following months regarding such things as vaccination  
9 regulations for dentists to administer vaccinations. I  
10 believe there was some other regulatory language that she  
11 had -- assisting with. She -- she was actually very helpful  
12 in certain aspects of acclimating me to the GC position.

13 **Q. Is it accurate that you had a cordial and, in**  
14 **fact, friendly relationship?**

15 A. Yeah, I would characterize that as fair.

16 **Q. And when you said she acclimated you to the GC**  
17 **position, did she just help you understand the position and**  
18 **how it worked or . . .**

19 A. Not so much that. It was more that she  
20 provided -- she served as a resource for certain things,  
21 such as, again, the vaccination regulations. She provided  
22 me with kind of a draft that I had to then change out to  
23 suit the board itself, but I think it was all tied to her  
24 position as state dental health officer and her affiliation  
25 with DHHS, that she had those kind of resources that I might

1 not have.

2 Q. So, in addition to being a cordial and friendly  
3 relationship, is it accurate that you guys were helpful to  
4 each other when you could be?

5 A. I think that's fair as well.

6 Q. Now, going back to the duties of general counsel  
7 you were describing, you mentioned that you coordinate  
8 investigations.

9 A. Correct.

10 Q. I believe that was the phrase that you used. What  
11 do you mean by coordinate investigations?

12 A. Right. So under -- I don't have the statute in  
13 front of me, but I want to say that NRS 631 has a section  
14 regarding investigations. Disciplinary and Other Actions is  
15 what the section is entitled.

16 And any investigation that is either from a formal  
17 complaint filed by a member of the public or a verified -- a  
18 verified complaint filed by a member of the public or an  
19 authorized complaint that the board itself issues pursuant  
20 to 631.360 -- those get assigned to myself and my staff to  
21 ensure that documents are collected and matters move through  
22 the investigation process.

23 Q. So if the board, either on its own authority  
24 authorizes an investigation or you have a verified  
25 complaint -- under either of those scenarios, it goes to the

1 **general counsel's office?**

2 A. Yeah, that's correct.

3 **Q. And in the general counsel office right now, is it**  
4 **correct that it's you, a deputy general counsel, and that's**  
5 **it?**

6 A. Right now, yes. However, at the time that we had  
7 filed -- that the board had authorized the investigation  
8 against Dr. Capurro, we had just brought on a legal  
9 assistant.

10 **Q. Do you still have that person as your legal**  
11 **assistant or are they no longer with you?**

12 A. No. She -- she left the position at the end of  
13 the month -- this past month.

14 **Q. With respect to the legal assistant, do they**  
15 **facilitate or help with the -- whatever work the general**  
16 **counsel's office does once the investigation has been turned**  
17 **to the general counsel's office?**

18 A. Yeah. Generally at my direction, yes.

19 **Q. So, then, tell me what -- when the board opens the**  
20 **investigation and it's given to general counsel's office,**  
21 **what steps do you and your staff take?**

22 A. So, again, just to clarify, there are two types of  
23 complaints that Section 631.360 set forth. There is the  
24 verified complaint. They come from a member of the general  
25 public, and then there are authorized investigations by --

1 as you mentioned, by motion of the board.

2 Most of our -- the vast majority are verified  
3 complaints from members of the public regarding some  
4 perceived lack -- some perceived breach of professional  
5 conduct or standard of care by dental -- by dentists or  
6 dental hygienists.

7 We review -- because they're written by lay  
8 people. We review them to determine whether or not there's  
9 a matter the board can address. And if there is, then we  
10 produce a notice of the verified complaint and send it back,  
11 plus a copy of the complaint and any supporting  
12 documentation provided to us by that member of the general  
13 public and await the dentist's response or the hygienist's  
14 response.

15 In this instance, it's an authorized  
16 investigation. There's no member of the public who raised  
17 the issue. So we draft, ourselves, the notice of the  
18 investigation -- authorized investigation by the board and  
19 send that to the licensee, along with whatever supporting  
20 documentation we might obtain.

21 **Q. From the time that you joined the board as general**  
22 **counsel to the present, other than Dr. Capurro's case, have**  
23 **you had any other matters that were -- went into**  
24 **investigation pursuant to the board moving to open an**  
25 **investigation?**

1 A. I have.

2 Q. How many?

3 A. I want to say three.

4 Q. Just generally, what were the nature of those  
5 three? Were they -- did they relate to --

6 A. As far as that, no. For what it's worth, they are  
7 all posted on the agendas that -- the board agendas, because  
8 the board has to authorize those investigations in an open  
9 meeting. They're anonymized. So they -- they list  
10 themselves as RDH Z, RDH Y, and RDH X, which I think are the  
11 three cases that the board had authorized. RDH stands for  
12 registered dental hygienist.

13 Q. Now, with respect to Dr. Capurro's investigation  
14 of Dr. Capurro -- so the board issued an authorized  
15 investigation, correct, and then --

16 A. Yes.

17 Q. -- that went to your office. Correct?

18 A. Correct.

19 Q. And did your office review whether or not the  
20 board had jurisdiction to review the matter?

21 A. At that point, no, because the board already  
22 authorized the investigation.

23 Q. So as you heard Mr. DiMaggio say, he said that  
24 review would happen after -- well, let's step back.

25 Mr. DiMaggio mentioned preliminary screening

1 consultants. Are you familiar with that?

2 A. I am.

3 Q. Does the board employ preliminary screening  
4 consultants?

5 A. It does now.

6 Q. And when did the board hire the current  
7 preliminary screening consultant?

8 A. I believe the board had selected the current  
9 preliminary screening consultants in a -- in one of their  
10 November 2020 meetings.

11 Q. Was Dr. Capurro's investigation ever given to  
12 these -- any one or more of the preliminary screening  
13 consultants?

14 A. This matter was not, no.

15 Q. Why not?

16 A. Because, first, we didn't have the preliminary  
17 screening consultant trained and ready to accept a file  
18 until very recently. I want to say in the past week we --  
19 or past couple weeks, perhaps, we conducted a PSC training  
20 after a significant delay.

21 And we're in the process of assigning them cases  
22 now. However, at the time, we did not have anybody in that  
23 position. And I will also note preliminary screening  
24 consultants, they are all people who have a background in  
25 dentistry or hygiene -- dental hygiene.

1           And so the purpose for them to review matters is  
2 to apply their dental knowledge to a particular case. And  
3 in this instance, because it wasn't so much about standard  
4 of care or dental knowledge, I believe that could go  
5 straight to the review panel for review instead.

6           **Q. Who, then -- was there an investigator that**  
7 **investigated Dr. Capurro's case between January and the time**  
8 **that the case was given to the review panel?**

9           A. So as far as an investigator, I guess there's a  
10 couple points I have to clarify. First, the board  
11 authorized an investigation under NRS 631.360. Second, the  
12 board, as I understand the statutes, may have authorized  
13 somebody -- one of its members and/or -- and any of its  
14 employees, investigators, or other agents to conduct an  
15 investigation in a formal hearing concerning any practice by  
16 a person constituting violation of the provisions of the  
17 chapter or regulations of the board under NRS 631.363.

18           I will note the board did not point, in this  
19 instance, anyone to conduct an investigation or an informal  
20 hearing under 363. Because it didn't, it fell on me, as  
21 general counsel, and my staff to perform the collection of  
22 documents and investigator tasks.

23           **Q. Now, would you agree that this was a departure**  
24 **from prior practice of the board to have an independent**  
25 **investigator investigate?**



1           A.    I think it's not fair to characterize it as  
2    departure.  It's more what the circumstances were.  We  
3    didn't have -- we don't -- we did away with the DSO program  
4    after the --

5                   (Reporter requested clarification.)

6           THE WITNESS:  Sorry.  Thank you.  We did away with  
7    the disciplinary screening officer, parentheses, DSO,  
8    program after the 2019 audit by the board of examiners.  And  
9    that's when we -- that's when the board -- this is all  
10   before my time.  That's when the board, instead, hired  
11   Dr. Hall to serve as the board's sole investigator.

12           When Dr. Hall was dismissed from his post which  
13   happened sometime in summer of 2020, there was nobody who  
14   was there to actually serve as investigator by the board.  
15   And so cases couldn't just sit there without moving forward,  
16   so the data collection, the follow up on the responses from  
17   dentists, that fell on the general counsel and -- and staff.

18           So I don't know about being a departure, per se.  
19   It's probably more the circumstances that the board found  
20   itself in in late 2020, early 2021.

