



# CALIFORNIA BOARD OF PHARMACY BOARD MEMBER PROCEDURE MANUAL



**DCA**  
California Department  
of Consumer Affairs

CALIFORNIA STATE



BOARD OF PHARMACY

# TABLE OF CONTENTS

## Chapter 1 Introduction

Overview.....	1
Abbreviations Used in This Manual.....	2

## Chapter 2 Board Meeting Procedures

Frequency of Meetings.....	4
Board Member Attendance at Board Meetings.....	4
Board Member Participation.....	4
Public Attendance at Board Meetings – Open Meetings Act.....	5
Quorum.....	5
Meeting Rules.....	6
Agenda Items.....	6
Notice of Meetings.....	7
Diversity, Equity, and Inclusion.....	7
Record of Meetings.....	7
Electronic Recording of Meetings.....	7
Public Comment.....	7
Board Voting at National Association of Boards of Pharmacy Meetings.....	8

## Chapter 3 Committee Meetings

Committees of the Board.....	10
Competency Committee.....	11
Committee Creation and Appointments.....	12
Attendance at Committee Meetings.....	12

## Chapter 4 Travel & Salary Policies/Procedures

Travel Approval.....	13
Travel Arrangements.....	13
Out-of-State Travel.....	13
Travel Claims.....	13
Salary Per Diem.....	14

## Chapter 5 Other Policies/Procedures

Requests for Board Representation or Presentation.....	16
Resignation of Board Members.....	16
Duties of Officers of the Board.....	16
Election of Officers.....	17
Officer Vacancies.....	18
Board Member Disciplinary Actions.....	18
Board Member Addresses.....	18

Written Correspondence and Mailings by Board Members.....	18
Request for Records Access .....	18
Communications with Other Organizations/ Individuals/Media .....	18
Executive Officer (EO).....	19
Executive Officer’s Annual Evaluation.....	19
Board Staff.....	20
Board Administration .....	20
Contact with Licensees, Applicants and Respondents .....	20
Service of Legal Documents .....	21
Gifts from Licensees or Candidates .....	21
Conflict of Interest.....	21
Ethics Course.....	22
Sexual Harassment Prevention Training.....	22
Defensive Driver Training.....	22
DCA’s Board Member Training .....	22
The Honoraria Prohibition .....	23
Serving as an Expert Witness.....	23
Request for Grants .....	24
Policy Positions of the Board .....	24

## Chapter 6 Enforcement Overview

Enforcement Options and Sanctions .....	33
Mail Ballots .....	35
Holding Disciplinary Cases for Discussion at Board Meetings .....	35

## Appendix

Abbreviations.....	A
Open Meeting Act.....	B
DCA Travel Guide and Departmental Travel Policies.....	C
Travel Expense Worksheet and Travel Expense Claim .....	C
Board Member Reimbursement for Time Spent on Board Business and Board Member Attendance Report .....	D
Executive Officer Evaluation Form .....	E
Gifts from Licensees or Applicants .....	F
Conflict of Interest .....	G
Ethics Course .....	H
Honoraria Prohibition .....	I
Overview of the Board Member’s Role in Disciplinary Actions .....	J
Sample Mail Ballot .....	K

# Chapter 1

## INTRODUCTION

### Overview

The California State Board of Pharmacy (board) was created by the California Legislature in 1891 to protect the public by regulating the practice of pharmacy. Section 4000.1 of the California Business and Professions Code specifically establishes that:

*Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

The board is one of the boards, bureaus, commissions, and committees within the Department of Consumer Affairs (DCA), part of the Business, Consumer Services and Housing Agency under the aegis of the governor. The Department is responsible for consumer protection and representation through the regulation of licensed professionals and the provision of consumer services. While the DCA provides administrative oversight and support services, the board has policy autonomy and sets its own policies, procedures, and regulations.

The board is presently comprised of 13 members; six are public members, and seven are pharmacists, as required by law. The seven pharmacist members and four public members are appointed by the governor. One public member is appointed by the Assembly Speaker and one is appointed by the Senate Rules Committee. Board members may serve up to two four-year terms.

According to California law, at least five of the seven pharmacist members of the board must be pharmacists who are actively engaged in the practice of pharmacy. There must be at least one pharmacist representative from each of the following practice settings: an acute care hospital, an independent community pharmacy, a chain community pharmacy, a long-term health care or skilled nursing facility, and a compounding pharmacy specializing in human drug preparations. The pharmacist appointees shall also include a pharmacist who is a member of a labor union that represents pharmacists. A "chain community pharmacy" means a chain of 75 or more stores in California under the same ownership, and an "independent community pharmacy" means a pharmacy owned by a person or entity who owns no more than four pharmacies in California. *California Business and Professions Code section 4001(c).*

Board members hold non-salaried positions but are paid \$100 per day for each meeting day (or eight-hour day spent performing board business) and are reimbursed travel expenses.

The board's operations are guided by its five-year strategic plan. The strategic plan is revised with the active partnership of all board members, staff, and interested stakeholders.



This procedure manual is provided to board members as a ready reference of important laws, regulations, DCA policies, and board policies in order to guide the actions of the board members and ensure board effectiveness and efficiency. The executive officer and board president will coordinate an orientation session with each new board member upon their appointment, to assist the new member in learning processes and procedures.

Any questions board members may have, at any time, can be addressed to the executive officer.

## General Rules of Conduct

Board members shall not speak to interested parties (such as vendors, lobbyists, legislators, or other governmental entities) on behalf of the board or act for the board without proper authorization.

Members shall maintain the confidentiality of confidential documents and information.

Board members shall commit time, actively participate in board activities, participate in enforcement decision making and prepare for board and committee meetings, which includes reading meeting materials and all required legal documents.

Board members shall respect and recognize the equal role and responsibilities of all board members.

Board members shall act fairly and in a nonpartisan, impartial, and unbiased manner.

Board members shall treat all applicants and licensees in a fair and impartial manner.

Board members' actions shall uphold the board's primary mission – protection of the public.

Board members shall not use their positions on the board for political, personal, familial, or financial gain.

## Abbreviations Used in This Manual

B&P	Business and Professions Code
Board	California State Board of Pharmacy
DCA	Department of Consumer Affairs
President	President of the Board of Pharmacy
Vice President	Vice President of the Board of Pharmacy
EO	Executive Officer
SAM	State Administrative Manual

Additional abbreviations and commonly used terms can be found in Appendix A.

## Chapter 2

### BOARD MEETING PROCEDURES

#### Frequency of Meetings

*(B&P Code Section 4002(b))*

The board is required by law to meet at least once every four months and may meet more often as it determines necessary. Full board meetings are generally two days and are held in northern and southern California on an alternating basis when possible. Additionally, the board, or a committee of the board, shall meet once per quarter to hear petitions for modification of probation and license reinstatement. The board welcomes and encourages public participation at its meetings and provides for public participation via WebEx. The Board may, if necessary to address a time sensitive issue (i.e., in response to a declared disaster, to meet specified times established in the Administrative Procedures Act for enforcement related matters or regulations, etc.) may convene additional board meetings.

The board has established the following interim policy until January 1, 2026:

Committee meetings will be convened via teleconference consistent with Government Code section 11123.5.

- Petitions for modification of probation and license reinstatements will be considered by a committee of the board consistent with Business and Professions Code Section 4309(c).
- Board meetings will be convened with a public location where a quorum of the board is present. Additional members may participate from a non-public remote location consistent with the provisions of Government Code Section 11123.2(j)(1). Where an in-person quorum cannot be achieved, the Board will determine if conditions exist to convene the meeting consistent with Government Code Section 11123.2(j)(2).

#### Board Member Attendance at Board Meetings

*(Board Policy)*

Board members shall attend each meeting of the board. If a member is unable to attend, they must contact the board president and the executive officer and ask to be excused from the meeting for a specific reason. Minutes will reflect when a member is not present for a meeting. Two consecutive non-excused absences may result in a request to the appointing authority that the member be replaced.

#### Board Member Participation

*(B & P Code Sections 106 and 106.5)*

The appointing authority has the power to remove from office at any time any member of any board appointed by the appointing authority for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. The governor may also remove from office a board member who directly or

indirectly discloses examination questions to an applicant for examination for licensure.

## Public Attendance at Board Meetings Open Meetings Act

*(Government Code Section 11120 et seq.)*

Board meetings are subject to the provisions of the Bagley–Keene Open Meeting Act. The Open Meeting Act governs meetings of the state regulatory boards and meetings of committees of those boards where the committee consists of more than two members. It specifies meeting notice and agenda requirements and prohibits discussing or taking action on matters not included on the agenda. Board members will receive training on the Open Meeting Act during the Board Member Orientation given by the DCA.

Appendix B contains detailed information about the Open Meeting Act that has been prepared by the Department's Legal Affair Division. Updates on the Open Meeting Act are provided periodically by the Department. Such updates will be provided to board members by board staff.

Attendance at general conferences that involve a discussion of broad issues and which are attended by a broad spectrum of participants are not covered by open meeting laws so long as members of the board do not discuss among themselves matters which are, or potentially may be, before the board. On the other hand, a workshop that is focused specifically on board issues and which involves more than two board members, or where the two members have some authority to act without further action by the full board, must meet the requirements of the Open Meeting Act.

Communications between or among more than two board members may be considered "meetings" if those communications occur in a serial fashion through a series of telephone calls or other communications (such as electronic mail) by which more than two of the board members are involved and board business is discussed (*e.g.*, polling of board members). Such communications are prohibited.

Any general discussion of exams or disciplinary procedures shall be held in public. The board may meet in closed session to discuss examinations where a public discussion would compromise the integrity of the examination or to deliberate on disciplinary cases and to discuss pending litigation.

An annual evaluation of the executive officer is held in closed session.

If the agenda contains matters that are appropriate for closed session, the agenda must cite the specific statutory section and subdivision authorizing the closed session.

## Quorum

*(B&P Code Section 4002(b) and Board Policy)*

Seven members of the board constitute a quorum for the transaction of business. The majority of a quorum is necessary to act on behalf of the board.



The board uses the following criteria in counting votes on a given motion or decision (this includes motions during board meetings and mail votes on disciplinary matters).

The board must have a quorum of members present to take an action.

- There must be at least seven members voting in order for the board to take an action or position on an item, unless otherwise delegated by the board.
- A motion passes if a majority of those voting votes for the measure.
- Abstentions count as votes for purposes of establishing a quorum, but do not count as votes for or against the measure. Abstentions simply mean that the abstaining board member will go along with the majority decision of the board.
- *For example, if seven members are present, and four members abstain from voting, then:  
a vote of 2 Aye, 1 Nay and 4 Abstain would mean that the motion passes (the majority vote is 2 versus 1, with 4 agreeing to go along with the majority of those voting).*
- The board president may determine to vote or not vote on any matter before the board.
- In the event of a tie the motion fails.

Should a board member recuse themselves from voting on a matter, that member is no longer counted for purposes of achieving a quorum. If this results in a loss of a quorum, the person may participate under the “rule of necessity”, however they should not participate in the discussion and they should abstain from voting. If the reason for the recusal is controversial or substantial (*i.e.*, the member was a witness in the case), the board should wait until another meeting to vote on the matter. This may necessitate a special meeting.

## Meeting Rules

*(Board Policy)*

The board generally uses Robert's Rules of Order as a guide for conducting its meetings, to the extent that this does not conflict with state law (*e.g.*, Bagley-Keene Open Meeting Act). Questions of order are clarified by the board's attorneys.

## Agenda Items

*(Board Policy)*

Any board member may suggest items for a board meeting agenda to the executive officer or during the "Public Comments on Items Not on the Agenda" discussion at every board meeting. The EO sets the agenda at the direction and with the approval of the board president and/or committee chair.

Generally, agenda items for board meetings originate with one of the board's five standing committees (Enforcement and Compounding Committee, Licensing Committee, Communication and Public Education Committee, Legislation and Regulation Committee, and Organizational Development Committee). The committee structure is designed to allow for initial discussion and consideration. Recommendations are then formed by the committee and brought to the full board for considerations as a committee report.

## Notice of Meetings

*(Government Code Section 11120 et seq.)*

According to the Open Meeting Act, public meeting notices (including agendas for board meetings) must be sent to persons on the board's mailing list at least 10 calendar days in advance of the meeting. The notice must include a staff person's name, work address and work telephone number who can provide further information prior to the meeting.

All meeting notices for public meetings are also posted on the board's website ([www.pharmacy.ca.gov](http://www.pharmacy.ca.gov)) at least 10 calendar days before the meeting.

## Diversity, Equity and Inclusion

The Board supports the efforts of the Diversity, Equity, and Inclusion Steering Committee at the Department of Consumer Affairs and commits to fostering inclusive engagement in its policy decisions, and promoting diversity, equity, and inclusion in the Board's publications and procedures.

## Record of Meetings

*(Board Policy)*

Board and committee meeting minutes are a summary, not a transcript, of each meeting. The meeting minutes shall contain summaries of how each board member voted on motions during the meeting.

The minutes are prepared by board staff and submitted for review by board members before the next board or committee meeting. Meeting minutes are approved at the next scheduled meeting of the board or committee. The purpose of reviewing and approving the minutes at a meeting is not to approve of actions taken at the previous meeting, but rather to determine whether the minutes as drafted accurately reflect the discussion at the previous meeting. When approved, the minutes shall serve as the official record of the meeting.

## Electronic Recording of Meetings

*(Government Code Section 11124.1 and Board Policy)*

The public-session portions of a meeting may be electronically recorded if determined necessary for staff purposes. Audio recordings shall be disposed of following board approval of the minutes. Meetings may be livestreamed for the public to view on the board's website at [www.pharmacy.ca.gov](http://www.pharmacy.ca.gov). Members of the public may tape record, videotape, or otherwise record a meeting unless the board reasonably finds that such recording constitutes a persistent disruption of the proceedings.

## Public Comment

*(Government Code Sections 11125.7 and 11430.10 and Board Policy)*

Due to the need for the board to maintain fairness and neutrality when performing their adjudicative function, the board shall not receive any substantive information from a member of the public regarding any matter that is currently under or subject to investigation or involves a pending criminal or administrative action.

If, during a board meeting, a person attempts to provide the board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the board cannot properly consider or hear such substantive information, and the person shall be instructed to refrain from making such comments.

If, during a board meeting, a person wishes to address the board concerning alleged errors of procedure or protocol or staff misconduct, involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the board will address the matter as follows:

- Where the allegation involves errors of procedure or protocol, the board may designate either its executive officer or a board employee to review whether the proper procedure or protocol was followed and to report back to the board.
- Where the allegation involves significant staff misconduct, the board may designate one of its members to review the allegation and to report back to the board.

At the discretion of the president or chairperson, speakers may be limited in the amount of time to present to give adequate time to everyone who wants to speak. In the event the number of people wishing to address the board exceeds the allotted time, the president or chairperson may limit each speaker to a statement of his/her name, organization, and whether they support or do not support the proposed action.

Members of the public are welcome to submit written comments in advance of a meeting to the contact person included on the agenda. To ensure member and the public have sufficient time to consider the comments, only comments received within two business days of the start of the meeting will be provided to members and included as part of the meeting materials. At the direction of the Board President or Committee Chairperson comments received after this time may be provided.

## Board Voting at National Association of Boards of Pharmacy Meetings

*(Board Policy)*

The National Association of Boards of Pharmacy is a professional organization that supports the state boards of pharmacy in protecting public health. The National Association of Boards of Pharmacy member boards of pharmacy are grouped into eight districts that include all 50 United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, , Bahamas, and ten Canadian provinces.

The board's president shall serve as the official delegate to the annual district and annual meeting of the National Association of Boards of Pharmacy. If the president cannot attend the meeting or is absent for a portion of the meeting, the president shall designate an alternate delegate to the meeting to vote on matters before the

NABP's sessions.

# Chapter 3

## COMMITTEE MEETINGS

### Committees of the Board

The board's strategic plan establishes five standing committees through which the board establishes its goals and organizes its activities in pursuit of ensuring the public health, safety, and welfare, and to assure the provision of quality pharmacist's care. These five committees develop policy related to a board mission-related goal. The committees and their goal areas are:

- **Licensing** – Ensuring the professional qualifications of licensees. This includes that those entering the practice of pharmacy, as well as those continuing to practice, meet minimum requirements for education, experience, and knowledge. The board also ensures that facilities licensed by the board meet minimum standards.
- **Enforcement and Compounding** – Protecting the public by exercising oversight on all pharmacy activities. This includes preventing violations and effectively enforcing federal and state pharmacy laws when violations occur.
- **Communication and Public Education** – Providing relevant information to consumers and licensees. This includes encouraging the public to discuss their medications with their pharmacist; emphasizing the importance of patients complying with their prescription treatment regimens; and helping pharmacists to become better informed on subjects of importance to the public.
- **Legislation and Regulation** – Advocating legislation and promulgating regulations that advance the vision and mission of the board. These activities ensure better patient care and more effective regulation of the individuals and firms who handle, dispense, furnish, ship, and store prescription drugs and devices in California.
- **Organizational Development** – Achieving the board's mission and goals. This is done through strategic planning, budget management, and staff development activities.

Each of these committees is comprised of at least three board members. Staff provides technical and administrative input and support to the committee. The committees are an important venue for ensuring that staff and board members share information and perspectives in crafting and implementing strategic objectives.

The board's committees allow board members, stakeholders, and staff to discuss and conduct problem solving on issues related to the board's strategic goals. They also allow the board to consider options for implementing components for the strategic plan. The committees are charged with coordinating board efforts to reach board goals and achieving positive results on its performance measures.

The board president designates one member of each committee as the committee's chairperson. The chairperson coordinates the committee's work and ensures progress toward the board's priorities. The board president also designates a vice

chairperson for each committee who fulfills the duties of the chairperson in their absence.

Committees typically meet before a quarterly board meeting. Committee meetings where appropriate. Committee meetings are governed by the same Open Meeting Act requirements as board meetings. The committees refer policy decisions to the full board during a public meeting for a formal decision and vote. During the committee's discussion, the public is encouraged to provide comments. The board meeting agenda will list action items and discussion items of interest for each committee.

All committee meetings of the Enforcement and Compounding, Licensing, Legislation and Regulation, and Communication and Public Education Committees are public meetings. This reflects the high interest the public has shown for the agenda items of these committees. The Legislation and Regulation Committee generally holds at least two public meetings each year, typically in the spring and fall in order to recommend positions on introduced legislation (in the spring) or to develop legislative or regulatory proposals (in the fall). The Organizational Development Committee typically does not schedule public meetings as it consists of only two members and items within its purview are not generally appropriate for open meetings (*e.g.*, personnel matters). Nevertheless, a report of items under the Organizational Development Committee's purview is generally provided at each board meeting.

During any public committee meeting, comments from the public are strongly sought, and the meetings themselves are frequently public forums on specific issues before a committee. Board members who are not members of a committee may attend a public committee meeting as part of the audience.

It is also important to note that any time more than two board members attend a board committee meeting, that committee meeting must have been publicly noticed. The board's legal counsel works with the EO to assure any meeting that fits the requirements for a public meeting is appropriately noticed.

The board also has one standing committee with responsibilities for the California pharmacist licensing examination (the Competency Committee). This committee is described below.

## Competency Committee

The board's Competency Committee is responsible for developing and grading the board's pharmacist licensure examination, the California Practice Standards and Jurisprudence Exam for Pharmacists (known as the CPJE). The committee is comprised of representatives from a cross section of professional practice. The board president or their designee is kept apprised of work of the committee.

Membership on this committee is professionally challenging as well as time consuming. The committee members are split geographically between Northern and Southern California. The committee meets seven times annually in two-day meetings. There is an annual meeting where the entire committee meets in one location to set goals for the year. Membership is generally eight years, and appointment is by the board president.

The Competency Committee is a stand-alone committee that is within the auspices of the board's Licensing Committee. However, meetings of the Competency Committee are not public meetings as these meetings are for examination development.

## Committee Creation and Appointments

*(Board Policy)*

The president may establish additional committees or subcommittees, whether standing or special, as they deem necessary. The composition of the committees or subcommittee and the appointment of the members is determined by the board president in consultation with the vice president, and the EO. Any additional committee or subcommittee meetings are governed by the same Open Meeting Act requirements as board meetings.

## Attendance at Committee Meetings

*(Board Policy and Government Code Section 11122.5)*

If a board member wishes to attend a meeting of a committee of which they are not a member, that board member must obtain permission from the board president or EO to attend. Therefore, requests to attend a committee meeting should be submitted to the EO at least two weeks in advance.

Board members who are not members of a committee may attend a public committee meeting as part of the audience. However, if a quorum of members of the full board are present during a committee meeting, members of the board who are not members of the board committee may attend the committee meeting only as observers.

## Chapter 4

### TRAVEL & SALARY POLICIES/PROCEDURES

#### Travel Approval

*(DCA Memorandum 91-26)*

Board members shall have board president approval for all travel and per diem reimbursement, except for regularly scheduled board and committee meetings to which a board member is assigned.

The DCA Travel Guide information is attached as Appendix C. Board members will be reimbursed for travel expenses incurred while performing approved board business in accordance with these reimbursement criteria.

#### Travel Arrangements

*(Board Policy)*

Travel arrangements, including hotel accommodations, flights, and rental cars, are made by designated staff through the state's designated travel agency. Staff will provide each board member with confirmations for all travel reservations for their review and approval. In the event that the travel reservations need to be modified or canceled the board member shall notify designated staff as soon as possible so that the appropriate steps can be taken to change or cancel the reservations.

State guidelines generally prohibit reimbursement for hotel expenses if the meeting is less than 50 miles from an individual's home address, unless preapproval is secured. Board members who wish to request an exemption to stay at a hotel less than 50 miles from their home must contact designated staff to pursue this exemption at least two weeks before the meeting. The exemption must be approved by the DCA before the meeting.

#### Out of State Travel

Out-of-state travel for all persons representing California is highly controlled and must be pre-approved by the governor's office. For approved out-of-state travel, board members will be reimbursed actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses at the state per diem rate.

#### Travel Claims

*(DCA Memorandum 91-26)*

Rules governing reimbursement of travel and meeting expenses for board members are the same as for management level state staff. All expenses must be claimed using the state's electronic travel claim program. Staff prepare these electronic travel claims on behalf of board members after all board and committee meetings. All claims will be provided to the board member for review and approval prior to final submission in the electronic travel claim program. Original receipts are required for reimbursement for lodging and parking, and are to be provided to



designated staff to be included with the travel claim.

In order for travel expenses to be reimbursed, board members must follow the procedures contained in DCA memoranda which are periodically disseminated by the director and are provided to board members on at least an annual basis by board staff. Questions regarding travel reimbursement policies shall be directed to designated staff.

## Salary Per Diem

*(B&P Code Section 103)*

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for board members is regulated by Business and Professions Code Section 103.

In relevant part, this section provides for the payment of salary per diem for board members "for each day actually spent in the discharge of official duties," and provides that the board member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

*(Board Policy)*

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

- No salary per diem or reimbursement for travel-related expenses shall be paid to board members, except for attendance at official board or assigned committee meetings. Attendance at gatherings, events, hearings, conferences, or meetings other than official board or assigned committee meetings in which a substantial official service is performed shall be approved in advance by the board president.
- The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a board or committee meeting until that meeting is adjourned. If a member is absent for a portion of a meeting, hours are then reimbursed for time actually spent. Travel time is not included in this component.
- For board-specified work, board members will be compensated for actual time spent performing work authorized by the board president. This may also include, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences; and exam item writing. Work also includes preparation time for board or committee meetings and reading mail ballots for disciplinary actions.
- Reimbursable work does not include miscellaneous reading and information gathering, committee work not related to a meeting, preparation time for a presentation, and participation at meetings not related to official participation of the board.

Board members may submit their hours for which they seek reimbursement to designated staff on the Board Member Attendance Report. By board policy, board members will be reimbursed for their hours spent at board and committee meetings

without submitting a Board Member Attendance Report. However, for reimbursement for all other board-sanctioned activities (including reading mail ballots for disciplinary actions) or performing board business, the hours must be submitted on the Board Member Attendance Report.

Business and Professions Code section 103 and a Board Member Attendance Report are provided in Appendix D.

## Chapter 5

### OTHER POLICIES/PROCEDURES

#### Requests for Board Representation or Presentation

*(Board policy)*

If an association or individual requests board participation at an event or meeting, a written request should be submitted to the EO, as to the purpose of the function, and the reason for the request. The board president will approve such requests consistent with the board's strategic plan and if funds are available. Approval to participate will also include the extent of participation (*e.g.*, one time meeting, presentation, or continuous participation on a committee). Continued participation as a board representative should be consistent with the board's strategic plan and may need to be approved by the full board.

Prior authorization for any reimbursement must be obtained or expenses will be the responsibility of the participant.

Board members may participate on their own (*i.e.*, as a citizen or professional) but not as an official board representative unless approved by the board president or the board. However, board members should recognize that even when representing themselves as “individuals,” their positions might be misconstrued as that of the board. For that reason, board members are cautioned to not express their personal opinions as a board policy or position or represent that the board has taken a position on a particular issue when it has not. Board members should also make every attempt to provide disclaimers that they are not representing the board.

#### Resignation of Board Members

*(Government Code Section 1750)*

In the event that it becomes necessary for a board member to resign, a letter shall be sent to the appropriate appointing authority (governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. Written notification is required by state law. A copy of this letter shall also be sent to the director of the Department, the board president, and the EO.

#### Duties of Officers of the Board

*(B&P Code Section 4002(a))*

The board shall elect from its members a president, vice president, and treasurer.

##### **President**

- Spokesperson for the Board of Pharmacy (including but not limited to) – may attend legislative hearings and testify on behalf of the board, may attend meetings with stakeholders and legislators on behalf of the board, may talk to the media on behalf of the board, and signs letters on behalf of the board
- Meets and communicates with the executive officer on a regular basis

- Communicates with other board members for board business
  - Authors a president's message in every newsletter
  - Approves board meeting agendas
  - Establishes positions on emergent bills between board meetings. Working with the executive officer negotiates amendments consistent with the Board's direction. Updates board positions in response to changes in pending legislation that requires urgent action.
  - Chairs and facilitates board meetings
  - Chairs the Organizational Development Committee
  - Signs specified full board enforcement approval orders
  - Grants or denies requests for an extension of time to submit arguments to the board under the Administrative Procedure Act
  - Approves leave requests and FMLA requests for the EO
  - Performs other duties as delegated by the board
- Vice President**
- Is the back-up for the duties above in the president's absence
  - In the absence of the president may perform duties delegated to the president by the board
  - Is a member of the Organizational Development Committee
- Treasurer**
- Maintains the private board member fund for commemorative awards for board staff and board members
- Past President**
- Is responsible for mentoring and imparting knowledge to the new board president
  - May attend meetings and legislative hearings to provide historical background information, as needed
- Committee Chair**
- Approves the committee agendas
  - Chairs and facilitates committee meetings
- Vice Committee Chair**
- Is the back-up for the duties above in the committee chair's absence

## Election of Officers

*(B&P Code Section 4002(a) and Board Policy)*

The board shall elect the officers during the third or fourth quarter of the fiscal year as appropriate, by a majority of the membership of the board. Officers shall serve

terms of one year effective June 1, and may be reelected to consecutive terms.

