

## Opinion No. 97-20 and 97-22

### BEFORE THE NEVADA COMMISSION ON ETHICS

#### In the Matter of the Request for Opinion concerning the conduct of RONDA L. MOORE, Deputy Attorney General, State of Nevada

This Opinion is in response to both a first-party and a third-party request for opinion filed with the Nevada Commission on Ethics (Commission) concerning the conduct of Deputy Attorney General Ronda L. Moore. On March 28, 1997, Ms. Moore requested the Commission issue an opinion concerning her conduct during her investigation of a complaint filed with the Nevada State Board of Psychological Examiners (Board) against psychologist Jacqueline Greedy, Ph.D. (Opinion Request No. 97-20). On March 31, 1997, Eric W. Lerude, an attorney in private practice in the State of Nevada, filed a third-party request on behalf of his client, Jacqueline Greedy, Ph.D., also regarding Ms. Moore's conduct during her investigation of the complaint against Dr. Greedy (Opinion Request No. 97-22).

On April 24, 1997, the Commission convened in Carson City to hold a hearing on the merits of Ms. Moore's request. Prior to commencement of that hearing, the Commission held a preliminary administrative hearing to determine whether just and sufficient cause existed for the Commission to conduct a hearing on the merits of Mr. Lerude's opinion request.<sup>[1]</sup> If just and sufficient cause was found, the Commission was scheduled to hold a hearing on the merits of that request concurrently with the hearing on Ms. Moore's request. Ms. Moore and Mr. Lerude were present for this preliminary hearing. The Commission determined that just and sufficient cause existed to proceed with Opinion Request No. 97-22, but continued the hearing on the merits of both requests to June 20, 1997 to allow Mr. Lerude sufficient time to prepare. Prior to the hearing on the merits, briefs were filed by Ms. Moore and Mr. Lerude summarizing their positions.

On June 20, 1997, the Commission held a hearing on the merits of the two requests in Reno, Nevada. Ms. Moore appeared and testified and was represented by legal counsel, Robert L. Auer, Senior Deputy Attorney General for the Nevada Attorney General's Office. Dr. Greedy was not present, however, her counsel, Mr. Lerude, appeared on her behalf. Because Ms. Moore had waived her statutory right to confidentiality regarding her opinion request, the hearing was open to the public.

### FINDINGS OF FACT

The facts underlying the two opinion requests are identical and are as follows.

1. Ms. Moore is employed by the Office of the Attorney General for the State of Nevada as a Deputy Attorney General in the Boards and Commissions Section of the Civil Division. The Board is one of her clients. As part of her representation of the Board, Ms. Moore investigates consumer complaints of professional misconduct by psychologists and prosecutes disciplinary actions based on those complaints.

2. Morgan Harris (Morgan) was a patient of Dr. Greedy's from 1990 to 1995. During that time she developed an emotional attachment to Dr. Greedy. Morgan's mother, Claudia Harris (Mrs. Harris), terminated Dr. Greedy's treatment of Morgan in 1995.

3. On November 8, 1995, Mrs. Harris filed a complaint against Dr. Greedy with the Board concerning her treatment of Morgan. The Board instructed Ms. Moore to investigate the complaint.
4. Mrs. Harris filed a lawsuit against Dr. Greedy in July 1996, seeking damages for herself and for Morgan. Morgan was 17 years old at the time.
5. As part of her investigation of the complaint filed with the Board, Ms. Moore interviewed Morgan on August 30, 1996 regarding what had occurred during the time she had been a patient of Dr. Greedy's. The purpose of the interview was to determine how Morgan would testify regarding the allegations made by her mother to the Board. Morgan's attorney was not present during the interview because she did not ask for him to be there, and he had advised Ms. Moore he did not think it was necessary that he be present.
6. During the interview, Morgan expressed loyalty to Dr. Greedy and indicated she was not in favor of her mother's lawsuit or complaint with the Board against Dr. Greedy. Ms. Moore requested that Morgan relate to her all personal information she knew about Dr. Greedy. Morgan's recollection of her relationship with Dr. Greedy differed substantially from what Dr. Greedy had told the private investigator hired by the Board. Morgan told Ms. Moore she had been to Dr. Greedy's home and that Dr. Greedy had shared personal information about herself with her, statements which conflicted with what Dr. Greedy had told the private investigator.<sup>[2]</sup> In order to clarify whether Dr. Greedy had in fact told her personal things or Morgan had received that information from her mother, Ms. Moore disclosed to Morgan that Dr. Greedy's statement differed from hers on that account.
6. Morgan turned 18 on February 7, 1997. During her deposition on February 21, 1997, Morgan testified that after talking with several people, including Ms. Moore, and doing a lot of thinking on her own, she decided she was no longer opposed to her mother's lawsuit against Dr. Greedy.
7. The Board was aware of the opinion requests filed by Ms. Moore and Mr. Lerude with the Commission and had directed Ms. Moore to continue her investigation of the complaint against Dr. Greedy.