21           **Q.    Do you agree that the -- at least one purpose of**  
22   **having a DSO or a preliminary screening officer or**  
23   **consultant, excuse me, is to have an independent view?**

24           A.    I can't speculate as to the legislative intent of  
25   that statute.  However, I will note that the legislature

1 also created the review panel statute that follows under  
2 3635, which also serves that similar independent review.

3 Q. Now, when you look at the regulations of NRS  
4 361.360, there's no subpart that comes under it. Right?  
5 The next statute is NRS 3 -- 631.363. Correct?

6 A. Correct.

7 Q. And then there's a subpart to 363. There's NRS  
8 3 -- 631.3635. Correct?

9 A. Correct.

10 Q. And that 365 is the regulation that discusses the  
11 review panel. Isn't that right?

12 A. Mm-hmm.

13 Q. And so it's actually a subpart to 363. Do you see  
14 that?

15 A. Yes.

16 Q. And it, in fact, refers back to 363 as well.  
17 Correct?

18 (Reporter requested clarification.)

19 Q. (By Ms. Ahmed) And it, in fact, refers back to  
20 363. Correct?

21 A. Sure.

22 Q. So wouldn't it appear to be that the review panel  
23 reviews somebody's investigation? Right? Someone must be  
24 designated as investigator, whether it's a DSO or a pre, you  
25 know, screening officer, consultant. Somebody is the

1 investigator that the review panel reviews their  
2 investigation. Correct?

3 A. I don't know if that logic follows, only because  
4 363, as I read it, says that the board may appoint one of  
5 its members and any of its employees, investigators, other  
6 agents to conduct that investigation and informal hearing.

7 If the board wants to appoint an investigator --  
8 and I think, in this instance, if there's anybody who would  
9 have conducted an investigation, it would have been myself.  
10 That being said, I don't believe I was appointed pursuant to  
11 363. To the extent that I -- that 363 requires somebody to  
12 be appointed to conduct the investigation, I suppose that  
13 would be me, because there was no one else to step into that  
14 position at that time.

15 Q. Now, 361.360 discusses the board -- if the board  
16 initiates an investigation. Right? That's -- initiate an  
17 investigation in one of two ways and then it also discusses  
18 being able to subpoena witnesses and things. Correct?

19 A. Yes.

20 Q. It doesn't talk about the mechanism or the -- who  
21 will do that for the board. Right?

22 A. I believe that it does not. It presumes that the  
23 board has that power and may delegate it.

24 Q. Now, I understand that the general counsel's  
25 office -- in the absence of the board having appointed

1 investigators, it defaulted to the general counsel's office  
2 is what -- that's kind of what I understood you to be  
3 saying. Is that fair?

4 A. That's my understanding of the situation. I could  
5 be wrong, but that's my understanding, because the work  
6 needed to get done.

7 Q. But there's no NRS or NAC that specifically refers  
8 the investigation to general counsel's office. Correct?

9 A. Correct. There's none that refers directly to  
10 general counsel's office. Correct.

11 Q. Now, in this matter, Dr. Capurro's matter, you had  
12 represented the board when -- well, let me step back.  
13 Dr. Capurro came to you in October of 2020. Correct?

14 A. When you say came to me, what do you mean?

15 Q. She approached you with a question about her  
16 licensing limitations. Is that correct?

17 A. Correct.

18 Q. And she -- would you agree that she came to you in  
19 part because of the friendly relationship that you guys had  
20 established?

21 A. I --

22 MS. BROWN: Objection. Calls for speculation.

23 THE WITNESS: And I -- on that same basis, I can't  
24 tell you what Dr. Capurro was thinking, necessarily, but I  
25 will, again, reiterate that we did have a good working

1 relationship, as I understood it, at the time.

2 Q. (By Ms. Ahmed) Did you understand her to be  
3 coming to you for a formal opinion about the matter?

4 MS. BROWN: Objection. Calls for speculation.

5 THE WITNESS: I really couldn't tell you.

6 Q. (By Ms. Ahmed) Did you look at whatever  
7 information she sent to you when she asked you that  
8 question?

9 A. I did review her e-mail and the 2020-2021  
10 employment contract she had with UNLV, and I will note I  
11 usually tell people when they ask me for legal opinions that  
12 I'm not their attorney, I'm the board's attorney, and that  
13 they should probably consult with an attorney if they want a  
14 legal opinion.

15 Q. Did you --

16 A. But I did not -- but in this case, I did not.

17 Q. Did you advise Dr. Capurro as to your  
18 understanding of any geographical limitations on her license  
19 after you reviewed those documents?

20 A. I do not recall.

21 Q. Do you recall discussing geographical limits with  
22 her at all?

23 A. I recall that she may have mentioned it during a  
24 phone call, because it tied into the e-mail inquiry that she  
25 gave to me, but, again, I don't recall the actual

1 conversation, if we -- that we had.

2 Q. When you first looked at the information, did you  
3 perceive there to be any issue with it?

4 A. You know, again, I don't think I can recall back  
5 to that point. I mean, it was kind of out of left field.  
6 So I just don't know what I would have said or anything  
7 without having actually reviewed and researched the issue,  
8 but I don't recall the discussion.

9 Q. Did you recall Dr. Capurro e-mailing you  
10 subsequently to a phone call that you had with her saying,  
11 This is what I understood you to be saying. Correct me if  
12 I'm wrong. Something to that extent. Do you recall that?

13 A. I do recall seeing an e-mail to that effect.

14 Q. And you did not respond to that e-mail. Correct?

15 A. I did not.

16 Q. Between you and Mr. DiMaggio, at some point, a  
17 decision was made that the -- Dr. Capurro's -- the  
18 information she had given indicated she might not qualify  
19 for a limited license anymore. Correct?

20 A. I don't think we made a determination, but we had  
21 concerns, which we --

22 MS. BROWN: Objection to the extent this calls for  
23 attorney-client communication. I'm instructing my client  
24 not to answer to the extent it contains any communications  
25 with clients, Mr. DiMaggio.

1 THE WITNESS: Thank you. So to the extent that we  
2 reached out to Dr. Capurro, I believe we did have concerns,  
3 but I don't think we made a determination.

4 Q. (By Ms. Ahmed) At that point, you began to gather  
5 information from Dr. Capurro about the license. Correct?

6 A. When you say "gather information," what do you  
7 mean?

8 Q. You asked her for documents.

9 A. Oh, correct.

10 Q. Including all of her original application  
11 materials. Correct?

12 A. That's not something that we asked her for.  
13 That's something the board already possessed, but correct.

14 (Reporter requested clarification.)

15 THE WITNESS: Already possessed.

16 Q. (By Ms. Ahmed) Do you recall telling Dr. Capurro  
17 that the -- there was nothing in her file regarding her  
18 original application?

19 A. Nothing in her file regarding her original  
20 application?

21 Q. Correct.

22 A. And in what conversation are you referring to?

23 Q. Did you, by e-mail or by phone, in or around  
24 October of 2020, tell Dr. Capurro that there was nothing in  
25 her board file about her -- about her -- reflecting her

1 paperwork for her limited license?

2 A. I don't recall if I conveyed that to her.

3 Q. To your recollection, did the board have  
4 information in its file?

5 A. It had some documentation.

6 Q. Did you, at some point, take steps to expire her  
7 license?

8 A. I did not, no.

9 Q. Was that -- Executive Director DiMaggio did that?

10 A. That's my understanding, yes.

11 Q. To your knowledge, did he consult with any member  
12 of the board before taking that action?

13 A. I wouldn't know.

14 Q. Do you, as general counsel, believe that  
15 Mr. DiMaggio has authority to expire a license under those  
16 circumstances?

17 A. I believe the statute permits him, so yes.

18 Q. Now, Dr. Capurro sued the board in state court.  
19 Correct?

20 A. Correct.

21 Q. And you represented the board in those state court  
22 proceedings. Correct?

23 A. I did in the -- at the beginning, correct.

24 Q. In December, the court issued a preliminary  
25 injunction. Correct?



1 A. That's my understanding, yes.

2 Q. And it enjoined the board to reactivate  
3 Dr. Capurro's license. Correct?

4 A. Yes.

5 Q. And to provide Dr. Capurro with due process if the  
6 board was going to take steps to investigate her license  
7 again. Correct?

8 MS. BROWN: Objection. Assumes facts not in  
9 evidence.

10 THE WITNESS: And I think what you're doing is  
11 repeating to me the order that Judge Bare signed that was  
12 issued by opposing counsel, which I will note I issued a  
13 different order which the judge did not accept.

