

I recently became aware of the problems that providers have been having with the ND Board of Dental Examiners (NDBODE). I have recorded issues with that board since early 2014, and these issues seem to be continuing.

The following is a brief summary of some of the issues with that Board:

### **Many Open Records/Meeting Violations**

While I was a registered lobbyist one of my clients was the ND Dental Hygienists Association. This occurred in 2014. They encountered numerous problems with the NDBODE and its executive director regarding meetings, proposed rules, secret meetings, and getting certain documents. After encountering numerous administrative roadblocks, the Association was forced to submit several formal open records requests. After finally getting some records, it was very apparent that the NDBODE was operating in violation of the ND Century Code. Records proved that the Board had at least one secret meeting via private email exchanges. Problems regarding open records and meetings continued to be discovered in 2015. Discussions were had with the Attorney General's Office regarding the numerous Open Records/Meeting Violations. One problem with those existing laws regarding Open Records/Meetings pertained to the "look back" period which prevented action being taken with past issues. Finally an open records request on 2/3/15 to the NDBODE Executive Director resulted in another "stall tactic", where the Association was told that the Executive Director would be address the open record request issue after the Executive Director returned from a 2 week vacation. A complaint was submitted to the AG's Office on 3/15/15. A list of the complaints were submitted to that office on 3/22/15. On 3/23/15, a formal AG Opinion request was submitted by Senate Majority Leader Rich Wardner. After the AG's Office researched the issues, they issued a response on 8/14/15 (Open Record and Meeting Opinion 2015-O-14) saying that the board did violate the Century Code requirements by:

1. The NDSBDE violated the open records law when it failed to produce a signed copy of a contract in the possession of it agent.
2. The NDSBDE violated the open meetings law when it discussed public business by email.

Numerous other violations could not be formally addressed because of existing limitations of the "look back" period before filing a complaint. Records show that the board hired a lobbyist via board action via email versus a public meeting.

Later on, a complaint by Senate Majority Leader Rich Wardner was considered whether this board could hire a lobbyist as a public entity. On 10/29/15, the Attorney General issued an opinion that:

*In conclusion, it is my opinion that a state agency or political subdivision generally may not use public funds to hire a lobbyist unless such authority is specifically provided for by statute. However, it might be possible to hire a lobbyist if the state agency or political subdivision has authority to promote or advocate in specific subject areas. Also, certain home rule counties and cities may hire a lobbyist if authorized by their home rule charter and implemented by ordinance.*

Once again it was determined that the NDBODE exceeded its authority by hiring a lobbyist.

I cannot find my records at this time, but the Association that I represented had to complain to the Administrative Rules Committee that the NDBODE had made an "Arbitrary and Capricious" decision regarding their proposed rules and the Committee agreed to revoke the proposed rules. One Board member was overheard saying that they were appalled by the Committee's actions and wanted to get back at the Administrative Rules Committee members. There was an "arrogant" attitude with the board that failed to realize that this regulatory board was a creature of the state by the state legislature. They felt that they were above the law and could operate as they chose to do.

Of all of the Occupational Regulating Boards that I have observed during my long career as a legislator and as a lobbyist, the NDBODE has been the worst in regards to following the law and performing their ascribed authority.

I have many, many past emails verifying the issues that I have encountered with this regulatory board that I could share if you desire.