



**Protecting Your Mission**

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Protecting Your Mission

**What is the Mission?**

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Protecting Your Mission

**PUBLIC HEALTH AND SAFETY PROTECTION**

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 Protecting Your Mission

- Consumer Protection
- Competence of Professionals

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 Protecting Your Mission

- LAWS DIFFER IN EACH STATE
- CHECK YOUR STATE’S LAWS

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IS YOUR MISSION DEFINED?

*California Professions and Business Code Section 2229*

(a) Protection of the public shall be the highest priority for the Division of Medical Quality, the California Board of Podiatric Medicine, and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(c) ... Where rehabilitation and protection are inconsistent, protection shall be paramount.

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 Protecting Your Mission

- How Do Regulatory Authorities Maintain Focus on their Mission?
- How Do Regulatory Authorities Prevent Mission Lapse?
- FTC v. NC Dental – Failure to Protect Board Mission?

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 Protecting Your Mission

- PROTECTION OF PUBLIC HEALTH AND SAFETY (THE PROVINCE OF REGULATORY AUTHORITIES)
  - **INTEGRITY OF DECISION MAKING PROCESS CRITICAL TO MISSION PROTECTION**
    - AVOID – CONFLICTS, CAPTURE, SELF DEALING, UNDUE INFLUENCE, IMPARTIALITY ,OVER-IDENTIFICATION
    - PROMOTION OF THE PROFESSION IS **NOT** THE PROVINCE OF REGULATORY AUTHORITIES

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**ANTI-CORRUPTION,  
TRANSPARENCY LAWS AND  
PUBLIC BOARD  
MEMBERSHIP SUPPORT  
MISSION**

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## ANTI-CORRUPTION LAWS

- Ethics Laws
- Lobbying Laws
- Conflict of Interest and Bias Laws

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## ETHICS LAWS

- Examples: Prohibitions Against Use of Public Position for Private Gain, Acting Officially in Matter with Private Interest, Financial Disclosures, Oath to Uphold Constitution, Confidentiality

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## LOBBYING LAWS

- Recognition of Difference in Missions:
  - Promotion of the Profession, Advocacy for Interest (Lobbying Principals, Lobbyists)
  - Protection of Public Health and Safety (Regulatory Authorities)

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### LOBBYING LAWS (cont.)

- Laws Against Solicitation and Acceptance of Items of Pecuniary Value
  - Bribery, Contract Violations
  - Gift provisions (e.g., bans, reporting)
  - Provision of Food, Beverages, Services
- Disclosures?

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### ETHICS/LOBBYING LAW RESOURCES

- State Statutes and Rules
- Government Oversight Body
  - State Laws, Guidelines, Cases, Enforcement
- Secretary of State

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### CONFLICT OF INTEREST

Having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity or incurring any obligation of any nature, which is in substantial conflict with the proper discharge of the Board member's duties.

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### TYPES OF CONFLICTS

- Board Membership – Distance From Lobbying Groups, Profession Agendas?
  - e.g., “Officer, Director or Employee of an Organization that Promotes the Profession”
- Public Membership – Distance from Regulated Profession?
- Professional/Financial/Business/Personal Ties

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### BIAS/APPEARANCE OF CONFLICT OF INTEREST

- Bias: A Preconceived Opinion or a Predisposition to Decide a Cause or Issue in a Certain Way
- Appearance of Conflict of Interest: One Who Appears to be in a Position of Conflict of Interest

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### CONFLICT – MAY BE REMEDIABLE:

- DISCLOSURE
- DISQUALIFICATION FROM PROCEEDINGS
- REVIEW WITH ATTORNEY

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### TRANSPARENCY LAWS

- Sunshine/Open Government Laws
- Balance with Privacy
  - Open Meetings
  - Open Records
  - Public Membership

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### OPEN MEETINGS LAWS

- "...The public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wis. Stat. s. 19.81 (1)
- "The open meetings law is to be broadly interpreted to promote the policy of openness." Wis. Stat. s. 19.81 (4)

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### OPEN MEETINGS LAWS

- "[i]t is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret. Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of the State of Nebraska, federal statutes, and the Open Meetings Act." Neb. Rev. Stat. § 84-1408.