14 Q. (By Ms. Ahmed) And to be fair, we're all -- you  
15 and I are both lawyers. So what is your understanding of a  
16 proposed order that is signed by the judge?

17 A. That the judge deems that that is a fair  
18 representation of the proceedings.

19 Q. It's the judge's order. Correct?

20 A. Right.

21 Q. Now, the judge did speak in that order about due  
22 process. Right?

23 A. I -- without seeing it in front of me, I can't say  
24 for sure, but I believe so.

25 Q. Subsequent to the December decision by the court,

1 did the board -- did you meet with the members of the board  
2 to discuss Dr. Capurro's case -- the District Court case?

3 A. I'm sure I must have subsequent to that decision,  
4 but when we talk about case, we're talking about the action  
5 in District Court. Correct?

6 Q. The District Court case, correct.

7 A. Then yes.

8 Q. And in your duties as general counsel, did you  
9 meet with members of the board outside of public meetings?

10 A. I don't know if I met with members of the board  
11 outside of public meetings, but in all likelihood, yes.

12 Q. I'm just talking about your general duties. Do  
13 you -- is it involving board members?

14 A. Oh, yeah.

15 Q. Outside of actual public meetings?

16 A. Sure, yes.

17 Q. And is there any guidance in board policy or  
18 statute as to documenting meetings that the general counsel  
19 has had with the board or various board members?

20 A. Not that I'm aware of. You're saying do -- is  
21 there something that requires me to make notes of my  
22 attorney-client communications with board members outside of  
23 a public meeting?

24 Q. Well -- so let me ask it this way: There's a --  
25 the board goes through a lot of effort to make public

1 notices and hold public meetings and there's processes the  
2 board engages in if they want to go into closed sessions.

3 Correct?

4 A. Sure.

5 Q. And that's done because the board is aspiring to  
6 (unstable Zoom connection) in its work for the --

7 A. Yes.

8 Q. Now, in your duties -- course of duties, you  
9 communicate with the board outside of these public meetings.  
10 Right?

11 MS. BROWN: Objection. Asked and answered.

12 THE WITNESS: Again, yes.

13 Q. (By Ms. Ahmed) But there's no way for someone to  
14 go back and track how often or when you met with the board  
15 members?

16 A. I mean, let me put it this way, there's open  
17 meeting law NRS 241, and that limits my ability to discuss  
18 with a majority of board members matters that would come up  
19 for discussion and decision by the board.

20 If there's a quorum or if there's lock in quorum,  
21 considerations of that sort, I have to take consideration of  
22 that when I make my communications to the board members.  
23 However, nothing by statute prohibits me from speaking to  
24 anything less than a quorum, as long as it's not  
25 "incumulatively" a quorum of members regarding issues that

1 come before a board.

2 There may be other statutes, confidentiality.  
3 Those issues I have to be cognizant of, but I don't know how  
4 I would do my job if I didn't talk to any board members  
5 outside of a public meeting.

6 **Q. In regards to Dr. Capurro's case or Dr. Capurro,**  
7 **generally, she's someone who was well known to members of**  
8 **the board. Correct?**

9 MS. BROWN: Objection. Calls for speculation.

10 THE WITNESS: Again, right, I don't know what  
11 their process is regarding Dr. Capurro, but she was state  
12 dental health officer. So I would --

13 (Reporter requested clarification.)

14 THE WITNESS: But she was state dental health  
15 officer, so I would presume so.

16 **Q. (By Ms. Ahmed) And, in fact, she's still the**  
17 **state dental health officer. Correct?**

18 A. That's my understanding.

19 **Q. And she regularly attended the board meetings that**  
20 **you attended. Correct?**

21 A. Again, I don't know. Probably some of them, but I  
22 don't know.

23 **Q. She was on a committee under the auspices of the**  
24 **board. Right?**

25 A. A subcommittee, correct.

1 Q. And, in that context, met with the other -- with  
2 members of the board who also sat on the subcommittee on a  
3 regular basis. Correct?

4 A. Yes.

5 Q. Now, do you agree that the investigative process  
6 laid out in NRS and NAC tries to build in some protection  
7 for the subject of investigations from the board of learning  
8 who they are prior to hearing a matter?

9 A. Absolutely.

10 Q. The process that you undertook in this case, did  
11 you preserve the protection built in by the statute?

12 A. I believe so, to the best of my ability.

13 Q. Now, because of the way that the information came  
14 to the board about Dr. Capurro's license, meaning she came  
15 to you with that information, do you agree that that made  
16 you a fact witness in this investigation?

17 MS. BROWN: Objection. Calls for a legal  
18 conclusion.

19 THE WITNESS: I believe that the way that the  
20 matter came to my attention as an e-mail that was sent by  
21 Capurro to myself -- I'm aware -- I was aware of certain  
22 details that came up before the investigation itself was  
23 authorized by the board. That is correct as to that aspect.

24 Q. (By Ms. Ahmed) You -- the District Court case was  
25 a publicly filed case. Correct?

1 A. That's what happens when you file with the court,  
2 yes.

3 Q. And you -- is it correct that you were apprising  
4 the board members, one or more, about that lawsuit as it was  
5 going on?

6 MS. BROWN: Objection. Calls for attorney-client  
7 communications. Do not answer that question.

8 Q. (By Ms. Ahmed) And I'm not asking for the content  
9 of communications.

10 MS. BROWN: Yes, you -- you are, and I'm not  
11 allowing him to answer that question. It was very specific  
12 about the subject matter of the communications.

13 Q. (By Ms. Ahmed) Mr. Su, in January of 2021, you  
14 went before the board in a public meeting and asked them to  
15 authorize an investigation of Dr. Z regarding limited  
16 license. Correct?

17 A. That is correct.

18 Q. And Dr. Z is, in fact, Dr. Capurro. Right?

19 MS. BROWN: Objection. That's confidential.

20 MS. AHMED: I don't know how we're supposed to  
21 proceed if we can't acknowledge that. It's not -- we're in  
22 a deposition that's supposed to be a part of the  
23 confidential investigation. So . . .

24 MS. BROWN: It's a matter of public records,  
25 because those are the minutes. So I -- if you can stipulate

1 that you are not going to attach a transcript where my  
2 client states that Dr. Z is Dr. Capurro, then I'm okay with  
3 the answer, but we need to maintain the confidentiality so  
4 that you don't taint the public record. That's all I'm  
5 asking.

6 Q. (By Ms. Ahmed) And so if it was referenced Dr. --  
7 Mr. Su, let me ask you this question: If there was  
8 reference to an anonymous doctor that we investigated, but  
9 in the course of discussing that anonymous doctor at a  
10 dental board public meeting it was made clear the identity  
11 of that doctor, that would be problematic. Correct?

12 THE WITNESS: Sorry. Miss Court Reporter, can you  
13 read that back? I --

14 Q. (By Ms. Ahmed) I can say it. So if the -- if --  
15 let's say if you, as general counsel, went before the board  
16 and you -- well, let's talk about specifics.

17 In March of 2016 -- 2021, excuse me -- on  
18 March 16th of 2021, you went before the full board.  
19 Correct?

20 A. Correct.

21 Q. And you asked the board for subpoenas in relation  
22 to a Dr. Z. Correct?

23 A. Correct.

24 Q. And in the discussion of those subpoenas, you made  
25 reference to Dr. Z's District Court case. Correct?

1 A. Correct.

2 Q. And you also went to closed session with the board  
3 during that meeting. Correct?

4 A. I did.

5 Q. What did you discuss with the board in that closed  
6 session?

7 MS. BROWN: Objection. Attorney-client privilege.  
8 I'm instructing you not to answer that question. And stop  
9 asking my client for attorney-client privileged  
10 communications, please.

11 MS. AHMED: So the closed session, your position  
12 is that on March -- March -- May 16 -- excuse me, March 16th  
13 of 2021 when the board when into a closed session that was  
14 to engage in attorney-client communications?

15 THE WITNESS: It was.

16 Q. (By Ms. Ahmed) Now, Mr. Su, you were conducting  
17 the investigation of Dr. Capurro's license. Correct?

18 A. No, I disagree with that. I was facilitating an  
19 investigation, but I wasn't myself conducting it.

20 Q. Who is the investigator in this case? Anybody?

21 MS. BROWN: Objection. Assumes facts not in  
22 evidence and asked and answered.

23 THE WITNESS: Let me go ahead and reiterate what I  
24 said. The board authorized an investigation under NRS  
25 631.3630. The board, as I understand it, did not



1 specifically appoint anyone as an investigator, under NRS  
2 631.363, because they had no one to appoint that they would  
3 traditionally have appointed.