## Officer Vacancies

*(Board Policy)*

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the president becomes vacant, the vice president shall assume the office of the president until an election is held. Elected officers shall then serve the remainder of the term.

## Board Member Disciplinary Actions

*(Board Policy)*

A member may be censured by the board if, after a hearing before the board, the board determines that the member has acted in an inappropriate manner.

The president shall sit as chair of the hearing unless the censure involves the president's own actions, in which case the vice president shall preside. In accordance with the Open Meeting Act, the censure hearing shall be conducted in open session.

## Board Member Addresses

*(DCA Policy)*

Board member addresses and telephone numbers are confidential and shall not be released to the public without express authority by the individual board member.

A roster of board members is maintained for public distribution and is placed on the board's website, using the address and telephone numbers of the board.

## Written Correspondence and Mailings by Board Members

*(Board Policy)*

If delegated to do so by the president or EO, all correspondence, press releases, articles, memoranda, or any other communication written by any board member in their official capacity must be provided to the EO for reproduction and distribution. The EO will maintain a copy and mail and distribute the written material.

## Request for Records Access

*(Board Policy)*

No board member may access a licensee's or applicant's file without the EO's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the board's office.

## Communications with Other Organizations/Individuals/Media

*(Board Policy)*

Interested parties may request to meet with a board member on a matter or matters

under the board's jurisdiction. Members must remember that the power of the board is vested in the board itself and not with any individual board member. For that reason, board members are cautioned to not express their personal opinions as a board policy or position or represent that the board has taken a position on a particular issue when it has not.

All communications relating to any board action or policy to any individual or organization, or a representative of the media, shall be made only by the president of the board, their designee, or the EO. Any board member who is contacted by any of the above should inform the board president or EO of the contact.

If a board member receives a media call, the member should promptly refer the caller to the board's EO. The board member should then send an email to the executive officer indicating they received a media call and relay any information supplied by the caller.

## Executive Officer (EO)

*(B&P Code Section 4003)*

The EO is appointed by and serves at the pleasure of the board, and is exempt from civil service. The EO shall exercise the powers and perform the duties delegated by the board and vested in them by California pharmacy law.

### Executive Officer

- Responsible for the financial operations and integrity of the board.
- Official custodian of records.
- Provides the board with advice during consideration of issues.
- Liaison between the board and board staff.
- Provides the board with complete, clear, and accurate reports, minutes, etc.
- Responds to requests for information from board members.
- Keeps the board informed of progress of board programs.
- Implements board policies.

## Executive Officer's Annual Evaluation

*(Board Policy)*

Consistent with the policy of the Department of Consumer Affairs, the board conducts an annual assessment of the EO during a closed session meeting of the board. Board members provide information to the president on the EO's performance in advance of this meeting by using the EO evaluation form provided by the Department. A representative from the department is designated to assist with the facilitation of the assessment process.

The evaluation process is based on the principle that performance should be evaluated on a regular basis in order to provide recognition of effective performance and as a tool to provide guidance in improving future performance.

If the EO is not at the maximum range of salary, the board may recommend a salary increase for the EO. To qualify for such increases, the EO must meet or exceed performance expectations, as determined by the board. The evaluation form is used to document the board's recommendation for a salary increase. Should the Board determine that the current salary level of the EO position is not appropriate, the Board must follow the Department's process to request a change in the salary level of the EO position.

The EO evaluation form is provided in Appendix E.

## Board Staff

*(DCA Reference Manual)*

Employees of the board, with the exception of the executive officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Board members shall not intervene or become involved in specific day-to-day personnel transactions. Personnel matters affecting the operation of the board's duties are shared with the president and vice president during Organizational Development Committee meetings.

## Board Administration

*(DCA Reference Manual)*

Board members should be concerned primarily with formulating decisions on board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for board members to become involved in the details of program delivery. Strategies for the day-to-day management of programs and staff shall be the responsibility of the executive officer.

## Contact with Licensees, Applicants, and Respondents

*(Board Policy and Government Code Section 11430.10 et seq.)*

Board members shall not intervene on behalf of applicants and licensees. They should forward all contacts or inquiries to the EO or board staff without direction on how matter should be handled.

The Government Code contains provisions prohibiting *ex parte* communications. An "*ex parte*" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

*"While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication."*

Board members should not directly participate in complaint handling and resolution

or investigations. An applicant who is being formally denied licensure, or a licensee against whom a disciplinary action is being taken, may attempt to directly contact board members.

If the communication is written, the member should read only enough to determine the nature of the communication. Once they realize it is from a person against whom an action is pending, the documents should be resealed and sent to the EO.

If a board member receives a telephone call from an applicant or licensee against whom an action is pending, they should immediately tell the person the member cannot speak to them about the matter. If the person insists on discussing the case, they should be told that the board member will be required to recuse themselves from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a board member believes that they received an unlawful *ex parte* communication, they should contact the board's assigned attorney or EO.

## Service of Legal Documents

*(Board Policy)*

Board members may receive service of a lawsuit against themselves and the board pertaining to a certain issue (*e.g.*, a disciplinary matter, a complaint, a legislative matter, etc.). To prevent a confrontation, the board member should accept service. Upon receipt, the board member should notify the EO of the service and indicate the name of the matter that was served and any other pertinent information. The board member should then mail the entire package that was served to the EO as soon as possible. The board's legal counsel will provide instructions to the board members on what is required of them once service has been made.

## Gifts from Licensees or Applicants

*(Board Policy)*

Gifts of any kind to board members or staff from any licensee or applicant with the board are not permitted.

Additionally, Government Code section 87210 contains specific requirements with respect to gifts. These requirements are among those discussed in the Ethics Course described below.

Government Code section 87210 and related sections are provided in Appendix F.

## Conflict of Interest

*(Government Code Section 87100 et seq.)*

No board member may make, participate in making, or in any way attempt to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. Any board member who has a financial interest shall disqualify themselves from making or attempting to use their official position to influence the decision. Any board member who feels they are entering into a situation where there is a potential for a conflict of interest should



immediately consult the board president or the EO.

Government Code section 87100 and related sections are attached as Appendix G.

*(Board Policy)*

A board member who feels they have a potential conflict of interest in a specific case or issue should make their position known when the matter is discussed publicly (*e.g.*, during a board meeting). Further, the member should reinforce this position by physically leaving the room until the discussion regarding the matter is concluded. Whenever possible, a board member should notify the EO when they believe that the member has a conflict of interest. The EO can help refer the board member to appropriate resources for assistance. For example, the Fair Political Practices Commission is another resource.

Within 30 days of taking or leaving office as a board member, and annually before April 1 of each year, every board member must file a conflict of interest statement with the Fair Political Practices Commission. Filing procedures are handled and coordinated by the Department of Consumer Affairs. Questions about this process should be directed to the EO.

### Ethics Training

*(Government Code Sections 11146-11146.4)*

Each board member must complete a course on ethics offered through the Department. Upon appointment to the board, a new board member must complete the course within six months. All members must retake the course every two years during their term. Records concerning the attendance of this course must be kept on file for five years. Training information is available on the Attorney General's website at <https://oag.ca.gov/ethics>.

Government Code sections 11146-11146.4 are provided in Appendix H.

### Sexual Harassment Prevention Training

*(Government Code Section 12950.1)*

Each board member must complete a sexual harassment prevention course offered through the Department within six months of assuming office. Board members must complete the sexual harassment prevention course every two years during their term or when directed by the Department of Consumer Affairs.

### Defensive Driving Training

Each board member must complete a defensive driving course offered through the Department of General Services within six months of assuming office. Board members must complete the defensive driving course every four years during their term.

### DCA's Board Member Training

*(B&P Code Section 453)*

The Department of Consumer Affairs provides an orientation session for new board members. The California Business and Professions Code requires that this course must be taken within one year of assuming office and within one year of any subsequent reappointment to the board. The training covers the functions, responsibilities, and obligations that come with being a member of a DCA board.

The department also has a website for board members:  
[https://dca.ca.gov/about\\_us/board\\_members/index.shtml](https://dca.ca.gov/about_us/board_members/index.shtml)

## The Honoraria Prohibition

*(Government Code Section 89501 et seq.)*

As a general rule, members of the board should decline honoraria for speaking at, or otherwise participating in, professional association conferences and meetings. A member of a state board is precluded from accepting an honorarium from any source, if the member would be required to report the receipt of income or gifts from that source on their statement of economic interest.

Under the Department of Consumer Affairs Conflict of Interest Code, members of the Board of Pharmacy are required to report income from, among other entities, pharmaceutical professional associations and continuing education providers. Therefore, a board member should decline all offers for honoraria for speaking or appearing before such entities.

There are limited exceptions to the honoraria prohibition. The acceptance of an honorarium is not prohibited under the following circumstances: (1) when a honorarium is returned to the donor (unused) within 30 days; (2) when an honorarium is delivered to the State Controller within 30 days for donation to the General Fund (for which a tax deduction is not claimed); and (3) when an honorarium is not delivered to the board member, but is donated directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt, non-profit organization.

In light of this prohibition, members should report all offers of honoraria to the president so that they, in consultation with the EO and staff counsel, may determine whether the potential for conflict of interest exists.

Government Code sections 89501 and 89502 are provided in Appendix I.

## Serving as an Expert Witness

During their tenure on the board, members should refrain from acting as pharmaceutical expert witnesses in civil or criminal court cases. The reasons for this prohibition are twofold.

Acting as an expert witness for compensation would probably constitute a violation of the Standards of Ethical Conduct for gubernatorial appointees. The first ethical standard precludes a gubernatorial appointee from engaging in activity, which has the appearance of using the prestige of the state for the appointee's private gain or advantage. A professional member of the board would be in high demand as an

expert witness in litigation relating to pharmacy, simply because of his or her status as a board member. Consequently, the member would likely receive more engagements as an expert witness than if they were not a member of the board. As such, serving as an expert witness would have the appearance of using the prestige of board-membership for private gain. Parenthetically, although the governor's ethical standards are addressed to the conduct of gubernatorial appointees, all members of the board should be in compliance.

More importantly, acting as an expert witness would jeopardize a board member's ability to participate in the deliberation and resolution of disciplinary actions before the board. As an expert witness in a civil or criminal action against a pharmacist or other applicant or licensee, a board member would be required to learn all the facts of the case at issue. If the applicant or licensee who is a party to the civil or criminal comes before the board in a disciplinary action, the board member who served as expert witness would be required to recuse himself because of considerable *ex parte* knowledge of the case.

## Request for Grants

All requests for funding/contributions to board projects shall be approved by the board president. Requests for such grants must be made by the EO at the president's direction. If a board member makes an individual request, a copy of the request shall be forwarded to the EO as soon as possible.

The mechanism for receipt, management, and dispersal of funds shall be pre-arranged and approved by the board.

## Policy Positions of the Board

The following are policies adopted by the board during open meetings.

### **Policy: Pharmacists as Emergency Responders**

*Adopted October 25, 2006*

The California State Board of Pharmacy wishes to ensure complete preparation for, and effective response to, any local, state, or national disaster, state of emergency, or other circumstance requiring expedited health system and/or public response. Skills, training, and capacities of board licensees, including wholesalers, pharmacies, pharmacists, intern pharmacists, and pharmacy technicians, will be an invaluable resource to those affected and responding. The board also wishes to encourage an adequate response to any such circumstance affecting residents of California, by welcoming wholesalers, pharmacies, pharmacists, intern pharmacists, and pharmacy technicians licensed in good standing in other states to assist with health system and/or public response to residents of California.

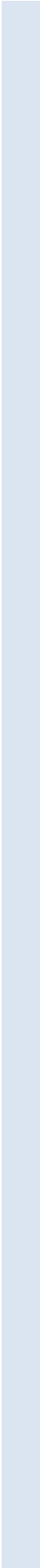
The board encourages its licensees to volunteer and become involved in local, state, and national emergency and disaster preparedness

efforts. City or county health departments, fire departments, or other first responders can provide information on local opportunities. The Emergency Preparedness Office of the California Department of Health Services is a lead agency overseeing emergency preparedness and response in California, particularly regarding health system response, drug distribution and dispensing, and/or immunization and prophylaxis in the event of an emergency. At the federal level, lead contact agencies include the Department of Health and Human Services, the Centers for Disease Control, and/or the Department of Homeland Security and its Federal Emergency Management Agency (FEMA). Potential volunteers are encouraged to register and get information at [www.medicalvolunteer.ca.gov](http://www.medicalvolunteer.ca.gov) (California) and [www.medicalreservecor.ps.gov](http://www.medicalreservecor.ps.gov) (federal).

The board also continues to be actively involved in such planning efforts, at every level. The board further encourages its licensees to assist in any way they can in any emergency circumstance or disaster. Under such conditions, the priority must be protection of public health and provision of essential patient care by the most expeditious and efficient means. Where declared emergency conditions exist, the board recognizes that it may be difficult or impossible for licensees in affected areas to fully comply with regulatory requirements governing pharmacy practice or the distribution or dispensing of lifesaving medications.

In the event of a declared disaster or emergency, the board expects to utilize its authority under the California Business and Professions Code, including section 4062, subdivision (b) thereof, to encourage and permit emergency provision of care to affected patients and areas, including by waiver of requirements that it may be implausible to meet under these circumstances, such as prescription requirements, record-keeping requirements, labeling requirements, employee ratio requirements, consultation requirements, or other standard pharmacy practices and duties that may interfere with the most efficient response to those affected. The board encourages its licensees to assist, and follow directions from, local, state, and national health officials. The board expects licensees to apply their judgment and training to providing medication to patients in the best interests of the patients, with circumstances on the ground dictating the extent to which regulatory requirements can be met in affected areas. The board further expects that during such emergency, the highest standard of care possible will be provided, and that once the emergency has dissipated, its licensees will return to practices conforming to state and federal requirements.

Furthermore, during a declared disaster or emergency affecting residents of California, the board hopes that persons outside of California will assist the residents of California. To facilitate such assistance, in the event of a declared California disaster or emergency, the board expects to use its powers under the California Business and Professions Code, including section 900 and section 4062, subdivision (b) thereof, to allow any pharmacists, intern pharmacists, or pharmacy technicians, who are not licensed in California but who are licensed in



good standing in another state, including those presently serving military or civilian duty, to provide emergency pharmacy services in California. The board also expects to allow nonresident pharmacies or wholesalers that are not licensed in California but that are licensed in good standing in another state to ship medications to pharmacies, health professionals or other wholesalers in California. Finally, the board also expects to allow use of temporary facilities to facilitate drug distribution during a declared disaster or state of emergency. The board expects that its licensees will similarly respond outside of the state to disasters or emergencies affecting populations outside California, and will pursue whatever steps may be necessary to encourage that sort of licensee response.

**Policy: Legislative Positions**

*Adopted April 21, 2009, Replaced July 2022*

Delegate the power to the board's president and chair of the Legislation and Regulation Committee to take board positions on emergent bills between board meetings.

**Policy: Emergency Meetings for Purposes of Waiving Statutory Requirements**

*Adopted February 25, 2016*

In the event that the board is not able to convene a public meeting on regular notice or pursuant to the emergency meeting provisions of the Open Meeting Act, the board delegates its authority pursuant to Business and Professions Code section 4062, to the board president for a period of 30 days.

**Policy: Extension of Deadline to Submit Arguments to the Board**

*Adopted October 29, 2013*

Allow the board president to grant or deny a request for an extension of time to submit arguments to the board under the Administrative Procedure Act. In the absence or unavailability of the president, the vice-president of the board may act upon the request.

**Policy: Sale of Tobacco Products in Pharmacies**

*Adopted October 29, 2014*

The California State Board of Pharmacy recognizes that pharmacists are health care providers and pharmacies are in the business of improving customer health; therefore the board recommends that pharmacies and chain stores that include pharmacies eliminate the sale of tobacco, e-cigarettes and tobacco products, as these products are known to cause cancer, heart disease, lung disease and other health problems.

**Policy: Warning Labels on Prescription Labels for Oral Chemotherapy Medications**

*Adopted January 30, 2019*

The California State Board of Pharmacy recognizes that oral chemotherapy treatment is increasingly common among cancer patients and health care providers. However, these medications pose serious risks to humans and the environment if improperly handled or disposed of. Many patients, caregivers and even health care providers may not recognize these drugs or be aware of their hazardous nature. The board supports voluntary efforts by pharmacies and clinics to improve awareness and education about oral chemotherapy medications. In addition, the board encourages pharmacists to provide specific counseling to patients and their caregivers on proper handling and disposal of OC medications.

To help patients, caregivers and health care providers recognize these medications as hazardous, the board encourages pharmacies to affix a standardized “hazardous drug” symbol to prescription labels when appropriate. The addition of the symbol would serve as an important reminder to patients and caregivers about the proper handling and disposal of the drugs.

The following represents an appropriate warning symbol:



**Policy: Medication Assisted Treatment (MAT)**

*Adopted January 30, 2109*

California law declares pharmacist health care providers who have authority and ability to provide health care services. Today pharmacists have six to eight years of collegiate education with focused experience in performing medication management. Increasingly this also includes additional residency experience.

Under California law for a number of years and in conjunction with collaborative practice agreements with prescribers, pharmacists have the ability to:

1. Design treatment plans
2. Initiate adjust and discontinue medications
3. Monitor patient progress
4. Order and review necessary laboratory tests
5. Coordinate care with other medical providers
6. Serve as expert consultants to support prescribers in making medication decisions for patients.

This skill set serves a dual purpose of positioning pharmacists so they may provide direct care to patients with opioid addiction and assist other medical providers in caring for this population, thereby expanding access to treatment. In recognition of these factors, the California State Board of Pharmacy advocates for changes in the law that will permit pharmacists to provide medication assisted treatment as part of a collaborative health care team.

**Policy: Legislative Positions**

*Approved July 2022*

Delegate the power to the Board’s president to take board positions on emergent bills between board meetings. Further, delegation also includes working with the Executive Officer to negotiate amendments consistent with the Board’s direction and update Board positions in

response to changes in pending legislation that require urgent action.

**Policy: Digital Signatures**

*Approved April 2023*

The Board is aware of some licensees' and applicants' desire to submit documents with digital signatures. Government Code Section 16.5 establishes authority for government agencies to accept digital signatures that meet specified conditions. "If a public entity elects to use a digital signature, that digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:"

- (1) It is unique to the person using it.
- (2) It is capable of verification.
- (3) It is under the sole control of the person using it.
- (4) It is linked to data in such a manner that if the data is changed, the digital signature is invalidated,
- (5) It conforms to regulations adopted by the Secretary of State.

The Secretary of State has established regulations specifying acceptable technologies for acceptance of digital signatures and designates Public Key Cryptography as an acceptable technology. (Cal. Code Regs., tit.2 § 22003.) While the Board has not established any formal rules requiring the use of digital signatures, it understands that stakeholders are interested in using digital signatures. The Board will not require any applicant or licensee to provide information using a digital signature in lieu of a wet signature; however, in the interest of meeting stakeholder requests, the Board will accept documents that are digitally signed using technology known as Public Key Cryptography consistent with the regulations established by the Secretary of State in Section 22003 as cited above. The Board reminds licensees using digital signatures to mail the completed application or notification form along with any fees required when applicable to the Board's office, 2720 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.

**Policy: Compounding Policy Statement**

*Approved September 12, 2023*

Compounding Policy Statement In light of the November 1, 2023, compendial date for several USP General Chapters, including General Chapter 795 Pharmaceutical Compounding – Nonsterile Preparations, 797 Pharmaceutical Compounding – Sterile Preparations, 800 Hazardous Drugs – Handling in Healthcare Settings and 825 Radiopharmaceuticals – Preparation, Compounding, Dispensing, and Repackaging, the California State Board of Pharmacy (Board) wishes to update its stakeholders on its policy related to licensees transitioning to the updated USP General Chapters as well as actions under consideration by the Board.

There are several provisions of state and federal law governing the practice of pharmacy. Most notably related to compounding are provisions in the Federal Food, Drug and Cosmetic Act including exemptions provided under Section 503A; California Sherman Food, Drug, and Cosmetic Act; and several provisions within the Business



and Professions Code including Sections 4126.8 and 4342.

As required by law, the Board has undertaken a review of its compounding regulations and identified changes necessary to clarify or make more specific requirements of Federal Law and USP General Chapters. These efforts resulted in the Board voting, as part of its April 2023 Board Meeting, to promulgate new regulations that are in addition to USP Standards. Additional information is available [here](#). The effective date of the newly updated state regulations is yet to be determined.

During this intervening period, the Board encourages licensees to begin transitioning to the new standards established in USP to ensure compliance with state and federal law. It is the Board's expectation that as compounding practices transition to new requirements, including provisions related to establishing beyond use dates (BUDs), that standard operating procedures must be updated and staff appropriately trained prior to implementing new practices and BUDs.

**Policy:**

**Assembly Bill 1286 Implementation**

*Approved December 13, 2023*

The California State Board of Pharmacy provides licensees and interested stakeholders with the following information on its policy relating to implementation of provisions contained within Assembly Bill 1286 (Haney, Chapter 470, Statutes of 2023).

Assembly Bill 1286 establishes a requirement for the reporting of medication errors that occur in the outpatient setting to an entity approved by the Board under specified conditions. The Enforcement and Compounding Committee will begin its evaluation of entities in the coming months. During this intervening period, reporting of such errors is not required nor will it be retroactive. It is anticipated that reporting of such errors will only be expected after approval of such an entity with an appropriate transition period for implementation. Interested stakeholders are encouraged to participate in relevant public meetings.

Assembly Bill 1286 also establishes a self-assessment process for surgical clinics. Development of the self-assessment form will be undertaken by the Enforcement and Compounding Committee. Upon development and approval of the self-assessment form, the Board will advise licensees and make the form available on its website. During this intervening period, completion of the self-assessment form requirement will be delayed. Interested stakeholders are encouraged to participate in relevant public meetings.

Several additional provisions contained in Assembly Bill 1286 become effective January 1, 2024. The Board encourages licensees to begin taking the necessary steps for compliance immediately. The Board recognizes that despite good faith efforts, there may be delays in achieving compliance by January 1, 2024. During the implementation period, the Board will consider actions taken to secure compliance when areas of non-compliance are identified through the inspection or

investigation process. The Board encourages licensees to maintain documentation of actions taken to achieve compliance and to present such information to the Board upon request.

**Policy: Statement Related to Risks to Patients Receiving Intravenous Hydration in Unlicensed Clinics or Locations**

*Approved August 1, 2024*

The California State Board of Pharmacy (Board) is aware of the retail intravenous (IV) therapy business model and its rapid growth both in California and nationally. Retail IV therapy, commonly referred to as “IV hydration,” “IV nutrient therapy,” or “vitamin infusion,” is provided in a number of different types of businesses including med spas and IV therapy clinics. Through this policy statement, the Board seeks to educate Californians about the potential health risks of seeking IV hydration treatment at some of these businesses and actions you can take to protect yourself.

IV hydration is, as the name implies, administered directly to the patient’s bloodstream, thereby bypassing many of the body’s natural defenses. This can result in severe or life-threatening reactions if the IV mixture is compounded (mixed) or administered in an unsafe manner. IV hydration provided at a clinic is a medical treatment that requires an examination with an authorized prescriber before administration. The compounding (mixing) and administration of the IV mixture must be done under the supervision of an authorized prescriber and/or licensed healthcare professional.

Currently, IV hydration clinics are generally unregulated in California and as such, these businesses appear in large part to not comply with national standards in place to ensure safe compounding (mixing) and administration of IV hydration. Many of these clinics appear to offer patients a menu of pre-selected IV mixtures that include various additives or combinations of additives to basic IV solutions, such as multivitamins or electrolytes. Creating such IV mixtures is considered sterile compounding by national standards and by the Board, and, accordingly, must be done in a specific manner by individuals with specialized training to avoid contamination and harm to patients. There is a variety of IV mixtures offered, which are advertised as treating a variety of conditions including migraines, hangovers, nausea, athletic recovery, and jetlag. Depending on the IV mixture, there may be very little or no scientific evidence that these IV mixtures work as advertised. Treatments may be offered in an office, workplace, hotel, or gym, or in a private home. The Board is aware of incidents of harm to patients who have obtained IV hydration treatment at some of these businesses. Due to the largely unregulated nature of IV hydration clinics, there is very little recourse for patients who have been harmed by these products or their administration. The federal Food and Drug Administration (FDA) released a statement highlighting concerns with compounding of drug products by medical offices and clinics under insanitary conditions.

The Board encourages Californians to learn about businesses offering IV hydration therapy, their operations, and their oversight before

receiving treatment. Below are some questions that may be appropriate to ask:

1. Did you speak with an authorized medical provider (e.g., physician or nurse practitioner) about your medical condition and medical history, and receive a diagnosis and prescription order for the IV hydration treatment?
2. Does the clinic purchase medications and supplies from an authorized and licensed entity? Are medications and supplies safely and correctly shipped and stored prior to use?
3. Is the medical director overseeing the clinic on site? If not, how often are they working at this location? How often does the medical director review patient's medical records or information to ensure the medication is appropriate for that patient?
4. Are licensed personnel compounding (mixing) and/or administering the IV hydration treatment?
5. Are the medications compounded (mixed) in a clean and well-maintained facility? How long are IV hydration products stored? Does this follow national standards for storage time and temperature?
6. Are there any licenses or permits posted in the facility? Are licenses from a California healthcare professional board? You can verify the status of licenses issued to medical providers and facilities authorized to provide medications here.

The Board's mission is to protect and promote the health and safety of Californians by pursuing the highest quality of pharmacist's care and the appropriate use of pharmaceuticals through education, communication, licensing, legislation, regulation, and enforcement.

## Chapter 6

### ENFORCEMENT OVERVIEW

#### Enforcement Options and Sanctions

Enforcement activities are essential for the board to meet its consumer protection mandate. The enforcement program uses a combination of education, communication, and enforcement sanctions to achieve compliance with federal and state pharmacy laws. Where voluntary compliance and education are not enough, the board inspects, mediates, admonishes, cites and fines, and pursues formal disciplinary action.

When the board receives a complaint or uncovers a potential violation of the law through its own efforts, the matter is investigated by staff. Investigations in the field are carried out by the board's inspectors, a statewide-dispersed group of pharmacists who are employees of the board.