### **ANALYSIS AND OPINION**

The Commission has jurisdiction over this matter pursuant to NRS 281.511(2). At all times relevant to this opinion request, Ms. Moore was a public employee as defined in NRS 281.436. The issue presented by these opinion requests is whether Ms. Moore violated NRS 281.481(2) or (5) by disclosing information contained in a confidential investigative file to Morgan during the course of her investigation of the complaint filed with the Board by Mrs. Harris against Dr. Greedy. The pertinent subsections of NRS 281.481 provide as follows:

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person.

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5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary

interests of himself or any other person or business entity.

The Commission finds for the reasons that follow that Ms. Moore's disclosure of the information did not violate either of these provisions.

As counsel for the Board, Ms. Moore is responsible for investigating consumer complaints filed with the Board in order to present evidence to the Board. Therefore, it was her duty to thoroughly investigate the complaint filed against Dr. Greedy by Mrs. Harris. To facilitate that investigation, Ms. Moore obtained psychological, medical, and other records, retained consulting psychologists and private investigators, and interviewed witnesses.

The private investigator hired by the Board interviewed Dr. Greedy and provided information from that interview to Ms. Moore. During Ms. Moore's subsequent interview of Morgan, Morgan made statements which contradicted statements made by Dr. Greedy. In order to clarify the accuracy of Morgan's statements, Ms. Moore disclosed to Morgan that Dr. Greedy had made contradictory statements.

Months after her meeting with Ms. Moore and after reaching the age of majority, Morgan made a decision to join in her mother's complaint and lawsuit against Dr. Greedy. She testified in a deposition that Ms. Moore "helped [her] make [her] final decision, because there were things that she disclosed to [her] that Jackie had said that [she knew] are not true, and when [she] found that out, it made [her] want to pursue this more." However, she also testified that she talked to former patients of Dr. Greedy, her psychology teacher at school, her school counselor, and others, and that she gave it a lot of thought and came to a decision on her own.

#### **Analysis Under NRS 281.481(5)**

Analysis of this question requires examination of NRS 641.255, which provides:

All complaints filed with the board are confidential, except to the extent necessary for the conduct of an investigation, until the board determines whether to proceed with any action authorized under this chapter. If the board dismisses the complaint, it remains confidential. If the board proceeds with any action, confidentiality is no longer required. [Emphasis added.]

This statute authorizes release of confidential information for purposes of investigating a complaint filed with the Board. In order to perform her public duties, it was necessary for Ms. Moore to thoroughly investigate the complaint against Dr. Greedy. As part of that investigation, Ms. Moore interviewed Morgan. When Morgan made statements which were contrary to information contained in Ms. Moore's investigative file, she confronted Morgan with the contradictory information in an effort to clarify her statements. Such a use of Dr. Greedy's statements is expressly contemplated by NRS 641.255 and is a standard and necessary practice in an investigation such as this one. The Commission does not conclude that NRS 281.481(5) was intended to preclude Ms. Moore from thoroughly investigating the matter because there was a possibility that Morgan might use information received during the course of the interview as part of her decision to pursue a case that might potentially benefit her financially.