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## OPEN MEETING LAWS

- Areas of Focus:
  - Accessibility and Transparency
  - Notice (Public Access, Timeliness, Subject Matter Specificity)
  - Quorum, Walking Quorum
  - CLOSED SESSION Limitations and Procedures
  - Consult with Attorney

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## OPEN RECORDS LAWS

- In WI, Presumption Records are Open (unless law creating exception):
  - Accessibility and Transparency
    - Broad Access Favored
    - Provisions re: requirements for record requests
    - Emails, Texts, Private Equipment
    - Retention Laws and Policies
    - Consult with Attorney

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## OPEN RECORDS LAWS

- Consider:
- "Performance Dashboards" To Track Goals and Performance
  - Document and Track All Open Record Requests
    - The total number of public records requests received
    - The total number of public records requests completed
    - The average time taken to fulfill public records requests
  - Fulfill Requests within 10 Days
  - Acknowledge Requests within one Day, Provide Status Responses within 5 Days
  - Post in Public Place (Website)

*Source: 2016 Wisconsin Executive Order #189, 2017 Executive Order #235*

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## OPEN RECORDS LAWS

- Consider:
  - Provide Initial and Ongoing Training to all Agency Employees and Boards
  - Publicize Email Address for Requests from Public
  - Explain Withheld Information and Redactions
  - Provide Procedural Guidance
  - Provide Electronic Copies (no charge) and Limit Copying Costs

*Source: 2016 Wisconsin Executive Order #189 and 2017 Executive Order #235*

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## OPEN MEETINGS AND RECORDS LAWS RESOURCES

- State Statutes and Case Law
- State Attorney General Office
  - Summary and Guidance Document?

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## PUBLIC MEMBERS

- 1960s – Public Members Included on Medical Boards (Starting with CA in 1961)
  - Boards Seen as Too Protective of Profession
    - Too Close with Professional Associations?
    - Guard Against Over-Identification with Professional Members
- Increase Transparency of Decision Making
- “Social Conscience for the Board”

Source: “Medical Licensing and Discipline in America,” Johnson, D. and Chaudhry, H., 2012

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## PUBLIC MEMBERS

- Voice of the Public
- Reduce Potential for Bias
- Add Balance and Credibility
- Outside Perspective
- Numbers Have Increased
  - Non-physicians = 16% of state boards' membership in 2016

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## PUBLIC MEMBERS

Shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the governmental body to which they are appointed

Shall not be married to any person so credentialed or engaged, and shall not employ, be employed by, or be professionally associated with any person so credentialed or engaged (*Wisconsin Statutes*)

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- LAWS DIFFER IN EACH STATE
- CHECK WITH YOUR STATE

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**CASE STUDY**

Board Member F owns one of two clinics in his town. The owner of the other clinic in town is before the Board for a disciplinary proceeding. What should Board Member F do?

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**CASE STUDY**

Board Member G has a consulting contract with an organization that sets standards and approves CE courses that are accepted by the Board for its biennial CE requirement. A Board discussion is scheduled concerning CE course requirements for members of the profession. Should Board Member G participate in the discussion?

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**CASE STUDY**

Board Member X is compensated by a Continuing Education sponsor for instructional sessions he teaches for credit within his profession. His Board decides to revise its Continuing Education rule. Must Board Member X resign from the Board?

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**CASE STUDY**

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**CASE STUDY**

Board members meet the night before their noticed Board meeting for dinner and socializing. No public notice is provided for the social event. They are joined by state agency staff whose emails, which were made public through an open records request, show a plan to defuse board objections at the dinner relating to a board matter that has generated strong public opposition. The matter is discussed during dinner.

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**CASE STUDY**

Board members arrive 20 minutes before the Board meeting. As other Board members arrive, a discussion begins about a topic on that day's agenda. Why is this kind of discussion, before, during break, or after a meeting not advisable?

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**CASE STUDY**

Board Member A calls Board Member B of his 8 member Board about a topic to be discussed at the next Board meeting. Board Member B calls Board Member C about the same topic, without Board Member A knowing about the call to Board Member C. The 8 Member Board has only 7 members due to a vacancy, and one other member is absent for the next meeting. Should the Board discuss the topic at its meeting?

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**CASE STUDY**

The Board convenes to closed session to discuss a routine disciplinary matter. One Board member sees an opportunity to have a private conversation about a recent media story about a Board decision, unrelated to the disciplinary matter, and attempts to discuss that matter. What should the Board Chair do in response?

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**Questions?**

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