During a routine inspection or investigation (which is conducted by a board pharmacist-inspector), if it is believed that a violation of pharmacy law took place, the licensee may be advised of the alleged violation by an "Order of Correction," a written document directing the licensee to comply with pharmacy law within 30 days by submitting a corrective action plan to the inspector. This process simply notifies the licensee of the violations of law that the inspector believes have occurred. This notification may not be the board's final or formal determination regarding the matter depending on the seriousness of the alleged violations. An Order of Correction is not a citation nor is it a disciplinary action.

At this time, the licensee is provided an opportunity to provide a written response to the alleged violation. In the written response, the licensee may address the specifics of the violation, as well as provide any mitigation information that the licensee wishes to have included in any investigation report and/or a corrective action plan.

If the Order of Correction is for minor violations, and the inspector is satisfied with the pharmacy's compliance, the Order of Correction may be the only action taken. If this is the case and the pharmacy doesn't contest the order, then the licensee must maintain in the pharmacy premises a copy of the Order of Correction and corrective action plan for at least three years from the date the order was issued.

After the inspection or investigation is completed and the inspector makes a determination that the law has been violated, the case is referred to a supervising inspector for review. If the supervising inspector determines that there was no violation or that the violation was so minor that the only action to take would be the issuance of the Order of Correction, then the case may be closed and the matter goes no further.

If, after review by the supervising inspector, it is determined that further action may be warranted, the case is referred for a second level of review. This second level of review includes a review of the matter as well as a final determination of the

appropriate course of action. In making this determination, the following factors may be taken in consideration:

- Gravity of the violation.
- Good or bad faith of the cited person or entity.
- History of previous violations.
- Evidence that the violations were or were not willful.
- Recognition by the licensee of his/her wrongdoing and demonstration of corrective action to prevent recurrence, *e.g.*, new policies and procedures, protocol, hiring of additional staff, etc.
- Extent to which the cited person or entity has cooperated with the board's investigation and other law enforcement or regulatory agencies.
- Extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.
- If the violation involves multiple licensees, the relative degree of culpability of each licensee is considered. In the case where a staff pharmacist may have failed to consult, the pharmacist-in-charge and the pharmacy may also be issued a citation and fine, if warranted by the circumstances.
- Any other relevant matters that may be appropriate to consider.

The type of potential actions include:

#### **Further Investigation**

It may be decided that there is insufficient evidence to determine if a violation occurred or if any action is warranted. In such cases the matter may be sent back for further investigation.

#### **Case Closure – No Further Action**

It may be decided that no action is now warranted. This may occur when it is determined that there was no violation, that the violation was so minor as to not merit an action, or that the mitigating circumstances were such that it would be best not to pursue an action. The matter will then not be taken any further. (The final resolution would be the Order of Correction.)

#### **Letter of Admonishment**

The decision may be made to issue a letter of admonishment. This may occur when it is determined that there was a minor violation, or a violation that mitigating circumstances were such that a letter of admonishment was appropriate. The licensee would be directed to come into compliance within 30 days by submitting a corrective action plan to the board documenting compliance, or the licensee can contest the letter of admonishment to the executive officer or designee for an office conference. If an office conference is not requested, compliance with the letter of admonishment does not constitute an admission of the violation noted in the letter of admonishment. The licensee must maintain on the licensed premises a copy of the letter of admonishment and corrective action plan for at least three years from the date the letter was issued. The letter of admonishment is considered a public record for purposes of disclosure.

#### **Citation and Fine**

The executive officer may issue a citation, with or without a fine. The citation will be issued to the licensee and will include a reference to the statute or regulation

violated. It will also include a description of the nature and facts of the violation, as well as a notice to the licensee of the appeal rights. It may or may not include an order of abatement either requesting documentation of the licensee's compliance, or directing the licensee to come into compliance and specifying how that must be done.

### **Disciplinary Action**

The executive officer or designee may determine that the violation is substantial and warrants discipline of the license. The matter is then referred to the Attorney General's Office, where, if appropriate to do so, an accusation is prepared, which identifies the alleged violations of pharmacy law. Disciplinary penalties include interim suspension orders, license revocation, voluntary license surrender, suspension, letter of reproof, and probation.

Appendix J contains an overview of board members' role in disciplinary actions created by the DCA Legal Affairs Division.

### **Mail Ballots**

*(Government Code Section 11526 and Board Policy)*

The board must approve any decision or stipulation before the formal discipline becomes final and the penalty can take effect. Proposed stipulations and decisions are securely sent to each board member for his or her vote. For stipulations, a cover memorandum from board staff and sometimes the board's attorney (a deputy attorney general) accompanies the mail ballot. A two-week deadline is generally given for the mail ballots for stipulations and proposed decisions to be completed and returned to the board's office.

After the deadline of 15 days and after seven votes from board members have been received, a decision has been reached. If a majority of the votes are to adopt a decision, the signature pages are sent to the board president, who signs the written decision document.

If two no votes are cast before the deadline, the case is set aside and not processed (even if seven votes have been cast on the decision). Instead, the case is scheduled for discussion during closed session at a subsequent board meeting. Under board policy, when a member wishes to hold a case, the reason for the hold should be provided on the mail ballot. This allows staff the opportunity to prepare the information being requested.

When a ballot is received after the deadline, the vote is retained in the file but is not counted.

A sample mail ballot is provided in Appendix K.

### **Holding Disciplinary Cases for Discussion at Board Meetings**

*(Board Policy)*

When voting on mail ballots for proposed disciplinary decisions or stipulations, a board member may wish to discuss a particular aspect of the decision or stipulation before voting. If this is the case, the ballot should be marked "hold for discussion."

For a case to be held for discussion before the board's vote on the matter (this discussion will occur in closed session), two board members must mark the mail ballot "hold for discussion."

If the matter is held for discussion, staff counsel will preside over the closed session to assure compliance with the Administrative Procedure Act and Open Meeting Act.

If the board member is comfortable voting on the matter, but wishes to discuss the policy behind the decision or case, the ballot should be marked "Policy Issue for Discussion. I have voted above. Issue: \_\_\_\_\_." The EO will respond directly to the member. If still unresolved or if the matter is to be referred to the board, the policy issue will be placed on the agenda for discussion at a subsequent board meeting.

# Appendix A





## **List of Board of Pharmacy Frequently Used Acronyms:**

### **Associations:**

- CPhA: California Pharmacists Association- represents principally the independent community pharmacists.
- CSHP: California Association of Health-System Pharmacists- represents principally hospital pharmacists
- NABP: National Association of Boards of Pharmacy- represents state boards of pharmacy, who are members. They are also the creator of the national pharmacist licensure examination (NAPLEX-the North American Pharmacist Licensure Examination)
- CRA: California Retailers Association - represents chain store pharmacies
- NACDS: National Association of Chain Drug Stores- a national group, representing chain drug stores
- ACPE: Accreditation Council for Pharmacy Education-national group that accredits schools of pharmacy in the US (the CA Board does not do this).

### **State Agency Acronyms:**

Below are some of the major ones the board uses

- Board/BOP: almost always when used in this form is the California State Board of Pharmacy (our official name)
- DCA: Department of Consumer Affairs - our parent agency
- Agency: State and Consumer Services Agency - essentially our grandparent agency
- DOJ: California Department of Justice
- AG's Office: The Attorney General's Office, which is a subdivision of the DOJ, and is the office that prosecutes the board's investigations under the Administrative Procedure Act.
- OAL: Office of Administrative Law- the state agency that approves board rulemakings (to adopt regulations)
- OAH: Office of Administrative Hearings-the agency that holds the board's administrative hearings where we seek to restrict or remove the license of a licensee.
- CIWMB: California Integrated Waste Management Board
- CDPH: California Department of Public Health
- CHCS: California Department of Health Care Services (home of MediCal)

### **Principal Code Section Acronyms:**

- B&P Code: California Business and Professions Code
- H&S Code: California Health and Safety Code
- Regulation section: California Code of Regulations Section (these are regulations)
- CFR: Code of Federal Regulations

**General:**

- **Dangerous Drugs:** drugs that are available only upon prescription of a licensed prescriber
- **Controlled Substances:** dangerous drugs that are subject to abuse and that are most highly regulated. They are statutorily classified into schedules I-V. Schedule I drugs are illicit and with no medical use (LSD, marijuana) Schedule II drugs have high medical value, but high abuse and street value (oxycontin, morphine, cocaine). Schedule III drugs have high medical value, but lower potential for abuse (codeine, vicodin) Schedule IV drugs have medical value but lesser potential for abuse (benzodiazepines) Schedule V drugs have medical value but the lowest potential of the controlled drugs for abuse.
- **OTC (over-the-counter) drugs:** are available without prescription

**Categories of Board Licensees:**

- **RPh:** means "registered pharmacist"
- **PharmD:** standard degree used for education of a pharmacist (typically this is a 4- 6 year degree. If 4 year, this is usually post BA orBS degree work). The recipient uses the title "doctor." Prior to 2000 in the US some colleges had the standard degree as a BS. In California since the 1970s, schools of pharmacy in this state solely awarded the higher-level PharmD degree.
- **PIC: pharmacist-in-charge:** a pharmacist who is specially designated to oversee the operations of a pharmacy. The PIC must be reported to the board for each pharmacy, and the PIC's name is printed on the pharmacy's license.
- **Pharmacist Intern-** a license issued to someone in pharmacy school gaining the 1,500 hours of mandatory experience needed to take the licensure exam or to someone working in CA pharmacy gaining experience in this state needed to qualify to take the licensure exam. The license is issued for no longer than 6 years to a student, or 2 years to others (foreign pharmacy school graduates).
- **Pharmacist Technician -**license of a pharmacy assistant, who works under the direct supervision of a pharmacist doing non-judgmental duties.
- **Designated Representative:** the individuals who are specially licensed by the board to oversee the operations of drug wholesalers or veterinary food animal drug retailers.
- **DRIC: Designated Representative-In-Charge:** the designated representative who is in charge of the operation of a drug wholesaler or veterinary food animal drug retailer
- **Wholesaler:** a licensed company in CA who ships and stores dangerous drugs, or if a Nonresident Wholesaler, a licensed company outside CA who ships dangerous drugs into CA
- **Veterinary Food Animal Drug Retailer (Vet retailers):** a specialty wholesaler who can label drugs for use on food animals or food-producing animals.

- Pharmacies: the entities that retail and dispense drugs to patients
- Clinics: medical care centers that may have a board-issued clinic license that allows these facilities to have one drug stock for all practitioners working in the clinic.
- Licensed correctional facility: a prison or correctional facility pharmacy
- Hypodermic Needle and Syringe Permit: allows a feed store to sell hypodermic needles and syringes for animal use.
- Exempt Hospital pharmacy: also known as a drug room, a dispensary in a hospital of less than 100 beds, where drugs are stored and dispensed from, but does not have pharmacist present to dispense medicines.

**Staff Acronyms:**

- EO: Executive Officer
- AEO: Assistant Executive Officer
- Director: Normally, the Director of the Department of Consumer Affairs
- Inspector: Board of Pharmacy investigator who is also a licensed pharmacist
- Analyst: a board employee who performs analytical work
- Technician: a board employee who performs technical or clerical duties
- President: Board member who is elected president by the board.
- Vice President: Board member who is elected vice president by the board
- Treasurer: Board member who is elected treasurer by the board. This individual is responsible for a board member contributed fund. The individual does not oversee board revenue collection.
- AG Liaison: an attorney with the AG's Office who coordinates prosecution issues on board cases with diverse attorneys at the AG's office and who advises the board about enforcement matters.
- Board Counsel: an attorney with the DCA who assists the board with disciplinary decisions under deliberation and with open meeting act issues.



# Appendix B



**GUIDE TO THE**  
**BAGLEY-KEENE OPEN MEETING ACT**  
(Includes Amendments through January 1, 2017)

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# BAGLEY-KEEN OPEN MEETING ACT

## Table of Contents

<u>Subject</u>	<u>Page(s)</u>
<b>I. Public Policy to Conduct People’s Business Openly</b>	<b>1</b>
<b>II. Board, Committee, Subcommittee, Task Force Meetings</b>	<b>2-4</b>
A. Definition of a “Meeting”	2
B. Exemptions from Definition of Meeting	2-3
C. Board and Committee Meetings	3-4
<b>III. Types of Meetings; Purpose; Notice; Other Requirements</b>	<b>4-11</b>
A. Regularly Scheduled Meetings	4-8
1. Who May Hold a Regularly Scheduled Meeting	4
2. Purposes for Which the Meeting May be Held	4
3. Notice Requirements for a Regularly Scheduled Meeting	5-7
a. Board Meetings	5-7
b. Committee, Subcommittee or Task Force Meetings	8
4. Specific Requirements for Regularly-Scheduled Meeting	8
5. Specific Prohibitions on Holding a Regularly-Scheduled Meeting	8
B. “Special” Meetings	8-10
1. Who May Hold a Special Meeting	8
2. Purpose for Which a Special Meeting May be Held	8-9
3. Notice Requirements for a Special Meeting	9-10
4. Specific Requirements During Special Meetings	10
5. Specific Prohibitions on Holding a Special Meeting	10
C. “Emergency” Meetings	10-11
1. Who May Hold an Emergency Meeting	10
2. Purposes for Which an Emergency Meeting May be Held	10
3. Notice Requirements for an Emergency Meeting	11
4. Specific Requirements for an Emergency Meeting	11
5. Specific Prohibitions on Holding an Emergency Meeting	11
<b>IV. Closed Sessions</b>	<b>11-18</b>
A. Purposes for Which Closed Session Can be Held	11-16
1. Personnel Matters	12
2. Examination Matters	12
3. Matters Affecting Individual Privacy	13
4. Administrative Disciplinary Matters	13-14
5. Board of Accountancy Matters	14
6. Pending Litigation	14
7. Response to Confidential Final Draft Audit Report	14
8. Threat of Criminal or Terrorist Activity	15
9. Advisory Bodies/Committees May Meet in Closed Session	15
10. Open Session Otherwise Required	15

B. Notice and Reporting Requirements for Closed Sessions	15-16
1. Notice of Closed Session	15-16
2. Reporting After A Closed Session	16
C. Other Procedural Requirements for Closed Sessions	16-17
<b>V. Meeting by Teleconferencing</b>	<b>17-18</b>
<b>VI. Deliberations and Voting</b>	<b>19-21</b>
A. Seriatim Calls to Individual Agency Members Prohibited	19
B. E-Email Prohibition	19-20
C. Secret Ballot Prohibited	20
D. Voting by Proxy Prohibited	20
E. Use of Electronic Devices During Meeting	20
F. Voting by Mail on Administrative Disciplinary Matters	21
G. Recording and Reporting Votes	21-22
<b>VII. Miscellaneous Provisions</b>	<b>21-23</b>
A. Conforming Board Member's Conduct	21
B. Providing Open Meeting Act to New Board Members	21
C. Prohibition on Placing Conditions on Public's Attendance	21-22
1. Sign-in	21
2. Discrimination in Admittance to Meeting Facility	22
3. Access for the Disabled	22
4. Charging a Fee or Requiring a Purchase for Access	22
D. Agency Recording of the Proceedings	22
E. Public's Right to Record the Proceedings	22
F. Media Broadcast of the Proceedings	22
G. Webcasting	22
H. Taking Agenda Items Out of Order	23
I. Opportunity for Public Comment at Meetings	23
<b>VIII. Disclosure of Documents</b>	<b>24</b>
A. Documents Distributed Prior to the Meeting	24
B. Documents Distributed During the Meeting	24
C. Charging a Fee for Public Documents	24
<b>IX. Penalties</b>	<b>24-25</b>

# **GUIDE TO THE BAGLEY-KEENE OPEN MEETING ACT (Includes Amendments through January 1, 2017)**

This guide is an update on the provisions of the public meetings law governing state agencies, officially called the Bagley-Keene Open Meeting Act. (Article 9 (commencing with Section 11120), Chapter 1, Part 1, Division 3, Title 2 of the Government Code). The Open Meeting Act closely parallels the Ralph M. Brown Act, which governs meetings of local government agencies. This guide includes all statutory changes through January 1, 2017. Please disregard all previous Guides to the Bagley-Keene Open Meeting Act (distributed prior to January 15, 2017) on this subject.

All statutory references are to the Government Code.

## **I. PUBLIC POLICY TO CONDUCT PEOPLE'S BUSINESS OPENLY**

Section 11120 sets forth the purpose of the law:

"It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act."

Each board has essentially three duties under the Open Meeting Act. First, to give timely and sufficient public notice of meetings to be held. Second, to provide an opportunity for public comment. Third, to conduct such meetings in open session, except where a closed session is specifically authorized. We use the terms "agency" and "board" to mean not only boards, but also commissions and any examining committees or boards within the jurisdiction of the Medical Board of California.

Section 11121 defines the "state body" that is subject to the Bagley Keene Act.

Unless specifically excluded by statute, a "state body" is defined as a state board, commission or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order; or a

board, commission committee or similar multimember body that exercises any authority, delegated to it by that state body; or an advisory commission, an advisory board, advisory committee, advisory subcommittee or similar multimember advisory body of a state body, if created by formal action of the state body or any member of the state body, and if the advisory body so created, consists of three or more persons. Effective April 1, 2016, the definition of "state body" was amended to include the State Bar of California, as described in Section 6001 of the Business and Professions Code. Notwithstanding subdivision (a) of section 11121.1, amended effective April 1, 2016, the State Bar is subject to the Bagley-Keene Open Meeting Act and the California Public Records Act. (§ 11121(e))

## **II. BOARD, COMMITTEE, SUBCOMMITTEE, TASK FORCE MEETINGS**

### **A. Definition of a "Meeting"**

"Meeting" is defined in the Act as including "any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains." (§11122.5(a)) The law now prohibits use by a majority of the members of a state body of direct communications or a series of communications of any kind, directly or through personal intermediaries, or technological devices (such as e-mails) to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body. (§11122.5(b) (1)).

### **B. Exemptions from Definition of Meeting**

The law recognizes that not all gatherings of a majority of members of a state body at a single location constitute a meeting. Current law provides that the provisions of the Act do not apply to the following situations, **provided that** "a majority of the members do not discuss among themselves, other than as part of a scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body." (§11122.5(c))

- Individual contacts or conversations between a member of a state body and any other person. (§11122.5(c)(1))
- Attendance by a majority of members at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body. (§11122.5(c)(2))
- Attendance by a majority of members at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body. (§11122.5(c)(3))
- Attendance by a majority of members at an open and noticed meeting of another state body or of a legislative body of a local agency. (§11122.5(c)(4))
- Attendance by a majority of members at a purely social or ceremonial occasion. (§11122.5(c)(5))

- Attendance by a majority of members at an open and noticed meeting of a standing committee of that body, provided the members of the body who are not members of the committee attend only as observers. (§11122.5(c)(6))

The law does not, however, prevent an employee or official of a state agency from engaging in separate communications outside of a noticed meeting with members of the legislature to answer questions or provide information about a matter within the agency's subject matter jurisdiction – with the limitation that the person cannot communicate to members of the legislative body, the comments or position of any other member of the legislative body. (§11122.5(b)(2))

### **C. Board and Committee Meetings**

There are two basic types of meetings held by agencies in the Department of Consumer Affairs. The first type is a board meeting, where a quorum of the members of the board is present. The second type is a committee meeting consisting of less than a quorum of the members of the full board. Subcommittee and task force meetings are variations of committee meetings.

Board meetings have historically been required to be noticed and open to the public, except where a closed session is authorized. Committee and subcommittee meetings, where less than a quorum of the board is present, are also required to be noticed and open to the public. The only exception is for a committee that consists of fewer than three persons and does not exercise any authority of a state body delegated to it by that state body. (NOTE – it is the number of persons on the committee [not the number of board members] that is determinative.)

Where a committee of fewer than three persons is to meet, and the meeting is not noticed, other members of the board should not attend the meeting, as such attendance would clearly be perceived as an Open Meeting Act violation. Board staff is not precluded from attending such a meeting.

**[Restriction on Attendance at Committee Meetings]** The law allows attendance by a majority of members at an open and noticed meeting of a standing committee of the board, provided the members of the board who are not members of the committee attend only as observers. (§11122.5(c)(6)) The Office of the Attorney General has addressed in a formal opinion a provision in the Brown Act relating to the attendance of "observers" at a committee meeting. The Attorney General concluded that "[m]embers of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body 'as observers.'" The opinion further concluded that such members of the legislative body may not sit in special chairs on the dais with the committee. (81 Ops.Cal.Atty.Gen. 156)

Thus, under the provisions of section 11122.5(c)(6), and the opinion of the California Attorney General, if a majority of members of the full board are present at a committee meeting, members who are not members of the committee that is meeting may attend that meeting only as observers. The board members who are not committee members may not sit on the dais with the committee, and may not participate in the meeting by making statements or asking questions.

If a board schedules its committee meetings seriatim, and other board members are typically present to ultimately be available for their own committee meeting, your notice of the committee meeting should contain a statement to the effect that “Members of the board who are not members of this committee may be attending the meeting only as observers.”

Subcommittees may be appointed to study and report back to a committee or the board on a particular issue or issues. If the subcommittee consists of three or more persons, the same provisions apply to its meetings as apply to meetings of committees.

Board chairpersons may occasionally appoint a task force to study and report on a particular issue. One or two board members typically serve as task force members, along with a number of other non-board members. When this is the case, the same Open Meeting Act rules that apply to committee meetings apply to task force meetings. Such a formally appointed task force falls under the definition of “state body” in Section 11121(c).”

### **III. TYPES OF MEETINGS; PURPOSE; NOTICE; OTHER REQUIREMENTS**

Boards and committees may hold several types of meetings, including a regularly scheduled meeting, a “special” meeting, or an “emergency” meeting under the provisions of section 11125.5. This section of the memorandum addresses who can hold certain types of meetings, the purposes for which the meetings can be held, notice requirements, and any other special requirements or prohibitions.

#### **A. Regularly Scheduled Meetings**

##### **1. Who May Hold a Regularly Scheduled Meeting**

A board, committee, subcommittee, or task force may hold a regularly scheduled meeting. These are the business meetings that are scheduled throughout the year to conduct the usual and customary business of the board. Such meetings may generally be called by the chairperson, or by a majority of the body. However, you must refer to your particular licensing act, which may contain different provisions as to who may call a meeting.

##### **2. Purposes for Which the Meeting May be Held**

These meetings are to conduct the usual and customary business of the board, or the business of a committee, subcommittee or task force as directed by the board. The subject matter of the meetings is essentially dictated by the jurisdiction of the board as found in the board’s licensing act. There are no statutory restrictions in the Open Meeting Act on the purposes for which a regularly scheduled meeting may be held.

### **3. Notice Requirements for a Regularly Scheduled Meeting**

#### **a. Board Meetings**

An agency is required to give at least 10 calendar days written notice of each board meeting to be held. (§11125(a).) Effective January 1, 2015, an agency is authorized to provide that notice by regular mail, email or both. However, that same section requires an agency to give a person requesting notice the option of receiving the notice by regular mail, email or both and the agency must comply with that requester's choice for receiving notice of meetings. (Business and Professions Code section 101.7) The notice must include the name, address, and telephone number of a person who can provide further information prior to the meeting and must contain the website address where the notice can be accessed. The notice must also be posted on the Internet at least 10 calendar days before the meeting.

In addition to the website posting, effective January 1, 2003, the notice is required to be made available in appropriate alternate formats upon request by any person with a disability.

The notice of each board meeting must include an agenda that is prepared for the meeting. The agenda must include all items of business to be transacted or discussed at the meeting. " ... A brief general description of an item generally need not exceed 20 words. ... No item shall be added to the agenda subsequent to the provision of this notice." (§11125(b)) This provision does not, however, preclude amending an agenda provided the amended notice is distributed and posted on the Internet at least 10 calendar days prior to the meeting. Effective January 1, 2003, the notice must include information that would enable a person with a disability to know how, to whom, and by when a request may be made for any disability-related modification or accommodation, including auxiliary aids or services. (§11125(f)) We suggest the following as standard language:

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting \_\_\_\_\_ at (916) \_\_\_\_\_ or sending a written request to that person at the Board [Address], Sacramento, California, [zip code]. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

The definition of "action taken" in Section 11122 is of some aid in determining what the Legislature intended by use of the words "items of business to be transacted."

"11122. As used in this article 'action taken' means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action."

General agenda items such as "New Business," "Old Business," "Executive Officer's Report," "Committee Reports," "President's Report," "Miscellaneous," etc., without specifying the particular matters thereunder, lack sufficient specificity to meet the standards of the Open Meeting Act and cannot be used to circumvent the notice requirement of a specific agenda. The Office of the Attorney General has opined that:

"... the purpose of subdivision (b) [of Government Code Section 11125] is to provide advance information to interested members of the public concerning the state body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate under the circumstances.

\* \* \*

"We believe that Section 11125 was and is intended to nullify the need for . . . guesswork or further inquiry on the part of the interested public." (67 Ops.Cal.Atty.Gen. 85, 87)

Items not included on the agenda may not be acted on or discussed, even if no action is to be taken by the agency. However, we offer two suggestions so members of the public and board members may raise issues that are not on the agenda.

We strongly encourage boards to include an item on their agendas for "Public Comment on Matters Not on the Agenda." This gives persons who are attending a meeting an opportunity to raise any issues they may have, which may not be on the agenda, but which may be appropriate for future board discussion. Matters raised under this agenda item should be discussed only to the extent necessary to determine whether they should be made an agenda item at a future meeting. (§11125.7(a))

It must be reiterated that no action may be taken on any such item and discussion is limited to that which is necessary to make the determination as to whether the item will be added to a future board agenda.

While neither the California Victim Compensation Board nor the Government Claims Board are within the Department of Consumer Affairs, any hearing conducted by either of these boards, pursuant to Section 13963.1 and neither representative requests the hearing be open to the public, the notice, agenda, announcement or report need not identify the applicant. (§11125.8)

We also strongly encourage boards to include an item on their agenda for "Agenda Items for Future Meetings." This allows all board members an opportunity to request specific agenda items for a meeting. Again, these items should be discussed only to the extent necessary to determine whether they should be included as agenda items for a future meeting.

**[CAVEAT: If the regularly scheduled meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.]**



The notice and the agenda must be provided to any person who requests it. A member of the public may request notice for a specific meeting, for all meetings at which a particular subject will be discussed or action taken thereon, or for all meetings of the agency. Mailing lists of persons who desire to be notified of more than one meeting must be maintained pursuant to Section 14911, which provides:

"14911. Whenever any state agency maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the state agency shall correct its mailing list and verify its accuracy at least once each year. This shall be done by addressing an appropriate postcard or letter to each person on the mailing list. The name of any person who does not respond to such letter or postcard, or who indicates that he does not desire to receive such publications or printed matter, shall be removed from the mailing lists. The response of those desiring to be on the mailing list shall be retained by these agencies for one year."