4           However, to the extent that somebody had to do the  
5 work of the investigation, that would have probably -- that  
6 fell to me, and I facilitated the investigation. I disagree  
7 that I'm an investigator.

8           I did not make any determinations regarding the  
9 investigation. I did not make any kind of report regarding  
10 the investigation, but I did collect documents. I did  
11 facilitate the issuance of subpoenas that furthered the  
12 investigation. And all that, with permission, was presented  
13 to the review panel pursuant to statute.

14           **Q. (By Ms. Ahmed) Now, Ms. Brown conducted**  
15 **deposition in that time period before the review panel was**  
16 **given the file. Correct?**

17           A. Correct.

18           MS. BROWN: I'm sorry. Before the review panel  
19 what?

20           MS. AHMED: Was given the -- the collected  
21 information.

22           MS. BROWN: Objection. Assumes facts not in  
23 evidence, in terms of what the review panel received, but go  
24 ahead.

25           **Q. (By Ms. Ahmed) Please answer the question.**

1 A. Oh. Could you repeat the question one more time?

2 Q. Mr. Su, I understand from both your testimony now  
3 and Mr. DiMaggio's testimony earlier, which -- for which you  
4 were present, that nobody wants to say that they were an  
5 appointed investigator. I get that. But --

6 A. Sure.

7 Q. -- for somebody that was a de facto investigator  
8 of the information that ended up in a complaint issued by  
9 the board regarding Dr. Capurro --

10 A. I'm sorry. I'm sorry. I'm receiving a call right  
11 now.

12 MS. BROWN: Hold on. His phone is not working.

13 THE WITNESS: Let's try one more time.

14 MS. BROWN: Objection. Argumentative. I don't  
15 think there's a question pending, but please proceed.

16 Q. (By Ms. Ahmed) Mr. Su, did somebody pick up the  
17 (unstable Zoom connection) investigator, whether or not they  
18 had a title of appointed investigator? Was somebody the  
19 investigator?

20 MS. BROWN: Objection. Asked and answered.

21 THE WITNESS: But I will reiterate I believe that  
22 if anybody conducted or facilitated or pursued the  
23 investigation authorized by the board pursuant to 360, that  
24 would have been me.

25 Q. (By Ms. Ahmed) So when Ms. Brown was (unstable

1 Zoom connection) depositions, was she doing so in the -- as  
2 someone who is investigating the charges against  
3 Dr. Capurro? I guess there were no charges. So, like,  
4 Ms. Brown is doing depositions in March of 2021. Prior to  
5 the issuance of the complaint -- the formal complaint, was  
6 she investigating?

7 A. I can't presume to describe what actions Ms. Brown  
8 was taking, as far as whether it was investigating or not.  
9 But they were actions in furtherance of the investigation.  
10 I can fairly say that.

11 Q. If you're facilitating an investigation and  
12 Ms. Brown is taking actions in furtherance of investigation,  
13 there's an investigation taking place. Correct?

14 A. Yeah, I don't disagree that an investigation took  
15 place.

16 Q. So do you disagree with Mr. DiMaggio's insistence  
17 that the board did not do an investigation, that, rather, it  
18 did an inquiry?

19 A. Yeah, yeah, I disagree -- I disagree with  
20 Mr. DiMaggio's resistance against the idea there was an  
21 investigation. I believe that the -- based on the  
22 documentation in February -- noted that there was an  
23 investigation.

24 Q. Now, you said that, if anyone was doing an  
25 investigation, it probably was or could have been you. But

1 you haven't committed to having actually been (unstable Zoom  
2 connection). Right?

3 (Reporter requested clarification.)

4 MS. AHMED: Being the investigator.

5 THE WITNESS: Again, under 363, I do not believe  
6 that I was appointed an investigator. However, because the  
7 board had no one to serve the task, it fell to my lap to  
8 make sure the investigation was performed.

9 Q. (By Ms. Ahmed) Did it pose problems for you or  
10 create a challenge for you in communicating with board  
11 members to balance your role as counsel for the board with  
12 the de facto job of being the investigator of Dr. Capurro?  
13 In your --

14 MS. BROWN: (Unstable Zoom connection) facts not  
15 in evidence. You're using terminology -- he just  
16 specifically said he's not appointed as an investigator, but  
17 you can answer the question.

18 THE WITNESS: No.

19 Q. (By Ms. Ahmed) Did you take any steps to preserve  
20 the confidentiality of the investigation as it related to  
21 board members who might be sitting in adjudication of  
22 Dr. Capurro if the case went to hearing?

23 MS. BROWN: Objection. Asked and answered.

24 THE WITNESS: As I said before, yes. Every --

25 Q. (By Ms. Ahmed) What steps did you take?

1           A.    I anonymized any reference to whomever would have  
2    been investigated, as is the custom for any kind of matter  
3    that may come before the board on a pending investigation or  
4    a current investigation.

5           I did not disclose any of the information that I  
6    collected as -- in the course of the investigation. Now, I  
7    will note that was a difficult task, given that -- the way  
8    that this case emerged, based on an inquiry and based upon  
9    the initial determination by Mr. DiMaggio that her license  
10   should be expired and based on the fact that Dr. Capurro saw  
11   fit to file a suit against the board and disclose a lot of  
12   that information in public record.

13           It made the job a little bit tricky, but any  
14   communication that I had with board members, be it in open  
15   meeting or otherwise, I was as scrupulous as I could be not  
16   to -- to avoid any kind of reference that would have tied it  
17   to Dr. Capurro.

18           **Q.    You were e-mailing with Board Member Lee in March**  
19   **of 2021 regarding the investigation of Dr. Capurro. Do you**  
20   **recall that?**

21           A.    I believe that's attorney-client privileged  
22   communications if it were. And, no, I cannot confirm that.

23           MS. BROWN:  Objection.  Attorney-client  
24   communications to the extent you're asking for the substance  
25   of those e-mails.

1 Q. (By Ms. Ahmed) You provided, in connection with  
2 the documents that were requested for this deposition, a  
3 privilege log. Correct, Mr. Su?

4 A. That is correct.

5 Q. And the privilege log reflects that in March of  
6 2021 -- March the 5th of 2021 you e-mailed Dr. Lee, who is  
7 the secretary-treasurer of the board, about Dr. Capurro. Do  
8 you recall that?

9 A. I do.

10 Q. And you did not anonymize that communication.  
11 Correct?

12 A. I did not.

13 Q. And in March of 2021 -- at the beginning of March  
14 of 2021, Dr. Lee was not on the review panel yet. Or was he  
15 already on the review panel?

16 A. He already was. They're appointed in January of  
17 every year.

18 Q. So what is your position? Is the review panel  
19 to -- allowed to know the identity of the subject of the  
20 investigation or does it stay anonymized for their review as  
21 well? What is --

22 A. Oh, no. They're definitely allowed to know. In  
23 fact, they have to know. It's part of their analysis.

24 Q. So --

25 A. I can give you an example. If you have --

1 Q. We'll come back -- I don't mean to cut you off,  
2 but -- so in March of -- I mean, I guess I did cut you off,  
3 but we can come back.

4 So in March of 2021 -- the beginning of March of  
5 2021, Dr. Lee is already tasked with sitting on the review  
6 panel to review the investigation.

7 Now, pursuant to NRS 631.3635, there's a point  
8 when the investigation is given to the review panel to look  
9 at. Is that fair?

10 A. Sure.

11 Q. And in the first amended complaint, it states that  
12 on March 28th of 2021 the investigation proceeded through  
13 the review panel process. Do you recall that?

14 A. I do.

15 Q. So is it correct, then, that in March 28th is when  
16 the review panel received the investigation?

17 A. Yes.

18 Q. And because the members of the board are sitting  
19 on a review panel, is it correct that they may receive  
20 information that will reveal the identity of an anonymous  
21 subject, you know, during the course of the investigation?  
22 They'll learn the anonymous subject's real identity?

23 A. They actually learn that information in  
24 furtherance of their duties as review panel members. And  
25 because of that, they cannot sit for any subsequent full

1 board proceedings. That is correct.

2 Q. Does the board member have a duty to -- only with  
3 respect to the actual hearing where the charges are going to  
4 be adjudicated or with respect to any other hearing where  
5 that anonymous person -- that that board member knows who it  
6 actually is is being discussed or something in relation to  
7 that person is being voted on?

