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MEMORANDUM

TO: Members of the BELTCA Board
Jennifer Van Curen, Executive Officer
FROM: Louis Ling, Board Counsel
DATE: November 3, 2026
RE: Considerations for Settlement Agreements

BACKGROUND

In attempting to address disciplinary complaints that had been unaddressed when Jennifer began serving as the Executive Director, she looked through the Board's files and found a Settlement Agreement and Order form (hereafter SAO). Generic copies of the RFA and NFA SAO forms are attached. Since neither of Jennifer nor I had prepared settlement documents for this Board's review, we assumed that the form she found was one that had been used previously and that had resulted in Board approval. Thereafter, she and I prepared a number of SAO forms using the generic form as our model, and she thereafter sent those to various licensees for their review and acceptance.

Several of the licensees signed their SAOs. Several other licensees desired to negotiate some of the terms of the SAOs, either on their own or through retained legal counsel. In the course of those negotiations, it became evident that because neither of us had ever presented SAOs to the Board, we did not know what variations from the generic SAO form would be acceptable or unacceptable to the Board. In order to avoid inconsistent results or rejected SAOs, Jennifer and I determined to seek the Board's advice, direction, and guidance regarding the Board's expectations for SAOs to be presented to it. Hence, this memorandum.

THE BOARD'S LEGAL AUTHORITY

In NRS 654.190(1), the Legislature gave the Board the discretion to impose any or all of the following in a disciplinary matter:

- Administrative fine of not more than $10,000
- Recovery of reasonable investigative fees and costs
- Suspension of a license
- Revocation of a license
- Denial of the renewal of a license

- Place conditions on a license
- Place a license on probation

By way of interpretation and application of the legislatively authorized disciplinary actions, NAC 654.220(8) includes some additional guidance such as:

- For a probation, the Board should set a specified length of time and shall set such conditions as the Board considers appropriate, which may include restricting the number of facilities for which the licensee may act as an administrator
- Ordering a letter of reprimand
- Restricting a licensee's practice, including prohibiting the licensee from transporting patients or residents by motor vehicle if the licensee has been convicted of DUI
- For a suspension, that it may be for a specified time or until further order of the Board
- Order participation in a program for the treatment of substance abuse
- Payment of a fine of not more than $10,000 for each violation

Furthermore, per NAC 654.220(10), any action taken by the Board against a licensee must be reported to the Health Integrity and Protection Data Bank (HIPDB). Also, per NAC 654.220(11), the Board may accept a voluntary surrender of a license subject to the provisions of NRS 654.190, meaning that the voluntary surrender does not divest the Board of jurisdiction to proceed with any investigation or disciplinary action against the licensee.

In addition, NRS 622.400 authorizes an administrative board to recover reasonable attorney's fees and costs incurred by the board as part of its disciplinary proceedings, and such attorney's fees and costs may be recovered in a matter involving a settlement agreement per NRS 622.400(1)(b).

NRS 622.330 permits an administrative board to enter into a settlement agreement as long as the approval of the settlement agreement is approved by the board at a public meeting. Any such settlement agreement approved by a board is a public record.

DISCUSSION OF GENERIC SAO

The generic SAO form requires a licensee to acknowledge that the Board had information which constitutes sufficient grounds for the initiation of an administrative action (*See* ¶¶ 5&6), and in order to enter into the SAO, the licensee must admit to at least one violation of NRS or NAC ch. 654 (*See* ¶8). After the legal paragraphs regarding waiver of rights, releasing the Board of potential legal claims, and indemnification, the generic SAO contains a probation of eighteen months for which the standard terms are:

- The licensee must maintain a grade of B or higher at the licensee's facilities throughout the period of probation
- If an inspection results in a grade below a B, the licensee's license is immediately suspended until the licensee appears before the Board at the next subsequent regular Board meeting

- The licensee shall complete three hours of continuing education related to the violation
- The licensee shall pay the Board's legal and administrative costs and a fine of $250.00

TOPICS FOR DISCUSSION

By way of guidance, Jennifer and I would ask the Board to discuss and give us guidance regarding the following questions:

- Is probation necessary in all SAOs, or can some not contain probation?
- Where probation is necessary, is eighteen months required or could a longer or shorter duration be negotiated?
- Is the immediate suspension language in the probation terms necessary?
- Where probation is required, are the present terms necessary (such as the amount of the fine) or could they be subject to negotiation?
- Would a letter of reprimand be acceptable in lieu of probation for some cases, and, if so, in what kinds of cases?
- Would restrictions of a licensee's practice be acceptable in lieu of probation, and, if so, in what kinds of cases?
- When would suspension, revocation, or a negotiate licensure surrender be acceptable?
- NAC 654.220(3) contemplates that a Board member or a committee of the Board review each complaint and conduct an investigation to determine whether there is a reasonable basis for the complaint. Would the Board be amenable to assigning one or more of its members to serve in this capacity, either as an assigned task for a single member or on a rotating basis?
- In evaluating a particular case, what factors should Board staff and/or the investigating Board member consider when setting terms for a SAO or determining to go to a hearing? Board staff could identify the following factors that might be considered:
    - Prior complaint and disciplinary history with the Board (i.e. first complaint vs. third complaint)
    - Length of licensure
    - Inspection history over licensure history
    - Spectrum of severity of allegations:
        - Intentional act ←- - - - - - - - → Negligent or Accidental
    - Patient or resident harm vs. no harm (recordkeeping, for example)

CONCLUSION

On behalf of Jennifer and me, we appreciate the Board's consideration of this memorandum, and we look forward to discussing this with you at the upcoming Board meeting.