Effective 1/1/98, a sentence was added to subdivision (c) of Section 11125.1 to state that "Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication." (Stats. 1997, Chapt. 949; SB 95) The Legal Office interprets this provision to supersede any provisions in particular practice acts which require newspaper publication of board or committee meetings. Boards and committees, of course, retain the discretion to publish notices in newspapers if they so choose.

#### **b. Committee, Subcommittee or Task Force Meetings**

Each agency is required to give notice of committee, subcommittee or task force ("committee") meetings to be held. However, this requirement does not apply if the committee consists of less than three persons. It is the number of persons on the committee that is determinative, not how many of the persons are board members. Thus, if a committee consisted of two board members and two other interested persons, its meetings would have to meet all the requirements of the Open Meeting Act.

Notice of committee meetings must be provided and posted on the Internet at least 10 calendar days in advance of the meeting. (§11125(a)) The notice "shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice." (§11125(c)) The notice must also include the Website address where the notice can be accessed on the Internet. Although the law does not so specify, we would suggest also including in the notice the name, address, and telephone number of a contact person who can provide further information prior to the meeting. As with board meetings, there is no requirement that the notice be published in any newspaper or other periodical. However, the notice must be provided to any person or persons who have requested to be notified of the particular committee's meetings. Effective January 1, 2015, an agency is authorized to provide that notice by regular mail, email or both. However, that same section requires an agency to give a person requesting notice the option of receiving the notice by regular mail, email or both and the agency must comply with that requester's choice for receiving notice of meetings. (Business and Professions Code section 101.7) You may elect to send such notice to those persons on your regular mailing list.

Remember, you must post your notice on the Internet at least 10 calendar days in advance of the meeting and must make the notice available in appropriate alternate formats upon request by any person with a disability.

Provision is made for certain non-emergency, but sometimes necessary, committee meetings. Where, during the course of a regularly scheduled and properly noticed board meeting, the board desires that a committee presently discuss an item of business on the agenda, the committee may do so provided (a) the specific time and place of the committee meeting is announced during the public meeting of the board, and (b) the committee meeting is conducted within a reasonable time of, and nearby, the meeting of the board. (§11125(c))

#### **4. Specific Requirements for Regularly-Scheduled Meetings**

There are no specific requirements, other than those set forth above, for regularly scheduled board, committee, subcommittee or task force meetings.

#### **5. Specific Prohibitions on Holding a Regularly-Scheduled Meeting**

There are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a regularly scheduled meeting.

We again remind you that, with respect to committee meetings, members of the board who are not members of the committee that is meeting may only attend the committee meeting as observers. This means these members may not sit on the dais with the committee, make any statements, or ask any questions during the committee meeting. (81 Ops.Cal.Atty.Gen. 156)

### **B. "Special" Meetings**

SB 95 of 1997 created a new category of meeting, identified as a "special" meeting.

#### **1. Who May Hold a Special Meeting**

A board, committee, subcommittee or task force may hold a special meeting.

#### **2. Purposes for Which a Special Meeting May be Held**

The only purposes for which a special meeting may be held are set forth in section 11125.4, and are drawn from the purposes for which an emergency meeting could be held under the prior law. In essence, the Legislature recharacterized those purposes as constituting "special" circumstances rather than "emergency" circumstances. Section 11125.4 provides in part that:

”(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes when compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider ‘pending litigation’ as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

\* \* \*

Department of Consumer Affairs licensing boards would most likely hold a special meeting for the purposes set forth in subdivisions (1), (2), (3), (4), and (6).

### **3. Notice Requirements for a Special Meeting**

A special meeting can be called at any time by the presiding officer or a majority of the members of the state body, provided the 10-day notice requirements of section 11125 “would impose a substantial hardship on the state body or where immediate action is required to protect the public interest.” (§11125.4(a)) The only purposes for which the meeting can be held are those set forth above.

The normal 10-day advance notice is not required for special meetings. However, notice of the special meeting is required to be provided to each member of the state agency and to persons who have requested notice of the agency’s meetings as soon as practicable after the decision to hold the meeting is made. Notice to members, newspapers of general circulation, and radio or television stations must be received at least 48 hours in advance of the meeting. Notice to newspapers, radio and television stations is satisfied by providing

notice to all national press wire services. Notices to the general public may be given via appropriate electronic bulletin boards or other appropriate mechanisms. (§11125.4(b)) The notice must also be posted on the Internet at least 48 hours in advance of the meeting.

The notice must specify the time and place of the special meeting and the business to be transacted. In essence, an agenda would be prepared. No business other than that noticed may be transacted. Notice is required even if no action is subsequently taken at the meeting. (§11125.4(b)) The notice must contain the Website address where the notice may be accessed on the Internet.

**[CAVEAT: If the special meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.]**

#### **4. Specific Requirements During Special Meetings**

At the commencement of a special meeting, the agency must make a finding in open session that providing a 10-day notice of the meeting would pose a substantial hardship on the agency, or that immediate action is required to protect the public interest. The specific facts constituting the hardship or need for immediate action must be articulated. This finding must be adopted by a two-thirds (2/3) vote of the agency members present, or if less than two thirds of the members are present, by a unanimous vote of the members present. Failure to adopt the finding terminates the meeting. The agency's finding must be made available on the Internet. (§11125.4(c))

#### **5. Specific Prohibitions on Holding a Special Meeting**

As discussed above, a special meeting may only be held for the purposes set forth in section 11125.4(b). Other than the limitation on the purposes of the meeting, there are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a special meeting.

### **C. "Emergency" Meetings**

#### **1. Who May Hold an Emergency Meeting**

A board, committee, subcommittee or task force may hold an emergency meeting.

#### **2. Purposes for Which an Emergency Meeting May be Held**

As noted above, S.B. 95 of 1997 recharacterized a number of "emergency" situations as "special" situations. This resulted in the narrowing of situations for which an emergency meeting may be held. Section 11125.5 provides an emergency meeting may be held only in the case of an "emergency situation," defined as:

"(1) Work stoppage or other activity that severely impairs public health or safety, or both.

“(2) Crippling disaster that severely impairs public health or safety, or both.” (§11125.5(b))

### **3. Notice Requirements for an Emergency Meeting**

An emergency meeting may be held without complying with the 10-day notice requirement in Section 11125 or the 48-hour notice requirement in Section 11125.4. However, newspapers of general circulation, television and radio stations that have requested notice of meetings shall be notified of the emergency by telephone at least one hour before the meeting. If telephone services are not functioning, notice is deemed waived. The notice must be posted on the Internet as soon as practicable after the decision to call an emergency meeting has been made. However, newspapers, television and radio must be notified as soon as possible after the meeting of the fact of the meeting, its purpose, and any action taken. (§11125.5(c))

### **4. Specific Requirements for an Emergency Meeting**

The following are required to be posted in a public place and on the Internet for a minimum of 10 days, as soon as possible after the emergency meeting:

- \* Minutes of the meeting
- \* A list of persons notified, or attempted to be notified, of the meeting
- \* Any action taken at the meeting
- \* A copy of the rollcall vote on action taken (§11125.5(d))

### **5. Specific Prohibitions on Holding an Emergency Meeting**

As discussed above, an emergency meeting may only be held for the purposes set forth in section 11125.5(b).

## **IV. CLOSED SESSIONS**

### **A. Purposes for Which Closed Session Can be Held**

"Closed" sessions were formerly called "executive" sessions. Since all references in the Open Meeting Act have been changed from "executive" session to "closed" session, throughout this memorandum we will refer to such sessions as "closed" sessions.

Section 11123 states that "All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article."

Section 11126 sets forth those specific items of business which may be transacted in closed session. Only those enumerated items of business may be conducted in closed session. An agency in the Department may convene a closed session pursuant to Section 11126 for the following purposes:

## **1. Personnel Matters**

A board may meet in closed session to ". . . consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against such employee by another person unless the employee requests a public hearing." In order to consider such disciplinary action or dismissal the "employee shall be given written notice of his or her right to have a public hearing . . . which notice shall be delivered to the employee personally or by mail at least 24 hours before the meeting." (§11126(a)) If such a notice is not given any action taken during a closed session for the above reason is null and void. Once the public hearing has been held, the agency may convene into closed session to deliberate on the decision to be reached. (§11126(a)(4))

Prior to January 1, 1995, section 11126(a) did not apply to employees who were appointed to their positions, such as executive officers, executive directors, and registrars (referred to as "executive officer" for convenience). For example, any decision or deliberations made in the selection or dismissal of an executive officer previously had to be conducted in open session. (68 Ops.Cal.Atty.Gen. 34.) However, with the enactment of SB 1316 (Stats. 1994, Chapt. 845) and SB 95 (Stats. 1997, Chapt. 949), a board can now meet in closed session to consider the appointment, employment, evaluation of, or dismissal of its executive officer, unless the executive officer requests a public hearing. (§11126(a)(1), (2)) SB 1316 supersedes the conclusion reached in 68 Ops.Cal.Atty.Gen. 34. As noted above, once the public hearing has been held, the state body may convene in closed session to deliberate on the decision to be reached. (§11126(a)(4))

If the executive officer does not request a public hearing, he or she must be given the opportunity for a hearing in closed session. After the hearing, the executive officer should be excused from the closed session, and the board may then continue in closed session to deliberate on the decision to be reached. (§11126(a)(4))

Section 11126(a) is not to be interpreted to mean that a board is required to handle civil service personnel matters itself. Normally, this function of an agency is administered by its executive officer in conjunction with the Director of Consumer Affairs, who shares authority with respect to civil service personnel.

## **2. Examination Matters**

A board may meet in closed session to "prepare, approve, grade or administer examinations." (§11126(c)(1)) Essentially, this includes any discussion regarding the actual content of examinations, and their reliability and validity. If an agency is perusing examination samples in order to choose one over the others, this may be done in closed session. On the other hand, if an agency is discussing, for example, the general logistics of administering an examination, then this would not be proper subject matter for a closed session. A basic rule is that if a meeting concerns the grading, specific content, validity of an examination, or examination security, then it can and should be conducted in closed session.

Also, an agency may hear appeals from examinees or re-review examinations in closed session as this would be included in the "grading" of the examination.

### **3. Matters Affecting Individual Privacy**

A committee, consisting of less than a quorum of the full board, may meet in closed session to:

" . . . discuss matters which the [committee] has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, . . . Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body." (§11126(c)(2))

Thus, review by a committee (or subcommittee of an examining committee) of an applicant's qualifications for licensure could properly be done in a closed session. Also, for example, an enforcement committee could convene in closed session to discuss an inquiry related to a particular licensee or licensees prior to any action being filed.

**CAVEAT: This closed session provision does not authorize such a review by the full board. Nor does it generally authorize a committee of a board to review complaints, investigation reports, or other information to determine whether disciplinary or other action should be filed against a licensee.**

To ensure that board members render an impartial and fair decision in considering an Administrative Law Judge's proposed decision, board members are precluded from involving themselves in the investigation or prosecution phase of an action. (§11430.10 *et seq.*) The board's role is that of judge in the case. If a particular board member has any significant involvement in the investigative or prosecution phases, he or she must disqualify himself/herself from participation in the board's action relative to the proposed decision, and not attempt to influence any other board member regarding the decision. Legal counsel should be consulted before any enforcement actions are discussed with individual licensees, as such discussions may impact participation by the member in a final decision on a case (§11430.60), and may require disclosures under the provisions of the state's Administrative Procedure Act. (§11430.50)

Even though these committee meetings may consist entirely of subject matter proper for closed session they are required to be noticed as discussed above.

### **4. Administrative Disciplinary Matters**

A board may meet in closed session to deliberate on a decision in an administrative disciplinary proceeding under the Administrative Procedure Act. (§11400, *et seq.*; §11126(c)(3)) In the closed session, the board may decide whether to adopt a Proposed Decision, review a transcript of a hearing and render a decision of its own, deliberate upon evidence heard by the agency itself, or consider a stipulation.

This section does not authorize an agency to convene into closed session for the purpose of assigning cases, *i.e.* deciding whether a case should be heard by a hearing officer alone or by the agency itself with a hearing officer. This section does not authorize an agency to convene into closed session to review investigation files or complaints. Members of boards that have the discretion to hear cases should not review pending complaints or investigation files for the reasons given above.

### **5. Board of Accountancy Matters**

The enforcement advisory committee established by the State Board of Accountancy pursuant to Business and Professions Code Section 5020 may convene in a closed session to "consider disciplinary action against an individual accountant prior to the filing of an accusation." (§11126(f)(3)) And the qualifications examining committee established by that board pursuant to Business and Professions Code Section 5023 may convene in closed session to "interview an individual applicant or accountant regarding the applicant's qualifications."

As noted above, such administrative and examining committee meetings are required to be noticed as previously discussed in this memorandum.

### **6. Pending Litigation**

A board may meet in closed session to confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation. (§11126(e)(1)) Again, please note the very specific notice requirements discussed below when a closed session is to be held to discuss "pending litigation". Litigation means an adjudicatory proceeding before a court, administrative body, hearing officer or arbitrator. Litigation is considered to be pending if, (1) it has been initiated formally (e.g. a complaint, claim or petition has been filed) or (2) based on existing facts and circumstances and on the advice of its legal counsel, the state body believes there is significant exposure to litigation against it, or it is meeting to decide whether a closed session is authorized because of significant exposure to litigation or (3) based on existing facts and circumstances, the state body has decided or is deciding whether to initiate litigation. (§11126(e)(2))

The agency's legal counsel must submit a memorandum which complies with the requirements of Section 11126(e)(2)(C)(ii) prior to the closed session if possible, but no later than one week after the closed session. This document is confidential until the pending litigation has been finally adjudicated or otherwise settled. (§6254.25)

### **7. Response to Confidential Final Draft Audit Report**

Section 11126.2 (added effective January 1, 2005) permits an agency to meet in closed session to discuss its response to a confidential final draft audit report from the Bureau of State Audits. However, once that audit report becomes final and is released to the public, the agency may only discuss it in open session.



## **8. Threat of Criminal or Terrorist Activity**

Effective January 1, 2006, AB 277 (Chap. 288, Stats. 2005) authorizes an agency at a regular or special meeting to meet in closed session to consider "matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body," where disclosure of those considerations could compromise or impede the safety or security of the described subjects. The law (Section 11126(c)(18)) requires the agency to authorize the closed session by a two-thirds vote of the members present at the meeting.

## **9. Advisory Bodies/Committees May Meet in Closed Session**

To the extent a licensing board, which is defined as a "state body" in the Open Meeting Act, is authorized to meet in closed session, then committees, subcommittees, or other bodies advisory to the licensing board, which are also defined as "state bodies," may meet in closed session for the same purposes as the licensing board. (§11126(f), (4)-(6))

## **10. Open Session Otherwise Required**

Any other business transacted by an agency must be in open session. Only for the above-mentioned reasons may a board within the Department of Consumer Affairs meet in closed session. (§11132) A board may not meet in closed session for the purpose of electing officers or to discuss the proposal or adoption of rules and regulations. Further, a board may not convene in closed session to discuss testimony received during a hearing on proposed rules and regulations. Finally, an agency may not meet in closed session because it wants to have a frank and open discussion among only members on a matter of controversy. In order for an agency to meet in closed session, the closed session must be specifically authorized by statute.

## **B. Notice and Reporting Requirements for Closed Sessions**

### **1. Notice of Closed Session**

When a closed session will constitute part or all of a meeting, it is important to note Government Code Section 11126.3, which requires that:

"(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. [A provision applicable to the Public Utilities Commission is not included herein.] If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126 [litigation has already commenced], the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage."

Thus, if the meeting will consist in part or in its entirety of a closed session, you must include on the notice of the meeting the above-described information. Pay particular attention to these very specific requirements if the closed session is to discuss pending litigation. Please note that to obtain legal advice in closed session concerning pending litigation, the notice must cite subdivision (e) of Section 11126 and your attorney must prepare a memorandum stating the specific reasons and legal authority for the closed session. Subdivisions of Government Code Section 11126, discussed under "Closed Sessions" above, will generally be the statutory authority cited.

If a closed session agenda to discuss pending litigation has been properly published, and an additional pending litigation issue subsequently arises, the state agency may discuss the new matter in closed session provided that postponement of the discussion would prevent the state agency from complying with any statutory, court-ordered, or other legally-imposed deadline. The state agency must publicly announce the title of, or otherwise identify, the litigation unless to do so would jeopardize the ability to effectuate service of process, or to do so would jeopardize the agency's ability to conclude existing settlement negotiations to its advantage. (§11126.3(d))

If you intend to have a closed session during your meeting, you should first contact your Legal Division attorney to ensure that a closed session is authorized and properly noticed.

## **2. Reporting After a Closed Session**

Section 11126.3(f), requires a state body to convene in open session after a closed session and to report as required in Section 11125.2, which states that:

“Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.”

## **C. Other Procedural Requirements for Closed Sessions**

There are certain additional requirements that must be met when closed sessions are to be held.

1. All closed sessions must be held during a regular or special meeting (§11128); they may not be scheduled independently of a noticed meeting of the board or committee. Where, for example, a board or committee meeting is scheduled to discuss only matters appropriate for a closed session, the meeting should be opened as a public meeting with an announcement immediately following that the agency will convene into closed session.

2. As discussed under "Notice Required," above, prior to holding the closed session the agency must announce the general reason(s) for the closed session and the specific statutory or other legal authority under which the session is held. (§11126.3 (a)) With respect to litigation that has already been initiated, it must announce the title of or otherwise identify the litigation. (§11126.3(a)) Other specific notice requirements, discussed above,

also apply to notices regarding pending litigation. In the closed session, only matters covered in the statement may be discussed. (§11126.3(b))

3. The agency is required to designate a staff person to attend the closed session and to record in a minute book a record of topics discussed and decisions made. (§11126.1)

4. The minute book referenced in (3) is available only to members of the agency, or if a violation of the Open Meeting Act is alleged, to a court of general jurisdiction. (§11126.1)

5. Information received and discussions held in closed session are **confidential** and must not be disclosed to outside parties by members or staff who attended the closed session. A recent opinion of the Office of the California Attorney General concluded that:

“A local school board member may not publicly disclose information that has been received and discussed in closed session concerning pending litigation unless the information is authorized by law to be disclosed.” (80 Ops.Cal.Atty.Gen. 231)

That opinion also cited a previous opinion, in which the Attorney General stated that “We have ... routinely observed that it would be *improper* for information received during a closed session to be publicly disclosed.” (76 Ops.Cal.Atty.Gen. 289, 290-291; Emphasis in the original.)

## **V. MEETING BY TELECONFERENCING**

Prior to January 1, 1995, the Bagley-Keene Open Meeting Act contained no provision for conducting meetings where the participating members were not physically present in one location.

Effective 1/1/95, subdivision (b) was added to Government Code section 11123 to authorize meetings by teleconference. (Stats. 1994, Chapt. 1153; AB 3467) That subdivision has been amended several times, most recently by AB 192 of 2001, and it currently provides:

"(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

"(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, 'teleconference' means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video."

A method is thus available whereby meetings may be conducted by audio or video teleconferencing provided the criteria set forth in the statute have been met. Note the restriction in subdivision (b)(1)(E) that prohibits a closed session emergency meeting. Emergency meetings in open session may be conducted by teleconference.

Effective January 1, 2015, subdivision (c) was added to Government Code section 11123 to require that any action taken and the vote or abstention on that action of each member present for the action be publicly reported by the state body. (Stats. 2014, Chapt.510; AB 2720)

We emphasize that the law now requires every teleconference meeting location to be identified in the notice and agenda and to be open to the public. Most importantly, the members of the agency must attend the meeting at a public location. Members are no longer able to attend the meeting via teleconference from their offices, homes, or other convenient location unless those locations are identified in the notice and agenda, and the public is permitted to attend at those locations. Nothing prohibits additional locations, where only the public is connected to the teleconference meeting. (§11123(b)(2))

## **VI. DELIBERATIONS AND VOTING**

Keep in mind the Open Meeting Act declaration of legislative intent that actions of state agencies be taken openly and that their deliberation be conducted openly. (§11120) In this regard, there are a number of provisions in the Open Meeting Act which address deliberations and voting.

### **A. Seriatim Calls to Individual Agency Members Prohibited**

Except as authorized by the above-discussed teleconferencing statutes, telephone conference calls may not be used to avoid the requirements of the Open Meeting Act. A conference call including members of a board, committee, subcommittee or task force sufficient to constitute a majority of that state body is prohibited, except pursuant to an authorized teleconference meeting.

In a case involving the Ralph M. Brown Act, the court concluded that a series of one-to-one telephone calls between members of a local body, where the purpose of the calls was to obtain a collective commitment on an issue, constituted a violation of the Act. (*Stockton Newspapers, Inc. v. Members of the Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95) The Brown Act is the local agency counterpart to the Bagley-Keene Open Meeting Act, and decisions rendered on its provisions are frequently followed in Open Meeting Act cases.

Citing the *Stockton Newspapers, Inc.* case, the court in *Sutter Bay Associates v. County of Sutter* held that to prevent evasion of the Brown Act, a series of private meetings (known as serial meetings) by which a majority of the members of the legislative body commit themselves to a decision concerning public business or engage in collective deliberation on public business would violate the open meeting requirement. ((1997) 58 Cal.App.4<sup>th</sup> 860, 877, 68 Cal.Rptr.2d 492, 502)

Effective January 1, 2010, the Act now specifically prohibits serial communications between a majority of members “to discuss, deliberate, or take action on any item of business that is within the subject matter of the state agency.” (Emphasis added.) (§11122.5(b))

### **B. E-Mail Prohibition**

Section 11122.5 was amended by Stats. 2009, c. 150 (A.B. 1494) to provide:

(b)(1) A majority of the members of the state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

(2) Paragraph (1) shall not be construed to prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the state

agency, if that person does not communicate to members of the legislative body the comments or position or any other member or members of the legislative body.

The enactment of subdivision (b) of section 11122.5, expands upon and confirms a recent opinion of the Attorney General prohibiting the use of e-mail to reach a collective decision outside a regularly scheduled meeting. In 84 Ops.Cal.Atty.Gen. 30, the Attorney General concluded that:

"A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board."

As noted above, interpretations of the Brown Act, which governs local public agencies, are often cited as authority in interpreting similar provisions of the Bagley-Keene Open Meeting Act.

Members of a board must refrain from calling or otherwise contacting other members on a one-to-one basis, or conducting serial meetings, in order to discuss, deliberate, or take action outside the meeting on a matter within the subject matter of the board.

### **C. Secret Ballot Prohibited**

An agency may not vote by secret ballot in a public meeting nor vote in closed session on any matter where discussion, deliberations, or action taken is required to be in an open meeting. (68 Ops.Cal.Atty.Gen. 65, 69)

For example, the election of board officers may not be conducted by secret ballot or in closed session.

### **D. Voting by Proxy Prohibited**

Voting by proxy is not authorized. (68 Ops.Cal.Atty.Gen. 65, 70)

### **E. Use of Electronic Devices During Meeting**

Board members should not text or email each other during an open meeting on any matter within the board's jurisdiction. Using electronic devices to communicate secretly on such a matter would violate the law. Where laptops are used by board members at the meeting because the board provides board materials electronically, the board president should make an announcement at the beginning of the meeting as to the reason for the laptops. We suggest the following (or something similar):

"You may notice board members accessing their laptops during the meeting. They are using the laptops solely to access the board meeting materials which are in electronic format."

## **F. Voting by Mail on Administrative Disciplinary Matters**

As a general rule, all voting on items of business to be transacted must be done at a public meeting. However, the Administrative Procedure Act authorizes mail voting on all questions arising under that act. (Govt. Code §11526.) Thus, board members may vote by mail on proposed decisions, stipulated decisions, and other matters in connection with a formal disciplinary case. No other votes may be cast by mail. (68 Ops.Cal.Atty.Gen. 65, 69)

## **G. Recording and Reporting Votes**

Beginning January 1, 2015, for each item on which a vote is taken, the minutes must contain a record of how each member voted on that action item. (For example, Yes – Members A, B, & C; No – Members D & E; Abstain – Member F.)

## **VII. MISCELLANEOUS PROVISIONS**

There are several provisions governing public meetings which do not fit under any of the above headings, but of which you should be aware.

### **A. Conforming Board Member's Conduct**

Any person who has been appointed as a member of a state body, who has not yet assumed the duties of the office, must conform his or her conduct to the provisions of the Open Meeting Act. (§11125.95)

### **B. Providing Open Meeting Act to New Board Members**

A copy of the Bagley-Keene Open Meeting Act must be provided to each agency member upon his or her appointment to office. Each agency should insure that a copy is given to each new member. (§11121.9.)

### **C. Prohibition on Placing Conditions on Public's Attendance**

#### **1. Sign-in**

No person can be required to register or sign-in or fulfill any other condition in order to attend a public meeting of an agency. While a person who wishes to make public comment may be asked to identify himself or herself for the board's record or minutes, a commenter cannot be compelled to do so or prevented from speaking because the commenter refuses to identify himself or herself.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, "it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document." (§11124)

## **2. Discrimination in Admittance to Meeting Facility**

A meeting may not be held in any facility that prohibits the admittance of any persons on the basis of race, religious creed, color, national origin, ancestry, or sex. (§11131)

## **3. Access for the Disabled**

All meetings must be accessible to the disabled. (§11131)

## **4. Charging a Fee or Requiring a Purchase for Access**

The Open Meeting Act prohibits holding a meeting in any location where the public is required to pay a fee or make a purchase to attend. (§11131)

## **D. Agency Recording of the Proceedings**

A tape or film record of an open and public meeting made by the agency must be made available for public inspection under the California Public Records Act, but may be erased or destroyed 30 days after the taping or recording. An inspection must be provided without charge on an audio or video tape player made available by the state agency. (§11124.1(b))

## **E. Public's Right to Record the Proceedings**

Persons attending a public meeting have a right to record the proceedings with an audio or video tape recorder or still or motion picture camera, in the absence of a reasonable finding by the agency that the recording could not continue without noise, illumination, or obstruction of view that constitutes, or would constitute a persistent disruption of the proceedings. (§11124.1(a))

## **F. Media Broadcast of the Proceedings**

A state body may not prohibit or otherwise restrict the broadcast of a public meeting in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings. (§11124.1(c))

## **G. Webcasting**

Whether or not webcasting is required, if your meeting is webcast, it is our recommendation that you place the following statement on your agenda:

“While the board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources.”



## **H. Taking Agenda Items Out of Order**

Items listed on the agenda may be taken up out of order, provided the purpose of moving the agenda items is not to frustrate public or other input on the item. It is a good practice to note on either the top or the bottom of your agenda that “All times indicated and the order of business are approximate and subject to change,” to alert members of the public this is a possibility.

If your agency schedules a multiple day meeting and may move items scheduled for a subsequent day to an earlier day, you should provide notice of this possibility on your agenda. Suggested language is that “Items scheduled for a particular day may be moved to an earlier day to facilitate the board’s business.” Again, the purpose may not be to frustrate public or other input.