8 MS. BROWN: Objection. Vague. Compound.

9 THE WITNESS: Yeah, I really don't know how to  
10 answer that question. Can you rephrase?

11 Q. (By Ms. Ahmed) Well -- so in Dr. Capurro's case,  
12 you went before the full board in March. Right? And --  
13 correct?

14 A. I went to full board in March regarding a Dr. Z  
15 and -- with a request to issue three subpoenas in  
16 furtherance of that licensee's case.

17 Q. Now, if there was a board member at that hearing  
18 who knew who Dr. Z was, does that board member have a duty  
19 to abstain from participating in any of the board discussion  
20 about the issuance of the subpoenas?

21 A. I think it depends on the circumstances of the  
22 situation. Here, it really was a poorly kept secret that  
23 Dr. Capurro, who had filed suit against the board, was --  
24 and had filed suit to enjoin the board from issuing  
25 subpoenas, thereafter -- there -- thereafter is contesting



1 the board's issuance of subpoenas.

2 I mean, I don't think -- under those  
3 circumstances, I don't think the board member that somehow  
4 was made aware of the connection would have to recuse  
5 themselves, no, because the confidentiality statute does not  
6 necessarily pertain to the existence of the investigation.

7 I mean, to an extent it should, but in this  
8 instance, Dr. Capurro kind of waived that confidentiality  
9 when she filed suit against the board. Beyond that --

10 **Q. For the record --**

11 A. Let me -- let me finish.

12 MS. BROWN: Please don't interrupt him.

13 THE WITNESS: Now, as far as the confidentiality  
14 statute, 631.368, it talks about the details of the -- of  
15 the investigation. That is confidential, and I never  
16 disclosed any of the details regarding the investigation to  
17 any board member during the investigation.

18 **Q. (By Ms. Ahmed) Is it your practice to -- what is**  
19 **your practice in relation to when you give the review panel**  
20 **the documents and information that had been gathered for the**  
21 **review panel to review? When do you give it to them?**

22 A. To be candid, it really depends on any given  
23 situation. I will say this: In this instance, it's unlike  
24 other situations that I've dealt with, in that there was no  
25 investigator or DSO to present documents to me to, then,

1 forward to the review panel.

2 The way that this case developed, I was left  
3 trying to secure documentation myself. Under ideal  
4 circumstances, it should go to a PSC, who would then review  
5 the file and then come back to me with their findings and  
6 recommendations that I would then give, in total, to the  
7 review panel. Here, there were no PSCs available.

8 **Q. Well -- so let me ask you, because you -- the**  
9 **District Court had already told you that you needed to give**  
10 **Dr. Capurro due process if the board is going to investigate**  
11 **her license. Correct?**

12 MS. BROWN: Objection. Assumes facts not in  
13 evidence and mischaracterizes the order. If you'd like him  
14 to review the order, I'd request that you do that, but  
15 you're making up words that are not in the order and it's  
16 not accurate. So I'm not going to ask him -- allow him to  
17 answer that, unless you rephrase that question or show him  
18 the order.

19 **Q. (By Ms. Ahmed) Let me ask you a different**  
20 **question, Mr. Su. Do you think that the court ordered the**  
21 **board to provide Dr. Capurro due process?**

22 MS. BROWN: Objection. Asked and answered a  
23 number of times. Go ahead and answer it again.

24 THE WITNESS: I believe that the court, in its own  
25 estimation of the case, required the board to give

1 Dr. Capurro a hearing and it had concerns about due process.

2 Q. (By Ms. Ahmed) Let's look at the order then. I  
3 think that's where we're at.

4 Now, if -- while we're doing that, I did just want  
5 to note for the record that while you were answering the  
6 question about the board member and the anonymity of the  
7 subject, you kind of chuckled when you were talking about  
8 Dr. Capurro filing suit.

9 So I -- it seemed -- it seemed to me that there  
10 was a certain amount of Dr. Capurro has brought this on  
11 herself, to the extent that board members might know about  
12 her case. Is that your view?

13 A. I don't have a view as to the -- whether or not  
14 she brought it upon herself. I'm just stating the facts of  
15 the cases that developed.

16 Q. Now, Dr. Capurro, in addition to having filed  
17 suit, she was known to the board through her work with the  
18 board. Correct?

19 A. I can't speak as to the board's knowledge of her,  
20 as I said before, but I believe it was public knowledge that  
21 she was state dental health officer.

22 Q. Now, the board had hired preliminary screening  
23 consultants in January of 2021. Correct?

24 A. Actually, I think they --

25 MS. BROWN: Objection. Misstates prior testimony.

1 Asked and answered.

2 THE WITNESS: They appointed -- yeah, they  
3 appointed them in November of 2020, actually.

4 Q. (By Ms. Ahmed) So in November of 2020, the board  
5 already had prescreening -- preliminary screening  
6 consultants that had been hired on a part-time basis?

7 A. The board voted to hire them, but they were not  
8 yet trained until, I want to say, April 2021.

9 Q. Given the circumstances that you highlighted with  
10 respect to how easily Dr. Capurro could be identified to the  
11 board, did it not make sense to you to first have the  
12 prescreening officers look at Dr. Capurro's case to build in  
13 some objectivity, anonymity?

14 MS. BROWN: Objection. Mischaracterizes former --  
15 prior testimony.

16 THE WITNESS: I don't know if it would have served  
17 purposes of anonuity [sic] to provide the file to, yet,  
18 another person down the chain. And for that matter, like I  
19 said before, the disciplinary screening -- I mean the  
20 preliminary screening consultants were retained primarily  
21 for their dental knowledge, because they're dentists or  
22 hygienists.

23 And they would review the complaint that was  
24 typically filed by a lay person, as well as the dental  
25 records, and make a determination of the merits of that

1 complaint by that member of the general public.

2 So, no, I don't think that it would have served  
3 the purposes of confidentiality or fairness to, yet, put  
4 another step in the process when we didn't even have a  
5 process in place.

6 Q. (By Ms. Ahmed) So you didn't have a process in  
7 place, but you have somebody who was at risk of losing their  
8 license. And it sounds to me like you were ad hocing the  
9 investigation. Right? No one was assigned, but it kind of  
10 fell to your lap. That's what you -- that's the gist of  
11 what you said?

12 MS. BROWN: Objection. Argumentative. Misstates  
13 prior testimony.

14 THE WITNESS: I disagree with the term "ad hocing"  
15 the investigation. I was trying to comply with the  
16 requirements of statute, as well as the requirements of  
17 Judge Bare's order that would give her a hearing.

18 And, yet, I did not want to enter into that  
19 hearing without the board knowing full details of  
20 circumstances. And so I requested, from the board, an  
21 authorized investigation.

22 Q. (By Ms. Ahmed) Now, why couldn't you wait until  
23 the preliminary screening officers had been trained to allow  
24 them to conduct the hearing?

25 A. I think I said it before, but, again, the

1 preliminary screening officers -- the primary purpose for  
2 bringing them on is because of their dental knowledge. This  
3 is a matter primarily regarding Dr. Capurro's limited  
4 license. And as I see it, it's more a documentation, slash,  
5 administration type issue.

6 So I didn't see the value in -- let's put it this  
7 way: The whole preliminary screening consultant scheme, it  
8 was still (unstable Zoom connection) November of 2020. We  
9 hadn't had an investigator at that point for about five  
10 months. We don't have any DSOs on staff.

11 So, no, I did not see the prudence in holding on  
12 to the -- the -- moving forward on this investigation as I  
13 might have in a case that involves dental standard of care  
14 or hygienist standard of care.

15 **Q. When Mr. DiMaggio expired Dr. Capurro's license,**  
16 **did you agree with that decision?**

17 MS. BROWN: Objection. Calls for attorney-client  
18 communications.

19 THE WITNESS: And --

20 MS. BROWN: Please don't answer that question.

21 **Q. (By Ms. Ahmed) You defended that decision in**  
22 **court. Correct?**

23 A. I participated in the defense of the board against  
24 the lawsuit, yes.

25 **Q. So would you agree that having either you or both**

1 you and Mr. DiMaggio oversee the investigation the board  
2 subsequently enacted against Dr. Capurro, that there's bias  
3 there on the part of you and Mr. DiMaggio?

4 MS. BROWN: Objection. Calls for speculation.

5 THE WITNESS: I don't -- I don't see what you're  
6 getting at. I don't think that there's bias in somebody who  
7 is board staff discharging their duties as they're required  
8 to by law, and that includes both defending the board in a  
9 lawsuit and authorizing an investigation based on the  
10 information that we had, pursuing additional information,  
11 wherever that leads, based on the authorization by the  
12 board.