In order for Morgan's interests to have been "furthered" by Ms. Moore's disclosure of information, her interests must have been improved as a result. The information Ms. Moore gave to Morgan did not grant Morgan a right to

sue which she was not already vested with; it did not provide her with evidence she did not already have a right to obtain on her own; and it could not increase the judgment she could recover if she were to prevail in her lawsuit. Therefore, any pecuniary interests which Morgan possessed were unaffected by Ms. Moore's disclosure. Consequently, the Commission finds Ms. Moore did not violate the provisions of NRS 281.481(5).

### **Analysis Under NRS 281.481(2)**

Regarding NRS 281.481(2), Mr. Lerude alleges that Ms. Moore's disclosure of the information to Morgan granted Morgan an unwarranted legal advantage in a lawsuit against Dr. Greedy because it gave Morgan "free discovery" of information which could be used against Dr. Greedy to allow Morgan to recover a larger judgment from the lawsuit than she otherwise could have expected. He suggests that Ms. Moore should have instead followed formal discovery procedures and disclosed information from her file only after formal charges had been filed against Dr. Greedy and a subpoena requesting the information was received from Morgan's attorney. According to Mr. Lerude, had this procedure been followed Dr. Greedy would also have been entitled to receive the information or could have objected to its production if she desired. Mr. Lerude was further concerned that Ms. Moore may have given Morgan other information which could be helpful in the lawsuit against Dr. Greedy which Morgan does not remember at this time. Mr. Lerude has produced no evidence to support this allegation.

The Commission sees no merit to Mr. Lerude's argument. Ms. Moore's alleged misconduct, e.g. disclosure of the information to Morgan, was not made in response to a request for information by Morgan. As stated above, Ms. Moore provided the information to Morgan only to further Ms. Moore's investigation into the treatment of Morgan by Dr. Greedy. It was not Ms. Moore's intent to provide Morgan with information which could be used to give her an advantage in the lawsuit against Dr. Greedy. Further, Mr. Lerude has failed to produce any evidence which shows how the information received from Ms. Moore has granted any advantage to Morgan or anyone else in the lawsuit against Dr. Greedy. Therefore, the Commission finds that Ms. Moore did not violate the provisions of NRS 281.481(2).

### **Sanctions Requested Against Mr. Lerude**

Ms. Moore has asked this Commission to impose sanctions against Mr. Lerude pursuant to NRS 281.551(2). This section provides:

2. In addition to any other penalty provided by law, the commission may impose a civil penalty not to exceed \$5,000 on any person who knowingly or maliciously submits to the commission any false accusation or false information, or submits to the commission any false accusation or false information in bad faith or who, by fraud or artifice, prevents the discovery of a violation of this chapter.

Ms. Moore cited the numerous accusations made against her by Mr. Lerude in his opinion request, and told the Commission she believed they were made in bad faith. Mr. Lerude argued that he always believed his allegations against Ms. Moore were meritorious and that they were brought in good faith.

Although Ms. Moore's and Mr. Lerude's positions were antipodean, and the Commission understands how each could reach his or her conclusion, we cannot find that either presented statements which were knowingly false.

We must caution, though, that this Commission is not a tool to be used to interfere with lawful investigations by governmental attorneys. We find Mr. Lerude's use of this Commission's processes in this matter to be dangerously close to such an abuse. Nonetheless, NRS 281.551(2) cannot be invoked simply because a person has made unsubstantiated allegations. Sanctions must be reserved for those individuals who make allegations which they know are false and who make such allegations with malicious intent. We do not find that here.

### **CONCLUSION**

Based upon the record, the Commission concludes that Ms. Moore did not violate NRS 281.481(2) or (5) when she disclosed confidential information to Morgan in furtherance of Ms. Moore's investigation of the complaint filed with the Board against Dr. Greedy. The Commission further concludes that it will not impose a sanction against Mr. Lerude for bringing the allegations against Ms. Moore.

### **COMMENT**

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The provisions of the Nevada Revised Statutes quoted and discussed above must be applied on a case-by-case basis, with results which may vary depending on the specific facts and circumstances involved.

DATED: August 11, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY E. BOETSCH, Chairwoman

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[1] Pursuant to NRS 281.511, a just and sufficient cause hearing was unnecessary regarding Ms. Moore's first-party request.

[2] The Board's private investigator interviewed Dr. Greedy on June 21, 1996.