## **I. Opportunity for Public Comment at Meetings**

Section 11125.7 addresses the subject of public comment at board meetings. With specified exceptions, that section requires state agencies to provide an opportunity for members of the public to directly address the state agency on each agenda item before or during the agency's discussion or consideration of the item. This opportunity for comment need not be made available if:

1. The agenda item has previously been considered at a public meeting by a committee comprised exclusively of board members, where members of the public were provided an opportunity to address the item. However, if the item has been substantially changed since the committee meeting, a new opportunity to address the agency would be required at the full board meeting.
2. The agenda item is one that may properly be considered in closed session, which would include deliberation and action on disciplinary proceedings under the Administrative Procedure Act. (§11125.7)

If a board wishes to establish a standing rule that discussion of agenda items will be given a specified amount of time, or that public comment will be limited to a certain amount of time, the board may do that by adopting an administrative regulation. (§11125.7(b))

Section 11125.7 was amended, effective June 27, 2016 to provide an equal time provision when the state body limits the time for public comment, by requiring the state body to provide at least twice the allotted time to a member of the public who uses a translator. This amendment is to ensure that non-English speakers receive an equal opportunity to address the state body when simultaneous translation equipment is not used. (Stats of 2016 chapt. 31 SB 836)

The law specifically provides that a state agency may not prohibit public criticism of its policies, programs, or services, or of the acts or omissions of the agency. (§11125.7(c))

## **VIII. DISCLOSURE OF DOCUMENTS**

### **A. Documents Distributed Prior to the Meeting**

When writings which are public records are distributed to all, or a majority of all, of the members of a board or committee for discussion or consideration at a public meeting, the writings must be made available for public inspection. Generally, the records must be made available for inspection at the time of distribution to agency members. (§11125.1(a)) Records exempt from disclosure under Sections 6253.5, 6254 or 6254.7 of the Public Records Act need not be disclosed even though the subject matter of the records may be considered or discussed at the meeting. This includes records which are drafts, notes or memoranda which will not be retained by the agency, attorney-client privileged communications, records of pending litigation and claims against the state, personnel, medical or similar files, complaint and investigation files, except for Accusations and Proposed Decisions, and any records or data relating to examinations.

### **B. Documents Distributed During the Meeting**

When public records pertaining to an agenda item are prepared by the state body or a member of the state body, and distributed to state body members during a meeting, the documents must be made available for public inspection at the meeting. If records are prepared by some other person, and distributed to members of the state body during a meeting, the documents must be made available for public inspection after the meeting. (§11125.1(b)) Records exempt from public disclosure under specified statutes are not required to be publicly disclosed. (§11125.1(a), (b))

### **C. Charging a Fee for Public Documents**

Under section 11126.7, an agency may not charge a fee for a notice, including the agenda, of a meeting, and may only charge those fees specifically authorized for public documents that are considered at the meeting

At its discretion, an agency may charge a fee to cover reproduction costs for providing the documents required to be made available, as discussed in paragraph (B), immediately above. If an agency charges a fee, it is limited to the direct costs of duplication authorized in Section 6257 for the reproduction of public records. (§11125.1(c))

Effective January 1, 2003, documents distributed prior to or during a meeting that are public records must be made available, upon request by a person with a disability, in appropriate alternative formats. No extra charge can be imposed for putting those documents into an alternative format.

## **IX. PENALTIES**

Under previous law, any interested person could commence court action (mandamus, injunction, declaratory relief) to stop or prevent violations or threatened violations of the Open

Meeting Act. SB 95, effective 1/1/98, added the Attorney General and the district attorney to the list of those who may commence such action. Court costs and reasonable attorney's fees may be awarded to a successful plaintiff to be paid from the funds of the agency. (§11130.5)

SB 95 also expanded the law to authorize the Attorney General, a district attorney, or any interested person to seek court action "to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, ..." (§11130(a)) This appears to be a rather unique provision, and its implications are unknown at this time.

SB 95 further expanded the law to authorize the Attorney General, a district attorney, or any interested person to seek a court action to compel a state agency to tape record its closed sessions. Upon a judgment of a violation of Section 11126, a court could so compel an agency. Discovery procedures for the tape recordings are also set forth. (§11130(b), and (c))

Section 11130.3 authorizes a person to institute a court action to obtain a judicial determination that an action taken in violation of the notice provisions or the provisions governing closed sessions of the Act is null and void. Court costs and reasonable attorney's fees may also be awarded to a successful plaintiff under this section. This section reinforces the need for a specific, informative agenda as required by Section 11125.

These remedies extend to past actions of an agency. The statute of limitations for bringing an action is 90 days. (§§11130(c) and 11130.3(a)).

Section 11130.7 of the Act provides:

"Each member of a state body who attends a meeting of such body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled, is guilty of a misdemeanor." (Emphasis added.)

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

**11120. Public policy; legislative finding and declaration; citation of article**

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1980, c. 1284, p. 4333, § 4; Stats. 1981, c. 968, p. 3683, § 4.)

**11121. State body defined**

As used in this article, "state body" means each of the following:

(a) Every state board, or commission,

or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

(e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1980, c. 515, § 1; Stats.1981, c. 968, p. 3683, § 5; Stats.1984, c. 193, § 38. Amended by Stats.1996, c. 1023 (S.B.1497), § 88, eff. Sept. 29, 1996; Stats.1996, c. 1064 (A.B.3351), § 783.1,

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

operative July 1, 1997; Stats.2001, c. 243 (A.B.192), § 1; Amended Stats. 2003 ch 62 § 117 (SB 600), Stats. 2015, c. 537 (S.B. 387), § 22, eff. January 1, 2016.)

(Added by Stats.2001, c. 243 (A.B.192), § 2. Amended by Stats. 2008, c. 344 (S.B. 1145), § 2, eff. Sept. 26, 2008; Stats. 2015, c. 537 (S.B. 387), § 23, eff. January 1, 2016.)

**11121.1. State body; exclusions**

As used in this article, "state body" does not include any of the following:

(a) Except as provided in subdivision (e) of Section 11121, state agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

**11121.2. Repealed by Stats. 2001, c. 243 (A.B.192), § 3**

The repealed section, added by Stats.1981, c. 968, p. 3684, § 5.2, provided the additional definition of "state body" as a multimember body with authority of state body.

**§ 11121.5. Repealed by Stats.1984, c. 1158, § 3**

The repealed section, added by Stats.1994, c. 1179, § 1, amended by Stats.1981, c. 968, § 5.3; Stats.1983, c. 143, § 186, Stats.1983, c. 101, § 60, related to the treatment of state college and university student body organizations as state agencies. Similar provisions were added at Education Code § 89920 et. seq.

**11121.7. Repealed by Stats. 2001, c. 243 (A.B.192), § 4**

The repealed section, added by Stats.1980, c. 1284, p. 4333, § 5, amended by Stats.1981, c. 968, p. 3685, § 6, related to representatives of the state body.

**11121.8. Repealed by Stats. 2001, c. 243 (A.B.192), § 5**

The repealed section, added by

## **BAGLEY-KEENE OPEN MEETING ACT – 2017 (CALIFORNIA GOVERNMENT CODE)**

Stats.1981, c. 968, p. 3684, § 7, related to advisory bodies.

### **11121.9. Provision of copy of article to members of state body**

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

(Added by Stats.1980, c. 1284, p. 4334, § 6.  
Amended by Stats.1981, c. 714, p. 2659, § 175;  
Stats.1981, c. 968, p. 3685, § 7.1.)

### **11121.95. Appointees or elected officials not yet in office; conformity of conduct to article requirements**

Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

(Added by Stats.1997, c. 949 (S.B.95), § 1.)

### **11122. Action taken**

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity

upon a motion, proposal, resolution, order or similar action.

(Added by Stats.1967, c. 1656, p. 4026, § 122.  
Amended by Stats.1981, c. 968, p. 3685, § 7.3.)

### **11122.5. Meeting defined; series of communications to discuss, deliberate, or take action prohibited; exceptions**

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b)(1) A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

(2) Paragraph (1) shall not be construed to prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the state agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person that do not violate subdivision (b).

(2)(A) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body.

(B) Subparagraph (A) does not allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and

noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, if a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, if a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not members of the standing committee attend only as observers.

(Added by Stats.2001, c. 243 (A.B.192), § 6.  
Amended by Stats.2009, c. 150 (A.B.1494), § 1.)

**11123. Meetings; attendance;  
teleconference option**

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b)(1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state

body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(Added by Stats.1967, c. 1656, p. 4026, § 122.  
Amended by Stats.1981, c. 968, p. 3685, § 7.5;  
Stats.1994, c. 1153 (A.B.3467), § 1; Stats.1997, c. 52 (A.B.1097), § 1; Stats.2001, c. 243 (A.B.192), § 7;  
Stats.2014, c. 510 (A.B.2720), § 1, eff. Jan. 1, 2015.)

**11123.1. State body meetings to meet protections and prohibitions of the Americans with Disabilities Act**

All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(Added by Stats. 2002, c. 300 (A.B. 3035), § 1.)



**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

**11124. Conditions to attendance**

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

(Added by Stats.1967, c. 1656, p. 4026, § 122.  
Amended by Stats.1981, c. 968, p. 3685, § 8.)

**11124.1. Audio or video recording of proceedings; inspection of state's recording; broadcast restrictions**

(a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

(Added by Stats.1980, c. 1284, p. 4334, § 7.  
Amended by Stats.1981, c. 968, p. 3685, § 9;  
Stats.1997, c. 949 (S.B.95), § 2; Stats.2009, c. 88 (A.B.176), § 42.)

**11125. Notice of meeting**

(a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request, by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1973, c. 1126, p. 2291, § 1; Stats.1975, c. 708, p. 1695, § 1; Stats.1979, c. 284, § 1, eff. July 24, 1979; Stats.1981, c. 968, p. 3685, § 10. Amended by Stats.1997, c. 949 (S.B.95), § 3; Stats.1999, c. 393 (A.B.1234), § 1; Stats.2001, c. 243 (A.B.192), § 8; Stats. 2002, c. 300 (A.B. 3035), § 2.)

**11125.1. Agendas and other writings distributed for discussion or consideration at public meetings; public records; Franchise Tax Board; inspection; availability on the Internet; closed sessions**

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the American with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by the Franchise Tax Board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

(Added by Stats.1975, c. 959, p. 2238, § 4. Amended by Stats.1980, c. 1284, p. 4334, § 8; Stats.1981, c. 968, p. 3686, § 10.1. Amended by Stats.1997, c. 949 (S.B.95), § 4; Stats.2001, c. 670 (S.B.445), § 1; Stats. 2002, c. 300 (A.B. 3035), § 3.5.); Stats. 2005, c. 188 (A.B. 780), § 1.)

**11125.2. Appointment, employment or dismissal of public employees; closed sessions; public report**

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

(Added by Stats.1980, c. 1284, p. 4335, § 9. Amended by Stats.1981, c. 968, p. 3687, § 10.3.)

**11125.3. Action on items of business not appearing on agenda; notice**

(a) Notwithstanding Section 11125, a

state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

(Added by Stats.1994, c. 1153 (A.B.3467), § 2. Amended by Stats.2001, c. 243 (A.B.192), § 9.)

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

**11125.4. Special meetings;  
authorized purposes; notice; required  
finding of hardship or need to protect  
public interest**

(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes when compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet Web site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

(Added by Stats.1997, c. 949 (S.B.95), § 5. Amended by Stats.1999, c. 393 (A.B.1234), § 2; Stats.2004, c. 576 (A.B.1827), § 1.; Stats. 2007, c. 92 (S.B. 519), § 1.)

**11125.5. Emergency meetings**

(a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

(Amended by Stats.1992, c. 1312 (A.B.2912), § 11, eff. Sept. 30, 1992; Stats.1997, c. 949 (S.B.95), § 6; Stats.1999, c. 393 (A.B.1234), § 3.)

**11125.6. Fish and Game  
Commission; emergency meetings;  
appeals of fishery closures or restrictions**

(a) An emergency meeting may be called at any time by the president of the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a

finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that constitute the impact to the economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

(Added by Stats.1998, c. 1052 (A.B.1241), S 21.)

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

**11125.7. Agenda item discussion before state body; opportunity for public address; regulation by state body; freedom of expression; application of provisions**

(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations

limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c)(1) Notwithstanding subdivision (b), when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the state body.

(2) Paragraph (1) shall not apply if the state body utilizes simultaneous translation equipment in a manner that allows the state body to hear the translated public testimony simultaneously.

(d) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(e) This section is not applicable to closed sessions held pursuant to Section 11126.

(f) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(g) This section is not applicable to hearings conducted by the California Victim Compensation and Government Claims



**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

Board pursuant to Sections 13963 and 13963.1.

(h) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

(Added by Stats.1993, c. 1289 (S.B.367), § 2. Amended by Stats.1995, c. 938 (S.B.523), § 13, operative July 1, 1997; Stats.1997, c. 949 (S.B.95), § 7; Stats.2006, c. 538 (S.B.1852), § 248; Stats.2012, c. 551 (S.B.965), § 1.; Stats. 2016, c. 31 (S.B. 836), § 71, eff. June 27, 2016.)

**11125.8. Hearings to consider crimes against minors or crimes of sexual assault or domestic violence; identification of applicant; disclosure of nature of hearing**

(a) Notwithstanding Section 11131.5, in any hearing that the State California Victim Compensation and Government Claims Board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

(Added by Stats.1997, c. 949 (S.B.95), § 9.; Amended by Stats. 2006, c. 538 (S.B. 1852, § 249; Stats. 2016, c. 31 (S.B. 836), § 72, eff. June 27, 2016.)

**11125.9. Regional water quality control boards; compliance with notification guidelines**

Regional water quality control boards shall comply with the notification guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting.

(Added by Stats.1997, c. 301 (A.B.116), § 1.)

**§ 11126. Closed sessions.**

(a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any

disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees,

or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7)(A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications

and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 9 (commencing with Section 60850) of, Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the Department of Resources Recycling and Recovery or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18)(A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular

or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(19) Prevent the California Sex Offender Management Board from holding a closed session for the purpose of discussing matters pertaining to the application of a sex offender treatment provider for certification pursuant to Sections 290.09 and 9003 of the Penal Code. Those matters may include review of an applicant's qualifications for certification.

(d)(1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e)(1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B)(i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a

significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C)(i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, “litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

(commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding

the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters

relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related



## **BAGLEY-KEENE OPEN MEETING ACT – 2017 (CALIFORNIA GOVERNMENT CODE)**

to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1968, c. 1272, p. 2396, § 1; Stats.1970, c. 346, p. 741, § 5; Stats.1972, c. 431, p. 791, § 43; Stats.1972, c. 1010, p. 1872, § 63, eff. Aug. 17, 1972, operative July 1, 1972; Stats.1974, c. 1254, p. 2713, § 1; Stats.1974, c. 1539, p. 3525, § 1; Stats.1975, c. 197, p. 570, § 1; Stats.1975, c. 959, p. 2238, § 5; Stats.1977, c. 730, p. 2318, § 5, eff. Sept. 12, 1977; Stats.1980, c. 1197, p. 4043, § 1; Stats.1980, c. 1284, p. 4338, § 11; Stats.1981, c. 180, p. 1096, § 1; Stats.1981, c. 968, p. 3688, § 12; Stats.1982, c. 454, p. 1842, § 40; Stats.1983, c. 143, § 187; Stats.1984, c. 678, § 1; Stats.1984, c. 1284, § 4; Stats.1985, c. 186, § 1; Stats.1985, c. 1091, § 1; Stats.1986, c. 575, § 1; Stats.1987, c. 1320, § 2;

Stats.1988, c. 1448, § 29; Stats.1989, c. 177, § 2; Stats.1989, c. 882, § 2; Stats.1989, c. 1360, § 52; Stats.1989, c. 1427, § 1, eff. Oct. 2, 1989, operative Jan. 1, 1990; Stats.1991, c. 788 (A.B.1440), § 4; Stats.1992, c. 1050 (A.B.2987), § 17; Stats.1994, c. 26 (A.B.1807), § 230, eff. March 30, 1994; Stats.1994, c. 422 (A.B.2589), § 15.5, eff. Sept. 7, 1994; Stats.1994, c. 845 (S.B.1316), § 1; Stats.1995, c. 975 (A.B.265), § 3; Stats.1996, c. 1041 (A.B.3358), § 2; Stats.1997, c. 949 (S.B.95), § 8; Stats.1998, c. 210 (S.B.2008), § 1; Stats.1998, c. 972 (S.B.989), § 1; Stats.1999, c. 735 (S.B.366), § 9, eff. Oct. 10, 1999; Stats.2000, c. 1002 (S.B.1998), § 1; Stats.2000, c. 1055 (A.B.2889), § 30, eff. Sept. 30, 2000; Stats.2001, c. 21 (S.B.54), § 1, eff. June 25, 2001; Stats.2001, c. 243 (A.B.192), § 10; Stats.2002, c. 664 (A.B.3034), § 93.7; Stats.2002, c. 1113 (A.B.2072), § 1; Stats.2005, c. 288 (A.B.277), § 1; Stats.2007, c. 577 (A.B.1750), § 4, eff. Oct. 13, 2007; Stats.2008, c. 179 (S.B.1498), § 91; Stats.2008, c. 344 (S.B.1145), § 3, eff. Sept. 26, 2008; Stats.2010, c. 328 (S.B.1330), § 81; Stats.2010, c. 32 (A.B.1887), § 2, eff. June 29, 2010; Stats.2010, c. 618 (A.B.2791), § 124; Stats.2011, c. 357 (A.B.813), § 1; Stats.2013, c. 352 (A.B.1317), § 234, eff. Sept. 26, 2013, operative July 1, 2013.)

### **11126.1. Record of topics discussed and decisions made at closed sessions; availability**

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

(Added by Stats.1980, c. 1284, p. 4340, § 12.  
Amended by Stats.1981, c. 968, p. 3691, § 13.)

**11126.2. Closed session; response to confidential final draft audit report; public release of report**

(a) Nothing in this article shall be construed to prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

(Added by Stats.2004, c. 576 (A.B.1827), § 2.)

**11126.3. Disclosure of nature of items to be discussed in closed session; scope of session; notice of meeting; announcement of pending litigation; unnecessary disclosures; disclosures at open session following closed session**

(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed

session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required to

be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

(Added by Stats.1980, c. 1284, p. 4341, § 13. Amended by Stats.1981, c. 968, p. 3692, § 14; Stats.1987, c. 1320, § 3. Amended by Stats.1997, c. 949 (S.B.95), § 10; Stats.1998, c. 210 (S.B.2008), § 2; Stats.2001, c. 243 (A.B.192), § 11.)

**11126.4. Closed sessions of  
Gambling Control Commission;  
information prohibited from being  
disclosed by law or tribal-state gaming  
compact; limitations; public notice**

(a) Nothing in this article shall be construed to prevent the California Gambling Control Commission from holding a closed session when discussing matters involving trade secrets, nonpublic financial data, confidential or proprietary information, and other data and information, the public disclosure of which is prohibited by law or a tribal-state gaming compact.

(b) Discussion in closed session authorized by this section shall be limited to the confidential data and information related to the agenda item and shall not include discussion of any other information or matter.

(c) Before going into closed session the commission shall publicly announce the type of data or information to be discussed in closed session, which shall be recorded upon the commission minutes.

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

(Added by Stats. 2005, c. 274 (S.B. 919), § 1.)

**11126.5. Disorderly conduct of general public during meeting; clearing of room**

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

(Added by Stats.1970, c. 1610, p. 3385, § 1. Amended by Stats.1981, c. 968, p. 3692, § 15.)

**11126.7. Fees**

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

(Added by Stats.1980, c. 1284, p. 4341, § 14. Amended by Stats.1981, c. 968, p. 3692, § 16.)

**11127. Application of article**

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1981, c. 968, p. 3692, § 17.)

**11128. Time of closed session**

Each closed session of a state body shall be held only during a regular or special meeting of the body.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1980, c. 1284, p. 4341, § 15; Stats.1981, c. 968, p. 3692, § 18.)

**11128.5. Adjournment; declaration; notice; hour for reconvened meeting**

The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

(Added by Stats.1997, c. 949 (S.B.95), § 11.)

**11129. Continuance; posting notice**

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours

after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

(Added by Stats.1967, c. 1656, p. 4026, § 122.  
Amended by Stats.1981, c. 968, p. 3692, § 19.  
Amended by Stats.1997, c. 949 (S.B.95), § 12.)

**11130. Actions to prevent violations or determine applicability of article; validity of rules discouraging expression; audio recording of closed sessions; discovery procedures for recordings**

(a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to audio record its closed sessions and preserve the audio

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

(Added by Stats.1967, c. 1656, p. 4026, § 122.  
Amended by Stats.1969, c. 494, p. 1106, § 1;  
Stats.1981, c. 968, p. 3693, § 20; Stats.1997, c. 949  
(S.B.95), § 13; Stats.1999, c. 393 (A.B.1234), § 4;  
Stats.2009, c. 88 (A.B.176), § 43.)

**11130.3. Judicial determination  
action by state body in violation of §§  
11123 or 11125 null and void; action by  
interested person; grounds**

(a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

(Amended by Stats.1999, c. 393 (A.B.1234), § 5.)

**11130.5. Court costs and attorney fees**

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a

personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

(Added by Stats.1975, c. 959, p. 2240, § 6. Amended by Stats.1981, c. 968, p. 3693, § 21; Stats.1985, c. 936, § 2.)

**11130.7. Violations; misdemeanor**

Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

(Added by Stats.1980, c. 1284, p. 4341, § 16. Amended by Stats.1981, c. 968, p. 3693, § 22. Amended by Stats.1997, c. 949 (S.B. 95), § 14.)

**11131. Use of facility allowing discrimination; state agency**

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry, or any characteristic listed or defined in Section 11135 or that is inaccessible to disabled persons, or where members of the

**BAGLEY-KEENE OPEN MEETING ACT – 2017  
(CALIFORNIA GOVERNMENT CODE)**

public may not be present without making a payment or purchase. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

(Added by Stats.1970, c. 383, p. 798, § 1. Amended by Stats.1981, c. 968, p. 3693, § 23. Amended by Stats.1997, c. 949 (S.B.95), § 15.; Stats. 2007, c. 568 (A.B. 14), § 32.)

**11131.5. Identity of victims or alleged victims of crimes, tortious sexual conduct, or child abuse; public disclosure**

No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

(Added by Stats.1997, c. 949 (S.B.95), § 16.)

**11132. Closed session by state body prohibited**

Except as expressly authorized by this article, no closed session may be held by any state body.

(Added by Stats.1987, c. 1320, § 4.)



# Appendix C



# Department of Consumer Affairs Travel Guide

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Office of Administrative Services  
Accounts Payable  
Travel Unit



July 2024

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**Disclaimer:** *Bargaining Contracts, California Department of Human Resources (CalHR), Departmental Policy and the State Administrative Manual (SAM) sets forth the information contained in this Travel Guide. If any of the information within conflicts with the most recent provisions set forth by the said mentioned above, then those provisions will supersede this Travel Guide. Information provided in this Travel Guide is routinely updated by various control agencies. The traveler or user of this Travel Guide must always make sure they have the most current information. Click on the web links to view the most current information.*

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## Table of Contents

<b>Table of Contents</b> .....	<b>i</b>
<b>Chapter 1: Introduction and Definitions</b> .....	<b>1</b>
Introduction .....	1
Who can file a claim? .....	1
Terms .....	2
Policies .....	2
<b>Chapter 2. Per Diem Allowances</b> .....	<b>5</b>
Introduction .....	5
Lodging Rates.....	6
Hotel Tax Waiver .....	8
Acceptable Receipts .....	8
Sharing a Room.....	8
Meal Rates.....	8
Fewer Than 24 Hours .....	9
More Than 24 Hours .....	9
Incidentals.....	10
Business-Related Meals .....	11
Receipts.....	10
Overtime Meals and Rates .....	10
Definitions .....	11
Arduous Work OT Meal .....	11
Excess Lodging Policy and Procedure.....	11
Reasonable Accommodation .....	12
Exception to Travel Status Policy.....	12
Exception Authority, Limits, and Criteria .....	13
Exception Process .....	14
<b>Chapter 3. Transportation.</b> .....	<b>15</b>
Introduction .....	15
Supervisor’s Responsibility .....	15
Determining the Most Economical Mode of Travel.....	15

Cost Comparison .....	16
Example of Cost Comparison .....	17
Reimbursement.....	17
Exception .....	17
Direct and Indirect Travel Arrangements .....	17
Air Travel .....	17
Airport Parking .....	18
Non-Employee Reservations (Airfare and Lodging).....	19
Frequent Flyer Programs .....	19
Receipts.....	19
Privately Owned Aircraft Usage SAM 0743 and 0746 .....	19
State-Owned, Privately Owned, and Commercially Owned Rental Vehicle Use .....	20
Commercial Rental Cars.....	21
Car Rental Reservation Information.....	21
Private Vehicle Authorization and Use.....	24
Mileage Rate Reimbursement .....	24
Alternate Worksite Mileage .....	25
Airport Dropoff.....	25
Motor Vehicle Accident Reporting.....	25
Overtime and Callback Mileage .....	25
State Vehicle Emergency Repairs .....	25
Taxis and Shuttles .....	26
Uber and Lyft .....	26
Parking and Tolls (SAM section 0755) .....	26
Commuting Transit and Vanpool .....	26
<b>CHAPTER 4. BUSINESS EXPENSES AND RECEIPTS.....</b>	<b>27</b>
Business Expenses.....	27
Valid Receipts .....	29
Required Receipts.....	29
Receipts Not Required.....	29
Lost Receipts .....	30
Odd-Size Receipts .....	30

**Chapter 5. Reportable Tax Items. .... 30**

- Introduction ..... 30
- Reportable Items..... 30
- Reportable Withholdings ..... 31
- Capturing Reportable Items ..... 32

**Chapter 6. Out-of-State, Out-of-Country, and Amended Claims. .... 33**

- Introduction ..... 33
- Out-of-State Travel (OST)..... 33
- Out-of-Country Travel ..... 34
- Amended Claims..... 34

**Chapter 7. Travel and Evidence Advances. .... 34**

- Travel Advances ..... 34

**Chapter 8. Filing Requirements. .... 36**

- Claim Form and Correction Instructions..... 36
- When to Submit Travel Expense Claims..... 37
- Required Information ..... 37

**Chapter 9. Completing a Travel Expense Claim. .... 37**

- Introduction ..... 37
- Employee Information ..... 37
- Trip Information, Miscellaneous Information and Justifications, and Authorized Signatures..... 38

**Appendix..... 39**

- Resource Materials ..... 39
- Useful Websites and Addresses ..... 40
- List of Related Forms ..... 41

## Chapter 1: Introduction and Definitions

### Introduction

The purpose of the Department of Consumer Affairs Travel Guide (Guide) is to provide and define the basic travel reimbursement rules for employees who are required to travel on official State business, methods of travel that are available, and how to use them, in accordance with the State Bargaining Contracts, California Department of Human Resources (CalHR) travel rules for state officers and employees pursuant to Sections 599.615 through 599.638.1 of Article 2 of Subchapter 1 of Chapter 3 of Division 1 of Title 2 of the California Code of Regulations, and the *State Administrative Manual (SAM)*, Chapter 700. If any of the information herein conflicts with the most recent provisions set forth by the bargaining contracts or legal provisions cited above, then those provisions will supersede this Guide. In addition, information provided in this Guide is routinely updated by various control agencies. The traveler or user of this Guide must always make sure they have the most current information.