13 Q. (By Ms. Ahmed) So it's your position that once  
14 the board authorizes an investigation, it was a possibility  
15 that it could lead to you finding that Dr. Capurro did  
16 qualify for the limited license?

17 MS. BROWN: Objection. Assumes facts not in  
18 evidence as to finding.

19 THE WITNESS: And I will note this: I was never  
20 charged with finding -- findings in this case. That's  
21 what -- that's what I'm trying to get at. NRS 631.363, it  
22 appoints members and employees to be investigators or  
23 conduct an informal hearing.

24 There was no informal hearing in this case. I was  
25 never charged to conduct an informal hearing in this case.

1 I was never charged to conduct any determinations regarding  
2 further action in this case. I was never charged to provide  
3 findings or recommendations for findings and conclusions in  
4 this case.

5 I simply collected data, information,  
6 investigated, if you will, but I was never told to make a  
7 decision about this because I'm not a board member or review  
8 panel member.

9 Q. (By Ms. Ahmed) Mr. Su, I'm going to share with  
10 you what I'll mark as Exhibit 1. I don't think I've had  
11 another exhibit this afternoon with you. One. And take a  
12 look. Can you see it?

13 A. Yes, ORPI.

14 Q. Okay. Can you see the title down --

15 A. Mm-hmm.

16 Q. -- on --

17 A. It's the Order Granting Plaintiff's Motion for  
18 Preliminary Injunction.

19 Q. Okay. So I'm going to just go down to the text of  
20 this and this is the order Judge Bare issued in the District  
21 Court case that Dr. Capurro brought against the board.  
22 Correct?

23 A. That's my understanding, yes.

24 Q. On this page, do you see any reference to the  
25 judge ordering the board to give Dr. Capurro a hearing?



1 A. What you're showing me here is the first page of  
2 the order and, I think, a preamble.

3 MS. BROWN: We don't see anything on the first  
4 page. Could you please scroll down.

5 Q. (By Ms. Ahmed) Do you not see, Dr. -- Mr. Su, can  
6 you see the text of the page?

7 A. Yes.

8 Q. Okay. So nothing on that page about a hearing  
9 being ordered. Correct?

10 A. Not under Findings of Fact, no. At least the  
11 section that I'm seeing right now.

12 Q. Okay. Let me scroll up to the bottom of that  
13 page. So from what's displayed now, page 2 to 3, line 14,  
14 do you see anything that talks about the board having to  
15 give Dr. Capurro a hearing?

16 A. No, and I don't believe there would be such  
17 language under Findings of Fact, but we may continue, if you  
18 wish.

19 Q. Do you agree that Dr. -- that the order does not  
20 discuss a hearing in the findings of fact? Or do you want  
21 to look, because I'm happy to let you review the --

22 A. At least -- at least in the --

23 MS. BROWN: Scroll down.

24 THE WITNESS: Yeah, in the findings of fact,  
25 you're not going to find anything like that, I think.

1 MS. BROWN: Just go through the entire document,  
2 so it's complete before he answers the question.

3 Q. (By Ms. Ahmed) Let me know when you're ready to  
4 move on.

5 A. I'm ready to move on. One second. Bottom of 4,  
6 The board took, revoked, annulled Dr. Capurro's license  
7 without providing her notice or a hearing.

8 Q. That's part of the findings of fact. Correct?

9 A. Yes.

10 Q. On page 4, lines 27 and 28? That's --

11 A. Mm-hmm.

12 Q. -- what you're referring to?

13 A. Yes.

14 Q. Now, is the board saying that -- this is, excuse  
15 me, the court saying that this is what the board did prior  
16 to this order. Correct?

17 A. I mean, I think it's -- based on the face of the  
18 order, that seems to be what the board -- the court signed  
19 off on.

20 Q. Right. So the court is not saying -- this line --  
21 lines 27 and 28 are not -- you don't -- you're not saying  
22 that this is where the judge ordered the board to give  
23 Dr. Capurro a hearing?

24 A. I think it is part of the analysis the court made  
25 towards that conclusion, but not in and of itself, no.

1 Q. I'm going to move up. Are you okay with lines 1  
2 through 7 or do you . . .

3 A. No, it's fine. Go ahead.

4 Q. Tell me when you're ready to move up.

5 A. What am I looking for here?

6 Q. What the court ordered to give you -- I think  
7 you've testified that the court ordered the board to give  
8 Dr. Capurro a hearing, and I'm asking you to find that in  
9 the order.

10 A. Sure. Okay. Keep going. It's -- just go down a  
11 little bit from 19. I need to see 19 through the next  
12 section.

13 Q. I'm scrolling up on page 6, showing you lines  
14 19 --

15 A. Let's stop.

16 MS. BROWN: Stop.

17 THE WITNESS: I believe 19 through 23 is  
18 instructed to what you were requesting.

19 MS. BROWN: Want to read it into the record?

20 THE WITNESS: It will help me to do that. Printed  
21 parts of NRS 233B.127, Sub 3, provide that, quote, no  
22 revocation suspension, annulment, or withdrawal of any  
23 license is lawful unless, before the institution of agency  
24 proceedings, the agency gave notice by certified mail to the  
25 licensee of facts or conduct which warrant the intended

1 action and the licensee was given an opportunity to show  
2 compliance with all lawful requirements for the retention of  
3 the license.

4 **Q. (By Ms. Ahmed) So, to be clear, what you just**  
5 **read, the word "hearing" is not mentioned at all. Correct?**

6 A. In that particular language, correct.

7 **Q. I'll move up from line 23. So tell me when you're**  
8 **ready.**

9 A. I'm ready. Let's go ahead and read into the  
10 record -- I'm at 20 percent battery.

11 MS. BROWN: Here. I'll trade you.

12 THE WITNESS: Thank you.

13 MS. BROWN: Pardon. Give us a minute, please.  
14 The battery is low. Screen is shutting off.

15 THE WITNESS: Okay. Can you -- yeah, sorry.  
16 Yeah, page 8, line 1 through 2 -- oh, sorry. Sorry. Let's  
17 start with page 7, line 22.

18 **Q. (By Ms. Ahmed) Okay.**

19 A. Dr. Capurro's interest in her license is  
20 significant and it is necessary for her to fulfill the  
21 obligations of her employment agreement, serve as DHO, and  
22 generally practice in her chosen profession.

23 The board severely impaired that interest when it  
24 summarily, quote, expired, end quote, her license without --  
25 without notice -- excuse me, without notice for hearing, in

1 violation of state law.

2 Q. Now, in that section that you just read, the court  
3 did not order the board to hold a hearing. Correct?

4 A. Not in that section. I don't know -- the order  
5 speaks for itself. I don't know what -- if you want -- what  
6 the court ordered, you'll probably look at the very bottom,  
7 but the facts leading up to -- the analysis leading up to  
8 that determination, I think it all kind of builds up to  
9 that.

10 Q. Well, let's -- like you said, let's go to the very  
11 bottom. We'll go back to the middle --

12 (Reporter requested clarification.)

13 Q. (By Ms. Ahmed) So let's scroll to the bottom and  
14 then if we need to go back to the middle, I am happy to do  
15 so.

16 So let's turn to the -- page 12 of 13 where it  
17 says, Based upon the above findings of fact, conclusions of  
18 law, the documents filed before this court, oral argument.  
19 Do you see that on lines 1 and 2 --

20 A. Sure.

21 Q. -- page 12? And then there follows what the judge  
22 specifically ordered. Correct?

23 A. Mm-hmm, mm-hmm.

24 Q. Okay. Do you see anything in this section that  
25 says -- where the judge is ordering the board to hold a

1 **hearing?**

2 A. I believe it's implied on lines 7 through 9. It  
3 is further ordered that if the board decides to take further  
4 action to revoke, suspend, annul or withdrawal Dr. Capurro  
5 for the same reason as the board, quote, expired, unquote,  
6 her license, the board must provide Dr. Capurro with her due  
7 process rights.

8 **Q. Do you agree that nothing in 7 through 9, what you**  
9 **just read, specifically says the board must hold a hearing?**

10 A. Like I said before, I think you can't read this  
11 order in -- this section of the order in isolation. It has  
12 to be read in conjunction with the facts that preceded it,  
13 and so I disagree with that. But to the extent that it  
14 doesn't use the magic word "hearing," agreed.

15 **Q. So it's possible, right, that when a person is**  
16 **before the board of -- the dental board that they can be**  
17 **investigated and the matter can be referred back for some**  
18 **non-hearing conclusion. Correct? That's a possibility in**  
19 **board investigations. Right?**

20 MS. BROWN: Objection. Vague.

21 THE WITNESS: Yeah, I -- I don't -- I'm not sure  
22 what you're getting at.

23 **Q. (By Ms. Ahmed) When the board investigates a**  
24 **licensee, is it the case that the licensee will always end**  
25 **up in a hearing before the board?**

1 A. Are we talking about settlements here or some kind  
2 of preliminary resolution to the matter?

3 Q. The --

4 A. Because that --

5 Q. Well, let me --

6 A. To the -- mm-hmm.

7 Q. A board -- is it -- does the board always  
8 investigate and then issue a formal complaint? Does  
9 everybody have to have done something that warrants issuance  
10 of a complaint, in your experience with the board?

11 A. No, it does not.

12 Q. And --

13 A. It actually rarely gets to a formal complaint  
14 process.

15 Q. So, in fact, most of the time, the board does not  
16 hold a hearing when it gives a licensee due process that  
17 they are entitled to in an investigation?

18 A. I think a fair way to state it is that the matter  
19 does not necessarily proceed to a hearing. However, that's  
20 like saying that cases don't necessarily proceed to trial.  
21 It doesn't presuppose that there isn't a trial. The matter  
22 goes through the process outlined by NRS 36 -- 631, NAC 631,  
23 and the ultimate outcome can be one of many things.

24 Q. So do you agree, in looking at lines 7 through 9  
25 that the board -- excuse me, the court directed the board to

1 give Dr. Capurro her due process rights if the board decided  
2 to take further action to revoke, suspend, annul, or  
3 withdrawal Capurro?

4 A. Repeat that for me one more time, please.

5 Q. You were directed in lines 7 through 9 -- the  
6 board is directed to give Dr. Capurro her due process rights  
7 in an investigation regarding her license.

8 A. Sure.

9 Q. Now, here, where Dr. Capurro was not -- case was  
10 not given an investigator assigned to even go through the  
11 evidence, including her response, would you say that the  
12 board has complied with providing the court's order to give  
13 her due process?

14 A. Yes.

15 Q. Here, no investigator reviewed her response and  
16 the evidence that she provided. Correct?

17 A. That is correct.

18 Q. And no investigator made findings of fact for the  
19 review panel to look at. Correct?

20 A. No investigator did, no.

21 Q. Did you create findings of fact for the review  
22 panel to review?

23 A. I did not.

24 Q. Did you provide any document to summarize your  
25 findings for the review panel to consider?



1           A.    I think that's attorney-client communications  
2 there, but as far as . . .

3           MS. BROWN:  Objection.  Assumes facts not in  
4 evidence regarding findings.  He's testified about this  
5 previously.  Asked and answered.

6           THE WITNESS:  I guess, let me short-circuit this  
7 by saying that the review panel itself made findings and  
8 recommendations.

9           Q.    (By Ms. Ahmed)  Sure.  The statute provides for an  
10 investigator to do that and the review panel to do that.  
11 Right?

12          A.    Right.

13          Q.    Now, if -- in a normal investigation, other than  
14 Dr. Capurro's investigation, where there's an investigator  
15 that is assigned that is not you, okay, do you do any kind  
16 of analysis of the investigation and give it to the board  
17 or, excuse me, give it to the review panel for  
18 consideration?

19          MS. BROWN:  Objection.  Assumes facts not in  
20 evidence about what's normal.  And Mr. Su is the  
21 investigator.  He's testified about this repeatedly.

22          THE WITNESS:  I don't generate fact findings and  
23 recommendations, if that's what you're asking.

24          Q.    (By Ms. Ahmed)  Are you -- do you even review or  
25 insert yourself in the review panel process in an

1 investigation where you are not involved in the actual --

2 A. In fact -- in fact, in every case, I do attend the  
3 board -- the review panel's deliberations. In every case.

4 Q. Now, when you sit in the review panel's  
5 deliberations, the information that you hear, is that  
6 information that you are, then, authorized to share with the  
7 members of the board?

8 A. I think you're jumping a few steps there. The  
9 details that I hear from the review panel -- I mean, that  
10 really is just a discussion. What comes out of that review  
11 panel discussion, ultimately, is the review panel's findings  
12 and recommendations, which, as noted in NRS 631.3635, are  
13 subsequently provided to the board if the matter does not  
14 resolve preliminarily through some kind of settlement for  
15 stipulation.

16 Q. If you, in your capacity as the lawyer for the  
17 board, sit in the review panel's deliberations, are you able  
18 to discuss the information that you heard from the review  
19 panel with members of the board at any point?

20 A. When the formal hearing commences.

21 Q. What --

22 A. And in my capacity, then, as prosecutor.

23 Q. So in Dr. Capurro's case, the investigation that  
24 you -- I don't know what the word is -- just -- that  
25 happened somehow, you -- was -- were you involved in that

1 investigation solely in your capacity as the attorney for  
2 the board?

3 A. Yeah, I don't know why else I would be involved in  
4 that -- in -- in coordinating or running that investigation.  
5 That's my sole purpose there as attorney for the board.

6 Q. And then you separately intend to serve as the  
7 prosecutor at the May 21st hearing as well?

8 A. I believe that Ms. Brown is actually going to be  
9 serving as prosecutor. And at the very -- I don't believe I  
10 have any intent or plan to speak during that proceeding,  
11 except, perhaps, if I'm named as a percipient witness.

12 Q. If an investigator had been appointed by the board  
13 and had conducted an investigation pursuant to that  
14 appointment, could they also prosecute the case at the -- at  
15 a hearing?

16 A. They wouldn't prosecute the case at a formal  
17 hearing. They might, however, pursuant to NRS 631.363,  
18 conduct an informal hearing where they would essentially run  
19 that informal hearing. That didn't happen in this case,  
20 because we don't -- didn't have somebody that was appointed  
21 by the board for that purpose.

22 Q. If the board had wanted to have a third party -- a  
23 neutral third party be the investigator on this case, the  
24 board has authority to so appoint somebody. Correct?

25 MS. BROWN: Objection. Assumes facts not in

1 evidence.

2 THE WITNESS: I suppose they would under NRS  
3 631.363. That being said, when you're talking about  
4 somebody who is a neutral third party, I'm not quite sure  
5 what you're getting at, because I believe that -- I believe  
6 that when you're talking about the board being able to  
7 appoint one of its members and any of its employees,  
8 investigators, or other agents to conduct the investigation,  
9 they're supposing even that employees of the board are going  
10 to be neutral third parties. It isn't a function of their  
11 position vis-à-vis the board.

12 Q. (By Ms. Ahmed) Well, to that point, when Dr. Lee  
13 serves on the review panel, right, he would not take on  
14 other roles in the investigation, like adjudicator. Right?  
15 Because the point is to preserve his neutrality or the  
16 neutrality of the board as a whole. Right?

17 A. Of course.

18 Q. So if there's somebody serving as the  
19 investigator, right, then the same logic applies. Right?  
20 They wouldn't then turn around and be the prosecutor?

21 A. I think you're missing the point behind 363. The  
22 investigator in that instance is supposed to, under  
23 Subsection 3, determine whether or not the board should take  
24 further action concerning a matter and then prepare written  
25 findings and fact of conclusions and submit them to the

1 board.

2 Here, nobody was an investigator that would make  
3 that determination. Instead, data was collected,  
4 information was collected, and then presented to the review  
5 panel and then they made a determination like that. But no  
6 investigator was tasked with that.

7 **Q. So in this very unusual circumstance where no one**  
8 **was appointed, this is not the normal way the board**  
9 **proceeds. Right? I mean, normally --**

10 MS. BROWN: Assumes facts not in evidence and  
11 mischaracterizes former testimony.

12 THE WITNESS: I -- I don't know what to -- how to  
13 say whether or not it is normal or not. I will say that  
14 since I have come on board -- the -- the board my past year,  
15 because we've had a backlog of cases, we had COVID-19 that  
16 we had to deal with, and advise the board -- advise the  
17 licensing community how to reopen their practices, had so  
18 many issues regarding trying to bring everything up to speed  
19 here at the board, there was going to be some kind of  
20 unconventionality to it, because we don't have an  
21 investigator, we don't have anybody who stepped -- stepped  
22 into the shoes of Dr. Hall, we don't have DSOs.

23 That being said, the statute doesn't mandate that  
24 there be an appointment of somebody under 363. What the  
25 statute does require is that the investigation be conducted

1 and that the board shall appoint a panel to review an  
2 investigation and we followed that to the letter.