Note: The travel reimbursement program is subject to Internal Revenue Service (IRS) requirements. There are no flat reimbursement rates. All items claimed must be for the actual amount of the expense, up to the maximum rates allowed for all State officers, employees, and agents of the State traveling on official State business.

### Who can file a claim?

All Department of Consumer Affairs (DCA and/or Department) employees and any agent of the State (listed below) may request a travel advance and/or travel reimbursement using the appropriate Department forms and the CalATERS Global System. Certain restrictions may apply (see reference-related section for specific requirements).

Statutory Board Members are individuals appointed to serve on boards or commissions established by law. Members are appointed by the Governor, Legislature, or Department Head. Reimbursement for necessary travel expenses is based on the rates for non-represented employees.

Non-statutory Board Members are individuals appointed to serve on boards, commissions, committees, or task forces that are created by agency secretaries, department directors, executive officers, or board members on an as-needed basis to fulfill the Department's mission. Reimbursement for necessary travel expenses is based on the rates for non-represented employees.

Proctors are intermittent hires through the State Personnel Board. Proctors administer written or physical agility exams for civil service classification. Reimbursement for necessary travel expenses is based on the rates for non-represented employees.

Volunteers are individuals who voluntarily perform services for the State without pay. The volunteer must sign an Oath of Allegiance, which is kept on file at the Department with the Volunteer Service Agreement. Volunteers will be reimbursed for necessary travel expenses at the rate negotiated for State employees performing comparable duties.

### **Terms**

Short-Term Travel: Expenses incurred at least 50 miles (one-way) from headquarters and/or residence when applicable and is fewer than 31 consecutive days.

Long-Term Travel: Travel that is in excess of 30 consecutive days becomes long-term travel. Specific reimbursement rates and reporting requirements apply; contact your Travel Liaison.

Per Diem Expenses: Meals, lodging, and all appropriate incidental expenses incurred may be claimed when conducting State business while on travel status.

Transportation Expenses: Various modes of transportation used while on official State business; for example, airfare, vehicle, taxi, and shuttle expenses.

Business Expenses: Charges necessary to the completion of official State business, such as business phone calls, emergency clothing, and emergency supplies. All purchases shall be justified, and if the total business expense is more than \$25, the claim must be approved by the DCA Accounting Administrator II.

Conference or Convention: A meeting with a formal agenda of persons to discuss or consult on specific work-related subjects with the purpose of exchanging views, providing lectures or dialogue, or providing or gaining skills and/or information for the good of the State. Requires an approved conference attendance request prior to attending and must be attached to the [Travel Expense Claim \(TEC\) \(STD 262 A\)](#).

Non-State Sponsored Conference: Planned, arranged, and funded by an outside entity.

State-Sponsored Conference: Planned, arranged, and funded by State agencies for the benefit of the State and/or outside parties for the purpose of conducting State business.

### **Policies**

Official Established Headquarters: Shall be designated for each State officer and employee and defined as the place where the officer or employee spends the largest portion of their regular workdays or working time, or the place to which they return upon completion of special assignments. In some instances, however, it may be in the best interest of the Department to designate either an employee's residence address or an assigned geographic area as their headquarters. Home-as-headquarters and



geographic area designations will be based upon a determination of “economic merit” for geographic and logistical circumstances where the State benefits from such a determination, either in increased efficiencies or reduced costs.

Signature Authority: The signature of the approving officer certifies that the traveler is authorized to travel, the expenses incurred were to conduct official State business, and that the items claimed are appropriate and keeping within the rules that govern State business travel. Typically, the approving officer would be the traveling employee’s immediate supervisor.

### Travel Approvals (Updated July 2023)

Type of Travel	Who Must Approve?	Date to DCA	Forms Required	Submittal Recipient/ Questions
Conference Attendance	<ul style="list-style-type: none"> <li>EOs, Bureau Chiefs or Deputy Directors</li> <li>DCA Deputy Director of Administrative Services</li> </ul>	One month prior to travel	<ul style="list-style-type: none"> <li><a href="#">Conference Attendance Request</a></li> <li>Conference Agenda</li> <li>Justification Memo</li> <li>All documents supporting the necessity &amp; mission criticality of the travel</li> <li>EO or AEO signature required</li> </ul>	<p><b>Nicole Le</b> Deputy Director, Administrative Services (916) 574-8301 <a href="mailto:Nicole.Le@dca.ca.gov">Nicole.Le@dca.ca.gov</a></p>
Mission Critical In-State Travel	<ul style="list-style-type: none"> <li>EOs, Bureau Chiefs or Deputy Directors</li> </ul>	<p>N/A</p> <p><i>Delegated Authority; Not Submitted to DCA for Approval</i></p>	<ul style="list-style-type: none"> <li>Approvers retain: <ul style="list-style-type: none"> <li>Justification Memo</li> <li>Agendas and all documents supporting the necessity and mission criticality of the travel</li> <li>EO, Bureau Chief or Deputy Director approval signatures</li> </ul> </li> </ul> <p><i>NOTE: If the travel is in-state and to a conference, the conference attendance process is to be followed.</i></p>	<p><b>Kam Khatra</b> Accounting Administrator II (279) 895-1347 <a href="mailto:Kam.Khatra@dca.ca.gov">Kam.Khatra@dca.ca.gov</a></p>

Out-of-Country	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Budget Office</li> <li>• DCA Director</li> <li>• Agency Secretary</li> <li>• Governor's Office</li> </ul>	Three months prior to travel	<ul style="list-style-type: none"> <li>• Out-of-State Travel Memo Template</li> <li>• <a href="#">STD. 257 Approval Request Form</a></li> <li>• Cost Breakdown Document</li> <li>• Agendas and all documents supporting the necessity and mission criticality of the travel</li> <li>• EO signature required</li> </ul>	<p><b>Taylor Schick</b> Chief Fiscal Officer (279) 278-5834 <a href="mailto:Taylor.Schick@dca.ca.gov">Taylor.Schick@dca.ca.gov</a></p> <p><b>Melissa Gear</b> Deputy Director, Board &amp; Bureau Relations (916) 574-8301 <a href="mailto:Melissa.Gear@dca.ca.gov">Melissa.Gear@dca.ca.gov</a></p>
Out-of-State	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Budget Office</li> <li>• DCA Director</li> <li>• Agency Secretary</li> <li>• Governor's Office</li> </ul>	Two months prior to travel	<ul style="list-style-type: none"> <li>• Out-of-State Travel Memo Template</li> <li>• <a href="#">STD. 257 Approval Request Form</a></li> <li>• Cost Breakdown Document</li> <li>• Agendas and all documents supporting the necessity and mission criticality of the travel</li> <li>• EO signature required</li> </ul>	<p><b>Taylor Schick</b> Chief Fiscal Officer (279) 278-5834 <a href="mailto:Taylor.Schick@dca.ca.gov">Taylor.Schick@dca.ca.gov</a></p> <p><b>Melissa Gear</b> Deputy Director, Board &amp; Bureau Relations</p>
Travel Advance Exception Request	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Deputy Director, Board &amp; Bureau Services</li> <li>• DCA Accounting Office</li> </ul>	10-days prior to travel	<ul style="list-style-type: none"> <li>• Advance approval in the CALATERS System (<b>Christine Lally</b>)</li> <li>• <a href="#">Travel Advance Exception Approval Request Form</a> (Kam Khatra)</li> </ul>	<p><b>Melissa Gear</b> Deputy Director, Board &amp; Bureau Relations</p> <p><b>Kam Khatra</b> Accounting Administrator</p>
50-Mile Exemption Request	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Accounting Office</li> </ul>	10-days prior to travel	<ul style="list-style-type: none"> <li>• Bulleted Memo</li> <li>• Additional Detail: <ul style="list-style-type: none"> <li>- Start and end time of the meeting(s)</li> <li>- Mileage from traveler's house to the meeting site</li> <li>- Estimated Commute Time</li> </ul> </li> <li>• EO or AEO signature required</li> </ul>	<p><b>Kam Khatra</b> Accounting Administrator</p>

Excess Lodging Request	<ul style="list-style-type: none"> <li>• EOs, Bureau Chiefs or Deputy Directors</li> <li>• DCA Accounting Office</li> <li>• California Department of Human Resources (CalHR)</li> </ul>	10-days prior to travel	<ul style="list-style-type: none"> <li>• <a href="#">Excess Lodging Form</a></li> <li>• Three lodging quotes</li> <li>• Justification as to why the proposed lodging is needed</li> <li>• Traveler or manager's signature required</li> </ul> <p>Note: CalHR approval required for lodging over \$250.</p>	<b>Kam Khatra</b> Accounting Administrator
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The Deputy Director of Board Relations approves Board Presidents' [TECs](#). Once they have been reviewed and initialed by the Executive Officer, the Board President shall approve the Executive Officer's and the Board Members' travel claims. In the absence of the Board President, the Board Vice President shall approve the Executive Officer's and the Board Members' travel claims.

The Deputy Director of the Office of Administrative Services approves Bureau and Board Presidents', Bureau Chiefs', Division Chiefs', and Deputy Directors' travel advances, expense claims, conference requests, and authorized signature forms. The Deputy Director of the Office of Administrative Services also approves all exception-to-travel status for board and bureau and Travel Advance Requests for non-salaried employees. In the absence of the Board President, the Board Vice President shall approve the Executive Officers' and the Board Members' travel claims.

In the extended absence of either the Deputy Director of Board and Bureau Services or the Deputy Director of the Office of Administrative Services, either can approve the above for boards and bureaus.

All approving officers must have a signature card on file with the Accounting Office before approving a claim.

Note: See DCA policy, form, and procedures posted on the ["Accounting" page of the DCA Intranet](#) regarding authorized signatures.

## Chapter 2. Per Diem Allowances

### Introduction

The State provides for reimbursement of actual and necessary out-of-pocket expenses while traveling on State business. When determining the appropriate amount of reimbursement allowed for meals, lodging, and incidentals, two criteria need to be

considered: distance and time. Employees on travel status must be at least 50 miles from home and/or headquarters. The most direct route determines this distance.

For short-term travel status per diem (meals, lodging, and incidentals), several factors need to be considered, such as:

- The bargaining unit of the employee (represented or excluded).
- Geographical location of travel must be at least 50 miles (one-way) from where the trip begins at headquarters and/or home. Factors include: Which is the closest distance? Is travel during normal working hours or not? Is it a second worksite?
- The timeframe in which the trip started and stopped.
- The type and location of facilities used for lodging.

**Lodging Rates**

Short-term reimbursement rates for lodging expenses are as follows. Please review your Bargaining Unit Contract on [CalHR](#) website for current rates.

<b>For Excluded/Exempt, BU 1 through BU 21</b>		
<b>Lodging</b>	<b>Maximum Lodging Reimbursement Rate Through December 31, 2023</b>	<b>Maximum Lodging Reimbursement Rate Effective January 1, 2024</b>
Statewide (except for those listed below)	\$90 plus taxes/resort fees on the entire cost of the lodging rate.	\$107 plus taxes/resort fees on the entire cost of the lodging rate.
Alameda	\$140 plus taxes/resort fees on the entire cost of the lodging rate.	\$189 plus taxes/resort fees on the entire cost of the lodging rate.
City of Santa Monica	\$150 plus taxes/resort fees on the entire cost of the lodging rate.	\$270 plus taxes/resort fees on the entire cost of the lodging rate.
Los Angeles, Orange, Ventura Counties, and Edwards AFB, excluding the City of Santa Monica	\$120 plus taxes/resort fees on the entire cost of the lodging rate.	\$169 plus taxes/resort fees on the entire cost of the lodging rate.
Marin	\$110 plus taxes/resort fees on the entire cost of the lodging rate.	\$166 plus taxes/resort fees on the entire cost of the lodging rate.
Monterey	\$125 plus taxes/resort fees on the entire cost of the lodging rate.	\$184 plus taxes/resort fees on the entire cost of the lodging rate.

Napa	\$95 plus taxes/resort fees on the entire cost of the lodging rate.	\$195 plus taxes/resort fees on the entire cost of the lodging rate.
Riverside	\$95 plus taxes/resort fees on the entire cost of the lodging rate.	\$142 plus taxes/resort fees on the entire cost of the lodging rate.
Sacramento	\$95 plus taxes/resort fees on the entire cost of the lodging rate.	\$145 plus taxes/resort fees on the entire cost of the lodging rate.
San Diego	\$125 plus taxes/resort fees on the entire cost of the lodging rate.	\$194 plus taxes/resort fees on the entire cost of the lodging rate.
San Francisco	\$250 plus taxes/resort fees on the entire cost of the lodging rate.	\$270 plus taxes/resort fees on the entire cost of the lodging rate.
San Mateo	\$140 plus taxes/resort fees on the entire cost of the lodging rate.	\$222 plus taxes/resort fees on the entire cost of the lodging rate.
Santa Clara	\$140 plus taxes/resort fees on the entire cost of the lodging rate.	\$245 plus taxes/resort fees on the entire cost of the lodging rate.

Lodging facilities include commercial hotels and motels and residential property—short term rental, that are reserved for fewer than 30 days. (See [CalHR PML-2015-039](#), Assembly Bill 229 (Stats. 2015, ch. 770), effective January 1, 2016 through December 31, 2018.) All rates for reimbursement are limited to State-contracted lodging rates. (See [CalHR Travel Reimbursements](#).)

### **Delegation of Authority to Departments to Approve Certain Excess Lodging Rate Requests**

Typically, state employees who are required to travel for official state business must submit Excess Lodging Rate Requests for advance approval of lodging rates that exceed the state’s maximum lodging reimbursement rates.

Effective September 19, 2023, CalHR delegates authority to departments to make determinations regarding Excess Lodging Rate Requests up to \$350 per night as follows, for:

- Requests submitted prior to the travel dates.
- Requests submitted after the travel dates (after-the-fact requests).

Excess Lodging Rate Requests are required if the requested lodging rate is more than the state rate. As noted above, CalHR’s Travel Reimbursements page lists the current state rates

for all excluded and all represented employees. All Excess Lodging Rate Requests for amounts above the delegated amount of \$350 per night will continue to require CalHR approval in advance, unless the purpose of the travel is to respond to:

- A State of Emergency declared by the Governor as noted in the “Blanket Excess Lodging Requests – Declared Emergency” language above.
- An emergency circumstance for which the department has an approved general blanket exemption from CalHR as noted in the “Blanket Excess Lodging Rate Requests – General Exemption” language above.

For exceptional circumstances that may require after-the-fact submission, after-the-fact Excess Lodging Rate Requests over \$350 per night require CalHR approval, unless the purpose of the travel is to respond to:

- A State of Emergency declared by the Governor as noted in the “Blanket Excess Lodging Requests – Declared Emergency” language above.
- An emergency circumstance for which the department has an approved general blanket exemption from CalHR as noted in the “Blanket Excess Lodging Rate Requests – General Exemption” language above.

All Excess Lodging Rate Requests, including after-the-fact requests and group requests, approved by a department in accordance with this delegation shall be included in the department’s Annual Excess Lodging Report submission to CalHR.

Departments should continue to follow their current processes for completing and submitting Excess Lodging Rate Requests to CalHR.

CalHR may modify the delegated approval authority to departments, as appropriate.

### **Hotel Tax Waiver**

The [Hotel/Motel Transient Occupancy Tax Waiver, STD 236 \(New 9-91\)](#), is available on the [DCA Intranet](#) Travel Home Page and should be used whenever possible. This form must be completed in advance and given to the hotel for its records. In most cases, employees must ask for the exemption at time of reservation. Some hotels will not honor the tax waiver.

### **Acceptable Receipts**

Lodging receipt must indicate the establishment’s name, address, and check-in/check-out dates and times, number of occupancies, room rate, taxes, and method of payment.

In the rare event where an employee chooses to use a third-party vendor (such as Priceline.com, Expedia.com, Travelocity.com, Hotels.com, etc.) to make travel arrangements, the following instructions must be strictly adhered to:

- Employees who request reimbursement for receipts from third-party vendors for lodging expenses related to a State-approved relocation or for lodging expenses incurred while traveling on State business, must provide a valid receipt from the third-party vendor and the commercial lodging establishment where the employee stayed.

Both receipts are required to properly substantiate a valid business expense.

### Sharing a Room

When sharing a room with another State employee, each person can claim half the room rate, or one employee can claim the entire amount and reference the other person in the comment section. Both employees should file their travel expense claims ([TECs](#)) at the same time and a copy of the other's claim should be attached to their own.

### Meal Rates

There are no flat reimbursement rates. All items claimed are to be for the actual amount of the expense, up to the following maximum reimbursement amounts listed below. The employee (or agent of the State) shall not claim reimbursement for any meals provided by or included in the cost of the hotel stay, airfare, and conference or convention registration fee and/or provided by the terms stated in a State contract. Please review your Bargaining Unit Contract on [CalHR, Travel Reimbursements](#) website for current rates.

Excluded and/or exempt employees and represented employees in Bargaining Units (BU) 1 through 21, please review your existing MOU for current rates (see following table).

Expense	Reimbursement Rate for Actual Expense Through December 31, 2023	Reimbursement Rate for Actual Expense Effective January 1, 2024
Breakfast	Up to \$7	Up to \$13
Lunch	Up to \$11	Up to \$15
Dinner	Up to \$23	Up to \$26
Incidental	Up to \$5	Up to \$5

### Fewer Than 24 Hours

The following table shows conditions under which a represented or non-represented employee may be reimbursed for meals while on travel status, if the trip is fewer than 24 hours:

Starts Trip on OR Before	Returns from Trip on OR After	Entitled To
6 a.m.	9 a.m.	Breakfast
4 p.m.	7 p.m.	Dinner

Note: Board and committee members are entitled to meals, including lunch, on a one-day trip only when attending official scheduled board or committee meetings. These meal expenses are excused from the travel status mileage requirement, but all-time requirements are applicable; for example, start trip at or before 11:00 a.m. and end at or after 2 p.m. to claim lunch. In addition, meals on trips of fewer than 24 hours will be reported as a taxable fringe benefit as required by the IRS.

### More Than 24 Hours

If a trip is more than 24 hours, but fewer than 31 consecutive days, a represented or non-represented employee is entitled to breakfast, lunch, and dinner for every full 24-hour period while on travel status. The following table shows the meal entitlements for the last fractional period:

Starts Trip on OR Before	Returns from Trip on OR After	Entitled To
6 a.m.	8 a.m.	Breakfast
11 a.m.	2 p.m.	Lunch
5 p.m.	7 p.m.	Dinner

### Incidentals

Incidental reimbursement is allowed for every full 24 hours of travel up to the maximum amount allowed per Bargaining Unit Contract for actual necessary expenses. Incidentals include expenses for fees and tips for services such as porters, baggage carriers, and hotel staff. No other items may be claimed as an incidental cost. (See [CalHR PML 2015-003](#) and [IRS Publication 463](#).)



### **Business-Related Meals**

In rare instances, the cost of business-related meal expenses may be allowed. It must be clearly shown that it was impractical to conduct the State's business during working hours and that the meal took place in conditions beyond the employee's control. Justification should be provided on the [TEC](#).

The statement must include the purpose or goal of each business-related meal and the unusual conditions that justify payment. The employee may claim expenses not to exceed the breakfast, lunch, or dinner allowance, whichever meal was consumed. The amount must be supported by a voucher or receipt for represented employees. Claims must include the establishment, the persons in attendance, and the business conducted during the meal period. No reimbursement is allowed for the meal if the employee claims per diem for that day.

Allowable meals may include Participants from different cities hold a luncheon to allow one or more of them to make connections on a scheduled flight; an employee is required to go to lunch as a member of a group, such as a board or commission where official business is conducted; the meeting does not adjourn during the lunch and the employee has no choice of place to eat.

Non-allowable meals include: Two or more employees go to lunch together and continue their business as an incidental to the meal; the meal is strictly for public relations purposes; departments call meetings with their own and/or other department employees to conduct State business; the meeting could have taken place during regular working hours.

### **Receipts**

Although the Department does not require receipts for most meals or incidentals, except as noted above, the traveler must retain all their meal and incidental receipts for IRS purposes.

### **Overtime Meals and Rates**

Overtime meal reimbursement is allowed when the employee works two excess hours, either consecutive or contiguous to regular scheduled work hours. Rates and terms are defined by each bargaining unit contract as stated below. In determining the overtime hours worked for meal compensation, do not include any breaks for meals. Only one meal allowance may be claimed each day unless the employee has worked a minimum of 16 hours. For every six additional hours worked in excess of ten hours, another meal allowance may be claimed, not to exceed three overtime meals within 24 hours.

<b>Bargaining Unit</b>	<b>Rate</b>	<b>Consecutive*</b>	<b>Contiguous*</b>
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10	\$7.50	X	
1, 4, 11 & 14	\$8.00		X
2, 7, 9, 12, 16 & 19	\$8.00	X	
Excluded & 21 (exempt FLSA)	\$8.00	X	

### Definitions

**Consecutive:** Works either two hours before or two hours after normal work hours on a regular scheduled workday; works two hours more than normal work hours on weekends, holidays, or regular scheduled day off (RDO).

**Contiguous:** Works two or more hours more than the number of hours worked on regular scheduled workday.

**Excluded:** Work Week Group Exempt (WWGE) and Represented Employees Exempt from Fair Labor Standards Act (FLSA) are only entitled to overtime meals for extended arduous work.

### Arduous Work OT Meal

**Meals for Extended Arduous Work:** On those rare occasions when an employee who is in a Work Week Group other than Work Week Group 2 would be required to physically or mentally work ten hours or more (not including any breaks for meals) for an extended period. The employee, with approval of the appointing authority, may claim the actual cost of an arduous work meal up to \$8. Such meals should only be approved when the work schedule is consistently in excess of a normal full-time schedule. Occasional extra hours worked, consistent with the nature of other than a Work Week Group 2 schedule, do not meet the criteria for Extended Arduous Work Meals.

### Excess Lodging Policy and Procedure

Request for reimbursement of lodging expenses in excess of the State-specified rates, excluding taxes, must be received ten days prior to the trip. Approval is required from the DCA Accounting Administrator II up to \$250 and CalHR if more than \$250. Please note that although DCA has been delegated authority to make determinations regarding Excess Lodging Rate Requests up to \$250 per night, the Excess Lodging Rate Form (STD 255C) has been updated to reflect the increased amount. The [Excess Lodging Rate Request \(STD 255C\)](#) form located on [DCA Intranet](#) should be completed and contain the following:

- A list of at least three hotels contacted using the Concur CI Azumano website to obtain State rate lodging. Contact additional hotels if no State rate hotels are found within the work area.

- Supporting documentation that a reasonable effort was made to locate lodging at State-specified rates. Using only higher-rate hotels in the documentation cannot be considered reasonable efforts.
- Explain any applicable reasons for the State business need for an exception to the State's standard lodging rate.
- Obtain all required signatures and submit the request to the DCA Travel Unit at least ten working days prior to the trip, when possible.
- Employees who incur expenses in excess of standard reimbursement will be responsible for the difference if the excess lodging request is denied.
- Attach agendas for any approved conference or convention that would assist in the travel justification.

#### **Reasonable Accommodation**

A reasonable accommodation can be obtained with supporting documentation through DCA Office of Human Resources Health & Safety Unit when travel requirements are a hardship to the employee for medical reasons. Please obtain the reasonable accommodation approval prior to the trip. (See [Health & Safety Unit, Reasonable Accommodation, DCA Intranet.](#))

#### **Exception to Travel Status Policy**

It is the policy of the DCA to adhere to the rules and regulations as defined by the CalHR regarding the approval of requests for reimbursement within 50 miles of the employee's home and headquarters when conducting official State business. Extreme acts of God and nature that place the employee in harm's way are automatic and will be approved after the fact, when fully documented ([SAM section 0715, CalHR PML 93-28.](#))

Note: All exceptions to travel status reimbursements will be reported as a taxable fringe benefit as required by the IRS.

#### **Exception Authority, Limits, and Criteria**

The CalHR delegated the exception to travel status authority to the Director of the DCA, who delegated the authority to the Chief Accounting Officer. There is no other allowable signature authority for this delegation. This delegation is extended with the provision that it will be administered according to the criteria, considerations, and record-keeping requirements as stated below. All exceptions are subject to audit by CalHR. Exceptions are to be granted in advance of the occurrence by the appointing power.

This delegation does not extend to the approval of meals or lodging at either the home or headquarters location. There is no allowance for any increase in the standard short-term travel reimbursement rates for meals and lodging or partial exceptions, such as lodging allowance without meals. When exceptions meet all the requirements and are granted by the Chief Accounting Officer, the employee is entitled to full short-term travel reimbursement rates. This exception is not to be used in lieu of overtime for one-day travel.

Exception requests will be considered under a limited number of circumstances when the employee is required to be away from their home and headquarters locations for more than a single day, but fewer than 50 miles. These include the nature of the work performed, the hours of work, or the apparent road and/or weather conditions make it impractical for the employee to return home or to the headquarters location at night.

The CalHR has guidelines for an exception approval criterion that includes reasonable commute mileage. State departments are expected to demonstrate that every consideration has been given to minimize the cost to the State through responsible planning and scheduling.

### **Exception Process**

A written request must be submitted in advance of the occurrence to the Accounting Office for review and approval by the Chief Accounting Officer. The Executive Officer or the Division/Bureau/Program Chief must approve all exception requests. Requests must contain the following information for each attendee:

- Name and classification of employee(s) requesting exception. If the time period and reason for expense are the same, submit a group request listing each employee's name, classification, the time period, and reason.
- Home and Headquarters address with distance to location of the event.
- Name and address of the location where expenses will be incurred.
- Name of the sponsor of the event.
- Reason(s) for the exception request; attempts made to reduce the costs.
- Amount of the anticipated expenses, including tax.
- For a conference or convention with more than one attendee, explain why one employee could not achieve the goal and attach a training and development request with approval.

Note: Provide copies of the agenda, conference/convention announcements, and map/mileage printouts. Once the exception request has been processed, a copy will be forwarded to the requesting office by the DCA Accounting Office. The requesting office

must maintain a record of each request for the standard five-year record retention schedule.