3 Q. (By Ms. Ahmed) Now, the board -- do you agree  
4 that the -- let me ask this a different way.

5 Does the -- to your knowledge, as general counsel,  
6 does the board have any kind of statute of limitations or  
7 time period that they're -- that they can investigate -- go  
8 back and investigate or is it they can investigate as long  
9 as a person's been licensed? Just generally, what's your  
10 understanding?

11 A. Not strictly a statute of limitations, but in  
12 practice. Because of NRS 629, healing arts, generally -- I  
13 forget the specific statute, but 629 requires medical  
14 professionals to retain medical records for at least five  
15 years. And under that basis, the board typically will not  
16 entertain a case that is older than five years from the date  
17 of treatment.

18 Q. So in a time period when you have COVID and a  
19 backlog investigation and you have, essentially, what  
20 amounts to a five-year statute of limitations almost --

21 A. I disagree with that, but go ahead.

22 Q. Okay. So you -- but you are able to go back in  
23 time five years. Right? Or there's really no limitation on  
24 when you can go back in time is how I --

25 A. That's -- that's probably fair to say. There's

1 technically no limitation. However, as a matter of  
2 practice, we go back five years because of the difficulty of  
3 assessing dental records or medical records because of NRS  
4 629.

5 Q. Well -- so in light of these circumstances,  
6 regarding Dr. Capurro -- in which her -- the investigation  
7 of her license arose and knowing that it would expire in  
8 June of this year, why was there an urgency to push forward  
9 if you didn't have investigators?

10 MS. BROWN: Objection. Calls for attorney-client  
11 privilege. Assumes facts not in evidence.

12 THE WITNESS: And outside of attorney-client  
13 privilege, all I can say is that my understanding is that  
14 the board has a duty to protect the public. And part of  
15 that comes from investigating circumstances where the public  
16 may be subject to treatment from a doctor who is -- a  
17 dentist who is not qualified. And so that was the genesis  
18 of this investigation.

19 And, I mean, I'll be honest with you, we had no  
20 bone to pick with Dr. Capurro. I didn't seek this out. She  
21 produced the e-mail to me and Frank independent --  
22 independently. We -- we simply looked at the information  
23 she gave us and determined that there might be an issue with  
24 her license. And that led us down this rabbit hole.

25 I personally think -- like I said before, I don't

1 have any animosity towards Dr. Capurro myself, but I do have  
2 a duty as general counsel. Frank has a duty as executive  
3 director of the board. And we try -- I try to -- we try --  
4 our duty as best we can.

5 And if it leads us to have to expire a license  
6 and, ultimately, to seek and authorize an investigation  
7 because of facts warranted, we bring that to the board and  
8 they make the determination. If we have to follow through  
9 an investigation, we do that. Everything by the book.  
10 Everything according to statute.

11 Q. (By Ms. Ahmed) And if it wasn't by the book or  
12 according to statute, you would agree that that's  
13 problematic?

14 A. Of course. I'm general counsel.

15 Q. Now, with respect to these investigations, you  
16 mentioned that the board has a backlog. Correct?

17 A. Correct.

18 Q. And some of the backlog includes investigations  
19 arising from verified complaints. Correct?

20 A. Right.

21 Q. Complaints where people have complained about  
22 having been harmed by a practitioner. Correct?

23 A. Yes.

24 Q. And that backlog is second to the investigation  
25 that you're conducting now with regard to Dr. Capurro.



1 **Right?**

2 A. Disagree. I don't think so. I don't think it's  
3 secondary to the investigation conducted of Dr. Capurro. I  
4 think the way that it's working, we have additional dental  
5 aspects that we need to review. And so we are trying to  
6 move them through the preliminary screening consultant  
7 process.

8 We also have -- we had a backlog of over 200 cases  
9 that had been reviewed by DSOs and investigators when I  
10 stepped on board. And I had to move those through the  
11 review panel process as well.

12 So I disagree that we placed it secondary to  
13 Dr. Capurro. I think that, all told, we try to move all the  
14 cases as expediently and as responsibly as we could under  
15 the circumstances.

16 **Q. Now, in those cases that are part of the backlog**  
17 **where there's a verified complaint pending, those**  
18 **practitioners -- does the board do anything with their**  
19 **license as the investigation is going through the process or**  
20 **are they free to practice right now?**

21 A. Until there's board action against them, they are  
22 free to practice.

23 **Q. To be clear, the board is unaware of any complaint**  
24 **by any person regarding the care that Dr. Capurro provided**  
25 **ever under her limited license. Correct?**

1           A.    I can't speak to complaints because they're  
2 confidential.  Sorry.

3           **Q.    This case was not brought pursuant to an -- excuse**  
4 **me, a verified complaint.  Correct?**

5           A.    No, this case was an authorized complaint.  
6 Correct.

7           **Q.    And then going back to the beginnings of your**  
8 **working interaction with Dr. Capurro, you mentioned that**  
9 **Dr. Capurro had authored a memo or -- under the auspices of**  
10 **DHHS.  Do you recall that?**

11          A.    Mm-hmm.

12          **Q.    Did the board generally agree with the contents of**  
13 **that memo or disagree?**

14          A.    I can't tell you what original board members  
15 thought.  I do know that the board wanted to ratify portions  
16 of the DHHS memo on the day that I started working here.

17          **Q.    And what about the other portion?**

18          A.    You'd have to look at the specific meeting minutes  
19 to figure out what they had to say about that.  I think  
20 there were some concerns regarding -- oh, my God.  I can't  
21 even remember specifics, but there were certain parts of the  
22 memo that they stuck out for whatever reasons they  
23 articulated at the meeting.

24                   (Reporter requested clarification.)

25           THE WITNESS:  That they articulated at the

1 meeting.

2 Q. (By Ms. Ahmed) As you sit here today, are you  
3 aware of any conflicts or biases that any board member has  
4 that would prevent them from sitting at the May 21st hearing  
5 on Dr. Capurro's case?

6 A. I am not.

7 MS. AHMED: Well, that's all that I have for you  
8 today. Thank you, and I'll turn it over to Ms. Brown, if  
9 she has any questions.

10 MS. BROWN: Hey, Nadia, is Dr. Capurro going to  
11 testify at the hearing on Friday?

12 MS. AHMED: I can -- I'm happy to talk to you  
13 offline about non-deposition matters. I definitely want to  
14 propel this to a close.

15 MS. BROWN: I e-mailed you a number of times and I  
16 haven't heard back. So are we talking today about exhibits  
17 as well?

18 MS. AHMED: You e-mailed who?

19 MS. BROWN: You.

20 MS. AHMED: Oh, no. I think I responded to you,  
21 except for the last one on Friday, but I --

22 MS. BROWN: No, you haven't.

23 MS. AHMED: I would like to do this -- I would  
24 like to wrap up Mr. Su's deposition. Thank you, Madam Court  
25 Reporter. I assume you have no questions, Ms. Brown.

1 MS. BROWN: I don't. Thank you.

2 (Proceedings concluded at 3:18 p.m.)

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CERTIFICATE OF DEPONENT

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\* \* \* \* \*

I, Phil Su, Deponent  
herein, do hereby certify and declare under  
penalty of perjury the within and foregoing  
transcription to be my deposition in said action;  
that I have read, corrected, and do hereby affix my  
signature to said deposition, under penalty of perjury.

\_\_\_\_\_  
PHIL SU, Deponent

1 STATE OF NEVADA )  
COUNTY OF CLARK )

2

3

CERTIFICATE OF REPORTER

4

I, Vanessa Lopez, a duly commissioned and licensed  
5 court reporter, Clark County, State of Nevada, do hereby  
6 certify:

7

That I reported the taking of the deposition of  
8 Phil Su, commencing on Monday, May 17, 2021, at the hour of  
9 1:52 p.m.;

10

That the witness was, by me, duly sworn to testify  
11 to the truth and that I thereafter transcribed my said  
12 shorthand notes into typewriting, and that the typewritten  
13 transcript of said deposition is a complete, true, and  
14 accurate transcription of said shorthand notes;

15

I further certify that I am not a relative or  
16 employee of any of the parties involved in said action, nor  
17 a relative or employee of an attorney involved in nor a  
18 person financially interested in said action;

19

That the reading and signing of the transcript was  
20 not requested.

21

IN WITNESS WHEREOF, I have hereunto set my hand in  
22 my office in the County of Clark, State of Nevada, this 1st  
23 day of June, 2021.

24



\_\_\_\_\_  
VANESSA LOPEZ, CCR NO. 902

25

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21 applying "minimum necessary" standards where appropriate. It is  
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