## **Chapter 3. Transportation.**

### **Introduction**

The cost of transportation while on official State business should be accomplished by using the most economical means for the State, according to the [SAM section 0700 \(General Policy\)](#).

All transportation costs related to State business travel should be entered on all [TECs](#).

Transportation expenses consist of:

- Commercial airfares;
- Private vehicle use;
- Commercial rental car use;
- Gasoline for State or rental cars;
- Taxis, shuttles, or streetcar fares;
- Transportation Network Companies (TNT) – Uber and Lyft;
- Parking of State, rental, or privately-owned vehicles;
- Bridge and road tolls;
- Emergency repairs (State cars only); and
- Commuting transit/vanpool (employee benefit) use.

### **Supervisor's Responsibility**

It is the supervisor's responsibility to ensure the method chosen for travel on State business is in the best interest of the State and not for the employee's convenience.

### **Determining the Most Economical Mode of Travel**

When determining the most economical mode of transportation, the following costs should be considered:

- Employee's time;
- Expenses for transportation (airline, bus, train, parking, shuttle, tolls, etc.);
- Expenses for meals, incidentals, lodging, and any other State business expense;
- Urgency of the situation.
- If the employee must carry specialized equipment.
- Number of stops and amount of equipment.
- Number of people to be transported (is it more economical?).
- Driving time one-way (is it more than two hours?).
- Availability of transportation to and from the destination; and
- Overtime wages.

#### **Cost Comparison**

Reimbursement will be made for the mode of transportation which is in the best interest of the State, considering direct expenses as well as the employee's time. If the employee chooses a more expensive mode of transportation, reimbursement will be for the least expensive mode of travel. Expenses incurred at the travel destination will be reimbursed based on the actual business expenses incurred while at that location.

A [cost comparison](#) must:

- Be completed and attached to the [TEC](#), showing both methods of travel.
- Include the least costly methods of travel for those expenses being substituted.
- Include only the expenses of traveling from one location to another. Do not include any worksite expenses. Expenses incurred onsite are to be claimed separately.
- An employee choosing to use a more expensive mode of transportation will only be reimbursed for the amount it would have cost for the most economical mode of travel.
- A [cost comparison](#) showing actual cost incurred versus the most economical mode and cost must be submitted with an employee's [TEC](#). The [cost comparison form](#) is provided in Appendix A for your convenience.

### Example of Cost Comparison

The most common cost comparison is when the employee chooses to drive their personal vehicle versus using normal air transportation. For example, when an employee drives (having obtained supervisor's prior approval) to Los Angeles from Sacramento, the comparison is computed from the point the employee would normally have left on travel status in Sacramento to the point of landing in Los Angeles. Please note all cost comparisons should be calculated using the current mileage rate and State rates for airfare if applicable.

Air Costs		Vehicle Costs
Ticket roundtrip	\$216.00	Mileage: City-to-city roundtrip:
Mileage to/from airport		
30 miles x 67.0 cents per mile=	\$20.10	720 miles x 67.0 cents per mile = <b>\$482.40</b>
Parking	<u>\$22.00</u>	
Total	\$258.10	

### Reimbursement

The least expensive method of transportation will be reimbursed on the [TEC](#). The time requirement for meals and lodging would be allowed for the time the employee would have left and returned had they flown. Additional meal and lodging expenses incurred as a result of using an alternative method of transportation is at the employee's own expense.

### Exception

An exception to the least-expensive requirement would be if an employee has a reasonable accommodation approval through the Department [Health & Safety Unit](#), which prevents the employee from specific modes of travel, such as air travel.

Request guidance from the Accounting Office Travel Unit ([calaters@dca.ca.gov](mailto:calaters@dca.ca.gov)) when special circumstances arise prior to commencing the trip.

### Direct and Indirect Travel Arrangements

All travel arrangements for air, auto rental, and lodging for official State business must be made through the Department's approved travel agency, Concur CI Azumano.

### Air Travel

Before making airline reservations, be aware of the contract rates and where to book your flights. The State contracted rate includes airfare for origination and destination points known as city pairs for within California, out-of-State, and international

destinations. The contract rates are unrestricted one-way fares and are not subject to limited seating.

When booking on Southwest Airlines, you should only select “Want to Get Away”. You should never select Business Class-type flights; if selected, you will be responsible for the difference in cost.

The 2020-24 contract fares are with United Airlines and Southwest Airlines. You must purchase your airline tickets through the CI Azumano, the certified State travel agency, using your Department’s centralized US Bank Business Travel Account (BTA). The CI Azumano website contains the online booking tool Concur Travel (formerly Cliqbook), the online booking tool for all airline travel.

All travel arrangements for official State business must be made through the Department’s approved travel agency, CI Azumano (

[www.caltravel.ciazumano.com](http://www.caltravel.ciazumano.com)

Current Airfare Contract: DGS TB #20-03 Airfare for Official State Business; July 1, 2024 – June 30, 2025

Air Travel: [SAM section 741](#).

Airline Itinerary Requirements: [SAM section 8422.114](#).

### **Airport Parking**

Employees parking at the airport must use the most economical parking available. However, if the board, bureau, or division determines that additional parking costs above the lowest-cost option are in the best interest of the State, a justification explaining the necessity for the additional cost shall be submitted with the employee’s [TEC](#). Without a receipt, reimbursement is limited to \$10. Please note, [TECs](#) submitted without the required justification may be cut by the State Controller’s Office. (See [CalHR PML 2007-024](#).)

Agencies/departments may consider the following items when determining if additional parking costs are in the best interest of the State:

- The direct expense; and
- The officer’s or employee’s time.

Please contact your Department’s Travel Liaison to initiate the start of your CI Azumano profile. You must complete your registration before booking your travel.

Please use the links below for training and more information:



After the initial profile setup, you'll access the reservation system at

[www.caltravel.ciazumano.com](http://www.caltravel.ciazumano.com)

- . Click on “Concur Login” to complete your profile.
- [Concur Travel Demo](#) (video) and [Concur Interactive Training](#).
- Concur Travel FAQs: [Concur Travel Booking Tool Training, Guides](#)

For security reasons, every traveler will need to contact their board or bureau Travel Liaison to initiate their CI Azumano profile. Your user ID is your Department e-mail address. You must use your Department e-mail address as your user ID to have access to our Department’s company ID. This e- mail address will be your user ID for future access to the reservation system. After you receive your temporary password, you can complete your profile and book your trips. In addition, you’ll need to change the temporary password to ensure your account is secure. Once you’ve established a user ID and password, the system will request that you complete the profile. After you’ve completed the profile, you must save the information before you attempt to book a trip. The CI Azumano has a travel reservation guide and video to help; they are provided on the website and link above.

### **Non-Employee Reservations (Airfare and Lodging)**

You can make reservations for non-State employees conducting State business for your program, such as subject matter experts, volunteers, witnesses, or contractors, and receive State rates when using the DCA State-contracted travel service agency. One-time travelers should be booked as a guest traveler; no profile should or needs to be established.

### **Frequent Flyer Programs**

Employees who earn travel premiums (frequent flier miles/points) while on official State business may use these travel premiums for their personal use. The value of these premiums will not be reimbursed to the employee if used for State business. (See [PML 2005–051](#).)

### **Receipts**

Airline itinerary or passenger receipts should include the traveler's name, dates and times of travel, destination, and amount of airfare. This document must be submitted with the employee's [TEC](#). The cost should always be entered on the claim as “Commercial Airfare,” and “Department Paid” should be selected for payment type.

### **Privately Owned Aircraft Usage [SAM 0743](#) and [0746](#)**

Travel on official State business may be by privately owned, rented, or leased aircraft whenever this is the least costly means or is in the best interest of the State.

Employees must first obtain supervisor and agency approval. Employee pilots shall certify at least yearly to their employing agency that they have the required liability insurance during the period of official travel. These required limits are shown on [STD 265 \(New 2-91\)](#). Use [STD 265](#) for certification and insurance. (See [SAM section 0746](#).)

In all cases, the aircraft must be certified in accordance with Federal Aviation Administration regulations and properly equipped for the type of flying to be performed.

State employees who pilot aircraft on official State business must meet the requirements of CalHR Rule 599.628 and [SAM section 0747](#).

Reimbursement for use of privately-owned aircraft: [SAM section 0744](#)

The reimbursement rate for employee privately owned aircraft is \$1.74 per statute mile effective Jan.1, 2023 to Dec 31, 2023 [Private Aircraft Mileage](#). Mileage is computed on the shortest air route from origin to destination, using airways whenever possible. Enter "Air Miles" and mileage on the [TEC](#). For expenses other than mileage, substantiate the expense with a voucher. Landing and parking fees are paid except at the site where the aircraft is normally stored.

### **State-Owned, Privately Owned, and Commercially Owned Rental Vehicle Use**

Agencies determine who will drive on official State business and the vehicle type to be used: State-owned, privately owned, or commercially owned vehicles. The definition of "use of a State vehicle in the conduct of State business" includes the use of State vehicles "when driven in the performance of, or necessary to, or in the course of, the duties of State employment and shall include the operation of State-owned or leased vehicles as commute vehicles in a carpool or vanpool program authorized by a State agency." ([SAM section 0750](#).)

State vehicles may be authorized when two or more employees are traveling together; the trip includes intermediate stops not feasible for public transportation; the schedule of public carriers does not fit the itinerary; transportation is not available at the destination; or an employee must carry specialized tools, books, etc.

Privately owned vehicles may be used by employees on official State business if this is approved by the DCA. If the use is not less costly, the supervisor may authorize the use, but the payment will be for the less-costly alternative. No agency will require an employee to use their privately-owned vehicle unless this is a formal condition for employment.

The following circumstances are prohibited uses of State vehicles:

- Using the State vehicle for anything other than conducting State business.
- Carrying in the vehicle non-Departmental employees, friends, or family members.
- Using the vehicle for private or recreational use.

**Commercially owned rental vehicles** may be rented when a State vehicle is not available and automobile travel is essential. The employee must return the rental car at the end of each work week State business is concluded. Refer to the [Department of General Services \(DGS\) website](#) to view the rental car contract and ensure adherence to State policy. (See Appendix.)

### Commercial Rental Cars

Transportation Services: [SAM Section 4100](#)

CalHR Policies for Method of Travel: [Travel Reimbursements - CalHR](#)

[DGS State Fleet Handbook \(revised May 2008\), at Page 5.](#)

DGS Rental Car Policies and Procedures: [Car Rental Resources for State Travel](#)

The State contract vendor for rental vehicles is Enterprise Rent a Car. The [current contract](#) is effective March 2019. Click on [www.dgs.ca.gov/travel/Programs/RentingaVehicle.aspx](http://www.dgs.ca.gov/travel/Programs/RentingaVehicle.aspx) for more information.

[Commercial Car Rental Car Rates](#) as of March 1, 2019: [http://inside.dca.ca.gov/documents/travel\\_rental\\_19-01.pdf](http://inside.dca.ca.gov/documents/travel_rental_19-01.pdf)[RentingaVehicle.aspx](#) for more information.

The rental of alternative fuel vehicles is encouraged, and their rental rate should be the same.

Here's a link to the complete [rental car contract](#).

### Car Rental Reservation Information

Rental Car reservation must be made on [Concur CalTravelStore](#) ([www.caltravel.ciazumano.com](http://www.caltravel.ciazumano.com)).

**Commented [LK1]:** FYI - There is a different link that points to the Travel Store

To receive the contract rate, employees are required to provide a current driver license and a second form of identification (ID) to ensure a smooth delivery of service when

renting a vehicle. Acceptable second forms of ID can be an employee issued ID badge, a business card, a copy of a travel itinerary booked through CI Azumano or Concur (the online reservation tool), or an authorization letter on Department letterhead. Reservations are required to be made in advance on Concur.

Employees must NOT:

- Extend rental agreements for personal business and pay the difference. When extending business trips for personal reasons, the employee must stop the State rental agreement and initiate a new personal rental agreement.
- Agree to purchase insurance. Insurance is included in the State contracted rates.
- Agree to purchase the fuel service option or prepaid fuel (i.e., a flat refueling rate).
- Agree to purchase higher rate, non-economy cars.
- Carry unauthorized, non-State employees in a rental or State vehicle. If travel plans change, please cancel the reservation.

### **Insurance**

The State contract includes insurance and employees should not accept additional insurance. Employees using a noncontracted vendor may not have insurance included in their rental rate. The employee will be personally responsible for the insurance costs when choosing to use a noncontracted vendor.

In the event an at-fault accident occurs when renting a noncontract vehicle, the employee and the Department may be legally responsible for all damages sustained by others as well as property damage to the rental vehicle. More information on SAM Insurance and Surety Bonds is available at [SAM section 2400](#).

### **Receipts**

DCA policy requires the final rental car receipt be attached to the expense reimbursement claim (STD 262 or CalATERS), whether charged to the Department or paid by the employee. The receipt must indicate the amount charged and payment method. Pre-calculations or reservation agreements are not acceptable. (See [SAM section 8422.115](#); [https://www.dgsapps.dgs.ca.gov/documents/sam/SamPrint/new/sam\\_master/sam\\_master\\_file/chap8400/8422.115.pdf](https://www.dgsapps.dgs.ca.gov/documents/sam/SamPrint/new/sam_master/sam_master_file/chap8400/8422.115.pdf).)

### **Forms of Payment**

The contract requires use of the Corporate Rental Business Traveler Account (CRBTA). Use of cash or the traveler’s personal credit card will not guarantee the State contract rate or the State’s insurance coverage.

A [Short-Term Vehicle Justification Form](#), signed by the employee's supervisor will be required for the following “exceptions” for State departments to submit to the State Controller’s Office (SCO):

- Renting a vehicle larger than compact/intermediate size;
- Renting a vehicle from a noncontracted vendor;
- Needing physical or medical accommodations; and

All employees **are not** required to refuel the rental car vehicle prior to returning. When refueling the rental car, the employee must submit a detailed gasoline receipt for reimbursement. Gasoline receipts must show the date of purchase, method of payment, and an expense breakdown: number of gallons, price per gallon, and extended total purchased amount. Prepaid fuel receipts are not acceptable for reimbursement.

The SCO approval form should be attached to the invoice and travel expense claim associated with the justification. State departments are no longer required to receive approval from the DGS Statewide Travel Program. The Short-Term Vehicle Justification Form is available on the DGS website.

Rates include unlimited mileage and are not subject to blackout dates. Contracted vehicle rates information is available on the [DCA Intranet, Travel Bulletin](#). Examples of vehicles are listed in parentheses shown on the list below. The Maximum Cap Rate (MCR) includes the base rate, all fees, all charges, in addition to airport fees, vehicle license fees and, State, city and county, or local surcharges that apply to the commercial car rental industry as a whole and identified by airport. Sales tax and refueling charges are not included in the contract rate.

**Short-Term Commercial Car Rental Cost Table**  
**Base Rate with \$300,000 Insurance for Short-Term Rentals**  
 (Effective March 1, 2024 – February 2025)

Vehicle Class Type	Daily	Weekly
<b>Compact</b> (Nissan Versa, Toyota Yaris)	\$40.54	\$170.28
<b>Mid-Size/Intermediate</b> (Toyota Corolla, Nissan Sentra)	\$40.54	\$170.28
<b>Full-Size</b> (Chevy Impala, Nissan Altima)	\$41.89	\$175.92

<b>FWD/Sport Utility Vehicle</b> (Ford Escape, Jeep Liberty)	\$59.07	\$295.35
<b>Minivan</b> (Chrysler Town and Country, Dodge Grand Caravan)	\$59.07	\$295.35
<b>Pick-Up Trucks</b> (Chevy Silverado, Ford F150)	\$69.81	\$322.20
<b>Plug-In Hybrid Electric Vehicle/Zero Emission Vehicle</b> (Nissan Leaf, Chevy Volt)	\$58.00	\$289.98
<b>Hybrid Electric Vehicle</b>	\$50.48	\$252.39

Note: The State of New York is exempt from the Base Rate listed above. Such rates are subject to open market rates quoted at time of actual car rental.

#### Private Vehicle Authorization and Use

The SAM requires that before any employee, including a board member, uses a privately owned vehicle to conduct State business, that employee must obtain authorization in writing from his or her supervisor and certify that the vehicle will be operated in compliance with [SAM section 0753](#). An Authorization to Use Privately Owned Vehicles on State Business form ([STD 261](#)) should be completed and on file with the immediate supervisor. The [STD 261](#) form must be updated and re-signed annually.

Employees should be aware that the insurance maintained by the State is for the liability above the amount of the employees' policies. All employees driving on State business must carry evidence of liability insurance coverage. Mileage rates paid to employees include an amount that reimburses employees for maintaining minimum insurance coverage.

#### Mileage Rate Reimbursement

The following table shows the mileage reimbursement rates for privately owned vehicles: [Mileage Rate](#)

##### Mileage Reimbursement Rates for Privately Owned Vehicles

1/1/2022 – 6/30/2022	58.5 cents per mile
7/1/2022 – 12/31/2022	62.5 cents per mile
1/1/2023 – 12/31/2023	65.5 cents per mile
Effective 1/1/2024	67.0 cents per mile

### **Alternate Worksite Mileage**

When an employee's regular work assignment requires reporting to a second location other than headquarters (e.g., a training site), mileage reimbursement is limited to the actual mileage incurred less their normal commute distance.

### **Airport Dropoff**

When an employee is driven to a common carrier and no parking expenses are incurred during the employee's absence, they may claim mileage reimbursement at double the number of miles from headquarters or residence, whichever is fewer, while the employee rides in the vehicle. If travel commences or terminates one hour before or after normal work hours, or on a regularly scheduled day off, mileage may be computed from the residence.

Minimal parking expenses for pickup will be allowed, with justification and/or notation on the [TEC](#).

### **Motor Vehicle Accident Reporting**

All accidents involving a State-owned vehicle, or any vehicle being used on State business ([SAM section 0757](#)), must be reported. Report all accidents immediately to your manager and to the DCA Business Services Office. Accidents must be reported within 48 hours to the Office of Risk and Insurance Management on a Vehicle Accident Report [STD 270](#) form. State reporting requirements are in addition to a regular police report as required by law.

Accident reimbursement claims require special approval and processing. Therefore, contact the DCA Travel Unit for guidance.

### **Overtime and Callback Mileage**

Callback or scheduled overtime mileage incurred on a normal day off, from your home to established headquarters, is reimbursable for Non-represented employees and the reimbursement is a reportable fringe benefit. **Note: Overtime mileage for represented employees is not allowed for pre-scheduled overtime.**

### **State Vehicle Emergency Repairs**

Emergency State vehicle repairs can be reimbursed on a [TEC](#) with the appropriate receipt and written justification or explanation of the event. Repairs require Fleet Administration approval. For non-emergency car repairs, the employee should have the vendor bill the program directly.

## Taxis and Shuttles

Taxis and shuttles should be used for trips within a reasonable distance (10 to 15 miles). Reimbursement can be made on a [TEC](#) for the actual cost of the expense with a receipt, or for no more than \$10 without a receipt. General Service charge cards are accepted for taxi and shuttle services within the Sacramento and Fresno areas. **Tips or gratuities to drivers are reimbursable up to \$2.00 or 20% whichever is greater.** Tips or gratuities for exceptional services, such as loading and/or unloading substantial luggage or multiple exam material, is allowable with written justification and receipt.

## Uber and Lyft

Per [CalHR PML2015-039, Assembly Bill 229 \(Stats. 2015, ch. 770\)](#), effective January 1, 2016 through December 31, 2018, Uber and Lyft are acceptable State travel modes of transportation. An original detailed receipt is required to be attached to the claim for reimbursement. (See [PML 2015-039](#).) **See above for changes on Tips.**

Zipcars are not authorized for use as State travel transportation.

## Parking and Tolls ([SAM section 0755](#))

Parking and tolls in excess of \$10 require a receipt and may be paid for:

- Day parking when the trip is away from the headquarters office and residence.
- Overnight public parking when the traveler is on travel status.
- Callback or scheduled overtime on a normal day off.

## Commuting Transit and Vanpool

*Employees who commute to and from work via public transportation or qualifying vanpools may be eligible for up to a 100-percent discount or reimbursement on public transit passes up to the monthly exclusion amount provided by the IRS. Reimbursement is based on actual cost supported by a receipt or proof of purchase.*

Mass transit and vanpool subsidy increases apply to the following eligible employees, including employees headquartered out of state:

Bargaining Unit and Related Excluded	Effective Date
R02,S02,M02,R09,S09,M09,R18,S18,M18	October 1, 2022



R08,S08,M08, and related CEA* positions	December 1, 2022
R13 and S13	August 2, 2022
R1, R3, R4, R6, R7, R11, R12, R14, R15, R17, R19, R20, R21, and all excluded employees, regardless of CBID	October 1, 2023
R16	July 1, 2024

\*CEAs must be directly tied to BU8.

The mass transit and vanpool subsidy increases are as follows:

- Public transit (mass transit) passes
  - 100 percent discount on public transit passes sold by state agencies, up to the monthly exclusion amount provided by the Internal Revenue Service (IRS).
  - 100 percent reimbursement on public transit passes purchased by state employees, up to the monthly exclusion amount provided by the IRS.
- Vanpool drivers and riders
  - 100 percent reimbursement on the monthly fee, up to the monthly exclusion amount provided by the IRS.

For 2022 and 2023, the maximum monthly exclusion amount provided by the IRS is \$280 and \$300, respectively.

Effective January 1, 2024, the maximum monthly rate was increased to \$315, without tax consequences.

The combined maximum allowable monthly exclusion amount for employees who are eligible to claim both mass transit and vanpool shall not exceed the combined IRS maximum monthly exclusion amount.

Part-time employees' reimbursement may be prorated to correspond to their appropriate work schedule. Daily passes may be utilized for part-time employee reimbursement.

The State will pay \$135 per month to the primary driver of a qualifying vanpool consisting of 7 to 15 people in lieu of the vanpool/transit rider incentive for the bargaining units listed above. A qualifying vanpool must meet both IRS section 132 and CalHR 599.936 criteria. (See CalHR webpage for [Miscellaneous Programs](#).)

## CHAPTER 4. BUSINESS EXPENSES AND RECEIPTS.

### Business Expenses

Business expenses are costs that are necessary for the completion of State business.

Examples:

- Phone calls more than \$1 or calls totaling more than \$5. The Department phone log can be used for logging calls when there is no official receipt provided (See “Justification for Reimbursement for Telephone Charges” in the Appendix).
- Approved training request for all courses provided by outside vendors/entities and in-State conferences and conventions. Reimbursement for training classes will be processed after completion of the training class.
- When physical examinations are required for pre-employment or as a condition of employment, the State will provide or pay for them. The applicant must pay for any services beyond the approved level for such services. For information on the current rate, see Employee Physical Exams, [SAM section 0191](#).
- Excessive porter or baggage handling, such as for several boxes of exam materials, will be reimbursed with a receipt and justification.
- Professional licenses in occupational fields that may be required by the functions of a specific position or is beneficial to the performance of an employee’s duties, for actual cost of the application or renewal fee.
- Each department, commission, board, or agency may reimburse an employee for up to the maximum allowed per BU Contract for membership dues in job-related professional societies or associations of the employee’s choice or for a job-related professional license fee, in recognition of the professional nature of employees. Both parties agree and understand that a different amount of reimbursement, if any, may be provided to employees in the same or similar situation.
- State Bar Dues – [CalHR Rule 599.921](#)
  - Employee designation: Manager, supervisor, confidential, and excluded.
  - References: [2022 Bar Membership Dues](#). Upon certification by the appointing power that the actual practice of law is required for the performance of duties of a specific position, employees shall be reimbursed for up to \$463 of the State Bar membership fee of \$515 for the cost of annual membership fees and specialty fees of the State Bar Association.
  - The State does not pay:
    - The \$5 contribution for the Legislative Activity option, line 21 of the State Bar coupon.

- The \$45 contribution for the Legal Services Assistance option, line 23 of the State Bar coupon.
- The \$2 contribution for the Elimination of Bias option, line 22 of the State Bar coupon.
- Optional Donations for Access to Justice, California Bar Foundation, Conference for California Bar Associations, or California Supreme Court Historical Society; or
- Penalties resulting from late payment of dues, unless the State is responsible for the late payment.

### **Valid Receipts**

A valid receipt consists of the establishment's name, address, itemized expenses, including the total amount due and method of payment. When submitting a [TEC](#), the claimant is required to include original, itemized receipts for all State business expenses, unless specifically noted and accepted in another section of this Guide.

Reimbursement requires proof of payment by the employee. If the receipt does not show the employee paid for the expense, attach other viable information such as the canceled check, bank, or credit card statement. For security purposes, blacken out all nonrelated charges and only retain the employee's name, bank name, and the specific charge you are claiming.

### **Required Receipts**

Receipts shall be submitted for every item of expense of \$1 or more, except as noted in this chapter.

DCA policy is for all receipts to be attached to the [TEC](#), whether paid directly to the vendor or establishment by the State or paid by the employee. Examples are airline itineraries, final rental car expense receipts, etc.

### **Receipts Not Required**

The employee must retain copies of all receipts, including those original receipts not required for reimbursement by the Department, for IRS purposes.

Receipts are NOT required for reimbursement of actual expenses as a result of conducting State business for the following expenses:

- Per diem meals and incidentals.
- Overtime meals.
- Railroad and bus fares of less than \$25 when travel is wholly within the State.
- Street car, ferry fares, bridge and road tolls, local rapid transit system, taxi, shuttle or hotel bus fares, and parking fees of \$10 or less for each continuous period of parking or each separate transportation expense.

#### **Lost Receipts**

In the absence of a receipt, reimbursement will be limited to the nonreceipted amount or the published expense, when lower than the nonreceipted amount.

#### **Odd-Size Receipts**

If receipts are small, tape them to an 8 ½-inch x 11-inch sheet of paper so they will be the same size as the travel claim. More than one receipt can be on a sheet of paper if they do not overlap. Do not tape the receipts to both sides of the paper.

## **Chapter 5. Reportable Tax Items.**

### **Introduction**

Various reimbursements of State business expenses and fringe benefits are subject to Federal and State income taxes and applicable Social Security and Medicare taxes. The Department is required to report qualifying business expense reimbursements as income to the State Controller's Office each month.

Note: It is the State and Department's policy to adhere to all IRS reporting requirements.

### **Reportable Items**

The following items are the most common reportable employer-provided benefits:

- Overtime meals;
- Callback mileage, including overtime mileage;
- Bicycle Commuter Program
- Meals on a one-day trip where there is no sleep period;

- Department-approved exceptions to the 50 miles travel status radius rule;
- Long-term assignments that exceed 30 consecutive days at one location for a period of more than one year. Contact the DCA Travel Unit for details when appropriate;
- The personal use of State vehicles for commute miles;
- Personal use of a State-provided electronic device;
- Travel advances that are not cleared within 30 days of the travel date; and
- Relocation: Contact the DCA Travel Unit ([calaters@dca.ca.gov](mailto:calaters@dca.ca.gov)) for details when appropriate.

**Note:** Any nonreceipted expense, such as meals and incidentals, becomes reportable if the IRS conducts an audit and finds no receipts in the employee’s file.

### Reportable Withholdings

Below is a grid showing the percentages of taxes withheld from each agency, along with an example of the withholdings based on a \$66 reporting item. The actual total amount withheld from the \$66 item is \$24.72 for a represented employee. This amount would be deducted from the employee’s next available pay warrant.

#### Percentages of Taxes Withheld by Agency (includes example withholdings based on a \$66 reporting item)

Type of Tax (W-2s)	Withholding Rate	Monthly Value	Actual Withholding
Federal	22.0%	\$66	\$14.52
State	6.6%	\$66	\$4.36
* SSI	6.2 %	\$66	\$4.10
Medicare	1.45 %	\$66	\$0.96
** SDI	1.1%	\$66	\$0.66

\*Supplemental Security Income: Not applicable to Safety or Peace Officer Retirement.

\*\*State Disability Insurance: Applicable to Service Employees International Union (SEIU)-represented employees only. (See [Payroll Procedure Manual \(PPM\) Withholding Requirements section N171](#) for most recent rates.)

The reportable reimbursements will be listed under “Other Income,” or will be noted as “Included in Box 1” on the employee’s W-2 form.

It is the employee's responsibility to maintain all reportable receipts with their records for IRS audit purposes.

### **Capturing Reportable Items**

There are many ways of capturing and reporting reportable items each month.

Examples:

- Overtime meals, callback mileage, and meals on a one-day trip are captured at the time of the [TEC](#) audit, and reimbursement is made.
- Department-approved exemptions to the "50 miles travel status radius" rule and long-term assignments that exceed 30 consecutive days are captured at the time that paperwork is submitted for approval to the Executive Office and the reimbursement of the [TEC](#) is made.
- Reporting personal mileage and/or use of a State vehicle is the responsibility of the employee. The IRS has determined that normal commute miles to and from work in a State vehicle are to be considered personal use. Only employees whose primary responsibilities are investigative law enforcement activities while they are performing law enforcement duties fit the IRS guidelines for exemption from reporting personal use of State vehicles. However, when these employees commute to and from the office for their office days or do not perform qualifying law enforcement activities on the way to or from work, the commute is reportable. All other employees who are permanently or temporarily assigned State vehicles must report personal use and/or their normal commute use. Each employee who drives a State vehicle is required to submit a monthly Employee Certification, Personal Use of State Provided Vehicles Form, [Personal Use of State-Provided Vehicle](#) to the DCA Accounting Office by the fifth day of the following month in which the personal use was incurred. Please note, this requirement applies to all employees who drive a State vehicle; it is not limited to those employees whose assigned cars are stored at home or in off-site parking.
- Reporting personal use of a State-provided electronic device is the responsibility of the employee. Each employee who uses State-provided equipment for any personal use should prepare a memo stating the type of usage and the actual or estimated cost of the usage to be reported. To avoid the reporting of this type of fringe benefit, the employee can submit a personal check with the memo to reimburse the Department for their personal use.
- All travel advances are to be temporary. Any outstanding travel advances over 90 days are considered long-term and should be treated as wages or compensation; therefore, reported as taxable income.

- Reporting “relocation” taxable items varies depending on the type of expenses that occur; i.e., moving of household goods, sale of residence, etc. For actual reporting requirements, contact the DCA Accounting Office’s Travel Unit ([calaters@dca.ca.gov](mailto:calaters@dca.ca.gov)) for details.
- Continuing Medical Education (CME) expense reimbursement is a taxable fringe benefit for part time, full time, and intermittent BU 16 represented employees. CME expense reimbursement has been considered a taxable fringe benefit by the IRS since the program was established by the CalHR and BU 16 representatives. This program does not meet the criteria to be non-taxable business expenses under Internal Revenue Code section 127. All reimbursements made under this program will be issued in advance as payroll checks near the beginning of each fiscal year.

## **Chapter 6. Out-of-State, Out-of-Country, and Amended Claims.**

### **Introduction**

There are additional requirements and/or approvals when filing out-of-State, out-of-country, or amended [TECs](#).

### **Out-of-State Travel (OST)**

Before any State employee may travel out-of-State on official State business, specific written approval must be given by the Director, the Agency Secretary, the Department of Finance, and the Governor’s Office. (See [SAM section 0710](#).)

Approval must be obtained if either one of the following conditions exist:

1. The employee is on State time, or
2. The employee is representing the State in an official capacity or is acting in such a capacity that it will be perceived that he or she is representing the State.

If either of these two criteria exist, approval is necessary regardless of whether the State is paying for the employee’s travel expenses. The trips are limited to the approved number of persons, days, and funds as specified for each blanket request. Expenses exceeding the blanket limits will require an approved blanket substitution request to cover the overages prior to travel. Any cost incurred prior to the blanket approval will be at the employee’s own expense.

OST expenses must be submitted separately from in-State travel and note the approved blanket number on the claim. Actual lodging expense, supported by a receipt and the standard meal and incidental reimbursement, may be claimed for travel

outside of California. Contact the DCA Budget (go to [DCA home page](#), under Office of Administrative Services) or Accounting Office ([calaters@dca.ca.gov](mailto:calaters@dca.ca.gov)) if you do not know the blanket number or require additional information. Refer to [SAM 0760–0765](#).

### **Out-of-Country Travel**

Employees will be reimbursed for actual lodging expenses, supported by a receipt, and will be reimbursed for actual meal and incidental expenses subject to maximum rates in accordance with the published government rates for foreign travel for the dates of travel. Failure to furnish lodging receipts will limit reimbursement to meals only. The government rates change monthly. (See CalHR webpage for [Travel Reimbursements](#) for current reimbursement rates.)

There is no allowance for blanket substitution of funds or authority for out-of-country trips. Any expenses that exceed the individual trip authority or funds will be at the traveler's expense. Claims must be submitted separately with the approved individual out-of-country trip request number written on the claim. Contact the DCA Budget Office if you do not know the trip number or require additional information.

### **Amended Claims**

When filing an amended claim, the following steps should be taken:

1. Submit a new claim.
2. Write "AMENDED CLAIM" in uppercase letters at the top of the claim.
3. Claim only the amount not submitted on the original claim.
4. Attach a copy of the original claim to the new claim.
5. Attach any required information, receipts, or justification not submitted with the original claim.
6. Obtain all required approval signatures and submit the claim to Accounting Office Travel Unit for payment.

## **Chapter 7. Travel and Evidence Advances.**

### **Travel Advances**

Short-term advances may be issued prior to the time travel is performed, to employees who must travel on State business. (See [SAM 8116](#).)



- Submit the travel advance request on CalATERS Global. In the event of non-access to CalATERS Global, please complete the [Request for Travel Advance \(AISD-008\)](#) form and send it to the DCA Accounting Office within 10 to 15 working days prior to the date of travel. Original signatures are required.
- Per the Governor's order, all departments are to keep outstanding travel advance balances (accounts receivables) to a minimum. Because of this order, DCA has limited travel advance amounts to lodging, meals, and airport parking that are fixed expenses to keep the outstanding receivables amount at a minimum. The employee will receive reimbursement for other expenses after the processing of their [TEC](#).
- If the trip is canceled, the advance must be returned immediately to the Accounting Office. If the travel advance check is cashed, a personal check or cashiers must be submitted as payment.
- For employees who are not required to travel on more than one trip per month, additional advances will not be issued for future travel unless the outstanding advances have been cleared. Departments may issue additional travel advances for employees who are required to travel on multiple trips within a month. Additional advances will not be allowed if the employee does not submit a [TEC](#) or return the excess advance amount within ten days of each trip.
- All advances must be cleared by submitting a [TEC](#) within 10 days after the date of travel. If the advance exceeds the expense claim, to clear the advance, the employee must submit a check with the claim, money order payable to DCA, or cash for the difference. If the claim exceeds the advance, the employee will receive the balance due to them by check within 10 to 15 working days.
- Add a notation regarding the advance information in section 11 or in the Note Section on CalATERS Global of the [TEC](#). (Example: March travel advance \$200.) Do not deduct the advance amount from your claim total; the auditor will make the adjustment when the claim is processed for payment.
- Any outstanding advances of more than 15 days may be deducted from your next month's pay warrant per [SAM 8116.1](#). The DCA Accounting Office will notify the employee before this process occurs. The notification letter will allow the employee time to clear the advance balance. Failure to clear advances may preclude future advances being issued until the outstanding advances are cleared. Direct deposit will be canceled for those employees with uncleared balances to collect any advance balances not cleared within a reasonable time.
- Travel advances that are not cleared within 15 days must be reported as taxable income. (See [SAM 8116.3](#).) Taxes due will be withheld from the next available payroll warrant and reported as taxable income on the employee's W-

2. When the advance is cleared, there is no method to refund the withheld taxes to the employee.
- Some restrictions apply to seasonal or part-time employees, including board and committee members, who may not be issued travel advances. Exception requests are granted by approval of the Chief Accounting Officer on a limited basis.

## Chapter 8. Filing Requirements.

### Claim Form and Correction Instructions

All Travel Expense Claims must be submitted on the CalATERS Global System. A [CalATERS Global Training Request](#) form should be completed and sent as an attachment to [CalATERS@dca.ca.gov](mailto:CalATERS@dca.ca.gov) to establish a CalATERS Global User ID and temporary password. There are two types of claims that can be submitted on the CalATERS Global System.

1. **Regular TEC**—Only one trip per claim should be entered on a Regular TEC. These claims consist of per diem, lodging, and mode of transportation cost to and from destinations. Expense reimbursements are determined by the date and time the trip started and/or ended. Therefore, this information must be entered for each trip. If a traveler traveled on more than one trip, each trip must be entered on a separate claim. The claim will be returned to the traveler or travel liaison for correction if more than one trip is entered on this type of claim.
2. **Non-Travel Expense Claim**—Consists of multiple days and months, up to a full fiscal year (July 1, 2021 through June 30, 2022). These claims consist of only parking, mileage, airfare, rental car, gas for rental car, business expenses, training, etc. This claim would not include meals, incidentals, or lodging. Please make sure when submitting this type of claim the amount is \$10 or more for budget and department cost efficiency.

The CalATERS Global TEC Transmittal should have the proper report name, index number, month and year of travel, original signature of the approver, dates, times, amounts, mode of transportation, purpose, normal work hours, etc. Original detailed receipts showing proof of payment and justifications, when necessary, are required documentation for the claim. The original CalATERS Global TEC and required receipts should be sent to the Accounts Payable, Travel Unit for processing.

In the event the employee is new to the Department and does not have a CalATERS Global User ID established, a [TEC](#) can be completed to submit their first request for reimbursement of State-related travel expenses. The original and one legible copy should be submitted to the Accounts Payable, Travel Unit for processing. Keep a third copy for your records with any non-required original receipts. All TEC forms should be completed in ink or typewritten. The original signature of the claimant and the approving

officer are required to be completed in ink in the appropriate area of the form. For minor corrections, line-out the incorrect information and write in the corrected information. The claimant must initial all corrections. Travel claims with correction fluid or correction tape in critical areas of the form affecting the reimbursement amount will not be accepted. Travel claims may be returned as auditable if submitted with numerous changes or if it is difficult to read.

### **When to Submit Travel Expense Claims**

TECs should be filed at least once a month, but not more than twice in one month. If the amount claimed for any one month does not exceed \$10, filing can be deferred until the next month's travel or until June 30, whichever comes first. Several trips may be entered on one TEC. Only one Regular Trip at a time can be submitted on CalATERS Global. When more than one trip is being listed on the TEC, a blank line should be left between each trip. Trips that start at the end of one month and extend into the next month should be submitted after the trip has concluded. Although it is acceptable to put several trips on one claim, the following expenses must be submitted on a separate TEC: Out of State, out of country, long-term assignment, evidence and relocation expenses. Please label the TEC header when filing reimbursement claims for other than short-term travel.

All claims for the current fiscal year must be submitted by the published year-end deadline. Do not combine fiscal years. If a trip overlaps June and July, two separate TEC or CalATERS Global claims must be completed and submitted, one for each month. However, they should be submitted together for audit purposes.

### **Required Information**

The TEC must be completed in its entirety, including heading, dates, time, amounts, mode of transportation, purpose, normal work hours, etc., and have the claimant's and the authorized approving officer's original signatures. Itemized expenses and original receipts showing proof of payment and justifications, when necessary, are required documentation for the claim. The original TEC and required receipts should be sent to the Accounts Payable/Travel Unit for processing.

## **Chapter 9. Completing a Travel Expense Claim.**

### **Introduction**

The [TEC](#) requires various information, including employee information, trip information, reimbursement amounts, authorizations, and justifications be provided. This chapter provides a step-by-step description of what is required to complete a [TEC](#).

### **Employee Information**

This information describes to whom, classification, bargaining unit, and where expenses should be charged.

Field	Enter Into Field
Claimant's Name	First name, middle initial, last name
Social Security Number or Employee Number*	13-digit position number or write "on file"
Department	Department of Consumer Affairs
Position	Civil service classification (title)
CB/ID Number	Bargaining unit number for represented employees OR Confidential, exempt, board/committee member, volunteer, or other specific title
Division or Bureau	Board, committee, program, division, or unit name
Index Number	Index/PCA number (contact the DCA Accounting Office for assistance if you do not know your Index/PCA number)
Residence Address* (including city, state, and ZIP code)	Home address (do not use P.O. Box) <i>If confidential, contact the DCA Accounting Office for guidance.</i>
Headquarters Address (city, state, and ZIP code)	Complete headquarters (work) address
Phone Number	Office phone number (include area code)

\* Refers to the Privacy Statement provided on the reverse side of the form.

### Trip Information, Miscellaneous Information and Justifications, and Authorized Signatures

This section requests information regarding the when, where, and why the expenses occurred.

Field	Enter into Field
1	<b>Normal Work Hours:</b> Use the 24-hour clock
2	<b>Private Vehicle License Number:</b> Enter the license number of the private vehicle used on State business
3	<b>Mileage Rate Claimed:</b> Enter the rate claimed for private vehicle use
4	<b>Month/Year:</b> Month number (January = 1, December = 12) and four-digit

5	<b>Date:</b> Day of the month (one day per line) <b>Time:</b> Departure and return (using the 24-hour clock)																		
6	<b>Location Where Expenses Were Incurred:</b> (A brief statement describing the purpose may be entered immediately below the last entry for each trip.)																		
7	<b>Lodging:</b> Enter actual cost of lodging, plus tax (up to the maximum)																		
8	<b>Meals:</b> Enter actual cost of meals (up to the maximum reimbursement)																		
9	<b>Incidentals:</b> Enter actual cost of incidentals (up to the maximum)																		
10 (A)	<b>Transportation:</b> Enter the cost of transportation, if paid by employee																		
10 (B)	<b>Transportation:</b> Enter the method of transportation, using the following codes: <table border="1" data-bbox="381 745 1133 1003"> <thead> <tr> <th>Type</th> <th>Code</th> </tr> </thead> <tbody> <tr> <td>Railway</td> <td>R</td> </tr> <tr> <td>Bus, air porter, light rail, Bay Area Rapid Transit (BART)</td> <td>B</td> </tr> <tr> <td>Commercial airline</td> <td>A</td> </tr> <tr> <td>Privately owned vehicle (motorcycles not allowed)</td> <td>PC</td> </tr> <tr> <td>Private air</td> <td>PA</td> </tr> <tr> <td>State car</td> <td>SC</td> </tr> <tr> <td>Rental car</td> <td>RC</td> </tr> <tr> <td>Taxi</td> <td>T</td> </tr> </tbody> </table>	Type	Code	Railway	R	Bus, air porter, light rail, Bay Area Rapid Transit (BART)	B	Commercial airline	A	Privately owned vehicle (motorcycles not allowed)	PC	Private air	PA	State car	SC	Rental car	RC	Taxi	T
Type	Code																		
Railway	R																		
Bus, air porter, light rail, Bay Area Rapid Transit (BART)	B																		
Commercial airline	A																		
Privately owned vehicle (motorcycles not allowed)	PC																		
Private air	PA																		
State car	SC																		
Rental car	RC																		
Taxi	T																		
10 (C)	<b>Transportation:</b> Enter carfare, bridge road tolls, or parking expenses																		
10 (D)	<b>Transportation:</b> Enter the number of miles driven with private and State vehicles, and then enter the amount due for private vehicles																		
11	<b>Business Expense:</b> Enter any other expenses necessary for completion of State business, with justification as required. <u>Note:</u> Expenses more than \$25 require Office of Administrative Services authorization. The DCA Accounting Office will obtain signatures.																		
12	<b>Total Expenses for Day:</b> Enter the total expenses for that day																		
13	<b>Subtotals:</b> Enter the total expenses for each column																		
14	<b>Purpose of Trip, Remarks, and Details:</b> Enter the justification and miscellaneous information, such as: Explanation of business expenses Phone expenses, including place, party, and number called Receipt justification, if needed Justification for obtaining rental cars, other than a compact, or use of a noncontract vendor Travel advances received																		

## Appendix

### Resource Materials

Subject	Issue Date	Ex	Num
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Short-Term Lodging Reimbursement Rates—Maximum Rates for All Represented and Excluded Employees	10/20/2016	<a href="#">Short-Term Lodging Reimbursement Rates</a>
Approval of Excess Lodging Rates	12/19/2013	PML 2013-044 <a href="#">4.pdf</a>
FLSA Guidelines	04/16/2004	DCA DPM-PERS 02-06 <a href="http://inside.dca.ca.gov/documents/dpm_hr_02_06.pdf">http://inside.dca.ca.gov/documents/dpm_hr_02_06.pdf</a>
Travel and Relocation—Lodging Receipts	07/01/2014	<a href="http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx">www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx</a> CalHR PML 2013-022 <a href="http://www.calhr.ca.gov/travel-reimbursements-library/2013026.pdf">www.calhr.ca.gov/travel-reimbursements-library/2013026.pdf</a>
Vanpool Incentives	7/23/2019  09/27/2002	CalHR <a href="#">Commute Programs</a>  CalHR PML 2002-064 <a href="http://www.dot.ca.gov/hq/asc/travel/pdf/PML2002-064.pdf">http://www.dot.ca.gov/hq/asc/travel/pdf/PML2002-064.pdf</a>  CalHR PML 2002-021

The list below includes memos, policies, procedures, and websites with information regarding travel reimbursement rules and regulations.

#### Useful Websites and Addresses

Useful Websites	Internet Addresses
Department of General Services State Administrative Manual Forms	<a href="http://www.dgs.ca.gov">www.dgs.ca.gov</a> <a href="http://sam.dgs.ca.gov/TOC/700.aspx">http://sam.dgs.ca.gov/TOC/700.aspx</a> <a href="http://www.dgs.ca.gov/osp/Forms.aspx">www.dgs.ca.gov/osp/Forms.aspx</a>

California Department of Human Resources	<a href="https://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx">https://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx</a>
Bargaining Unit Contracts Personnel Management Letters (PMLs)	<a href="http://www.calhr.ca.gov/Pages/home.aspx">www.calhr.ca.gov/Pages/home.aspx</a>
Travel Agency	<a href="#">Caltravelstore</a>

Commented [LK2]: This also points to the Travel Store

### List of Related Forms

The travel forms mentioned in this Travel Guide are available on the [Department of Consumer Affairs\(DCA\) Intranet](#) at <http://inside.dca.ca.gov/offices/accounting/travel.shtml> and in this Appendix.

Form	Number	<a href="#">DCA Intranet</a> and/or Internet Links
Authorization to Use Privately Owned Vehicles on State Business	STD 261	<a href="http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std261.pdf">www.documents.dgs.ca.gov/dgs/fmc/pdf/std261.pdf</a>
Cost Comparison Page	N/A	<a href="http://inside.dca.ca.gov/documents/cost_comparison.pdf">http://inside.dca.ca.gov/documents/cost_comparison.pdf</a>
Excess Lodging Rate Request/Approval	STD 255C	<a href="https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std255c.pdf">https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std255c.pdf</a>
Conference Attendance Request	N/A	<a href="http://inside.dca.ca.gov/documents/conf_attend.pdf">http://inside.dca.ca.gov/documents/conf_attend.pdf</a>
Hotel/Motel Transient Occupancy Tax Waiver	STD 236	<a href="http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std236.pdf">www.documents.dgs.ca.gov/dgs/fmc/pdf/std236.pdf</a>
Justification for Reimbursement for Postage Charges	AISD 12	<a href="http://inside.dca.ca.gov/documents/postal_charges.pdf">http://inside.dca.ca.gov/documents/postal_charges.pdf</a>
Justification for Reimbursement for Telephone Charges	AISD 11	<a href="http://inside.dca.ca.gov/documents/phone_charges.pdf">http://inside.dca.ca.gov/documents/phone_charges.pdf</a>
Request for Travel Advance	AISD 008	<a href="http://inside.dca.ca.gov/documents/travel_advance.pdf">http://inside.dca.ca.gov/documents/travel_advance.pdf</a>
Travel Advances and Travel Expenses Policy	SAM Ch. 8100	<a href="#">SAM Section 8116 Travel Advances and Travel Expenses</a>
Travel Expense Claim	STD 262a	<a href="http://inside.dca.ca.gov/documents/std262a.pdf">http://inside.dca.ca.gov/documents/std262a.pdf</a>





# Appendix D



Code:

Section:



[Up^](#) [<< Previous](#) [Next >>](#) [cross-reference chaptered bills](#) [PDF](#) | [Add To My Favorites](#)

Search Phrase:

**BUSINESS AND PROFESSIONS CODE - BPC**

**DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS [100 - 472.5]** (*Heading of Division 1 amended by Stats. 1973, Ch. 77.*)

**CHAPTER 1. The Department [100 - 144.5]** (*Chapter 1 enacted by Stats. 1937, Ch. 399.*)

**103.** Each member of a board, commission, or committee created in the various chapters of Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000), and in Chapter 2 (commencing with Section 18600) and Chapter 3 (commencing with Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective provisions.

Each such member shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money.

Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards, commissions, or committees on any day when the officer or employee also received compensation for the officer or employee's regular public employment.

*(Amended by Stats. 2019, Ch. 351, Sec. 11. (AB 496) Effective January 1, 2020.)*



# ATTENDANCE REPORT

**BOARD MEMBER:** \_\_\_\_\_

**MONTH:** \_\_\_\_\_

Please report the **actual** time you spent attending meetings or performing board business.

Pre-Meeting Preparation (please list meeting)	Date	# Hours	# Minutes
1.			
2.			
3.			
4.			
5. Reviewing Board Packet			

Meetings Attended (DO NOT INCLUDE BOARD OR COMMITTEE MEETINGS)	Date	Hours in Meetings (do not include meal and/or travel times)			
		Start Time:	End Time:	# Hours	# Minutes
1.					
2.					
3.					
4.					
5.					

Mail Ballots/Transcripts & Documents Reviewed	Date	# Hours	# Minutes
1.			
2.			
3.			
4.			
5. Review of Transcript—Case #			

You will be paid in eight-hour increments at the end of each month; any portion of hours remaining will be carried over into the next month.

**To the best of my knowledge and belief, the information stated is accurate.**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# Appendix E





# PERFORMANCE APPRAISAL

FOR

# EXECUTIVE OFFICER

*Prepared by*  
*Department of Consumer Affairs*  
*Office of Human Resources*  
*1625 N. Market Blvd. Suite N-321*  
*Sacramento, CA 95834*



**Executive Officer**  
**PERFORMANCE APPRAISAL**

***INSTRUCTIONS***

1. The Performance Appraisal process system is based on the principle that performance should be evaluated on a regular basis in order to provide recognition of effective performance and as a tool to provide guidance in improving future performance.
2. To indicate the rating of any performance factor, an "X" mark should be placed in the appropriate rating column and in the "Overall Rating" column on each page. Additional spaces have been provided to accommodate other critical performance factors identified by the Board.
3. Comments to the Executive Officer should:
  - Include factual examples of work especially well or poorly done, and
  - Give suggestions as to how performance can be improved.
4. The Overall Ratings must be consistent with the factor ratings and comments, but there is no prescribed formula for computing the overall rating.
5. Overall Comments may consist of a summary of comments from specific categories, general comments or comments on other job-related factors which the rater wishes to discuss. Additional pages may be attached.
6. The Board President/Chairperson will discuss the appraisal with the Executive Officer and give them a copy. In signing the appraisal, the Executive Officer merely acknowledges that they have seen the appraisal and has discussed it with the rater. Their signature does not indicate agreement with the ratings or comments.
7. The original copy of the appraisal will be maintained by the Department of Consumer Affairs, in the Executive Officer's Official Personnel File.





## EXECUTIVE OFFICER

### PERFORMANCE APPRAISAL RATING SYSTEM

The rating system consists of five (5) Ratings Categories, as defined below:

#### ***Outstanding***

Performance significantly exceeds the Board's expectations due to the efforts and ability of the employee when considering the job in its entirety. Significantly above-standard performance may be exhibited by consistently completing assignments in advance of deadlines; implementing plans and/or procedures to increase efficiency or effectiveness of work; working independently with little direction; and consistently meeting Board goals.

#### ***Above Average***

Performance exceeds the Board's expectations due to the efforts and ability of the Executive Officer when considering the job in its entirety. Performance is beyond what is expected of an Executive Officer in this position.

#### ***Average***

Performance of the Executive Officer meets the minimum expectations of the Board. The Executive Officer adequately performs the duties and responsibilities of the position.

#### ***Needs Improvement***

The Executive Officer's performance fails to meet the Board's minimum expectations due to lack of effort and/or ability when considering the job in its entirety. Performance requires improvement in numerous and/or important aspects of the position.

#### ***Not Applicable***

Rater is unable to assess the Executive Officer in this area, or the area is not applicable to the employee's job.



**Executive Officer**  
**PERFORMANCE APPRAISAL**

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**OVERALL RATING for**

**NAME:** \_\_\_\_\_

**BOARD OF** \_\_\_\_\_

The overall rating must be consistent with the factor rating and comments, but there is no prescribed formula for computing the overall rating. The rating system is described on page 3.

- OUTSTANDING**
- ABOVE AVERAGE**
- AVERAGE**
- NEEDS IMPROVEMENT**

---

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**OVERALL COMMENTS** *(Attach additional pages, if necessary)*

**I HAVE PARTICIPATED IN A DISCUSSION OF OVERALL JOB PERFORMANCE**

Signature of Executive  
Officer: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Board  
President/Chairperson: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**Executive Officer**  
**PERFORMANCE APPRAISAL**

**Performance Factor**

**Ratings**

1. Relationship with the Board	Outstanding	Above Average	Average	Needs Improvement	Not Applicable
Maintains respect and trust of Board members.					
Provides Board with advice during consideration of issues.					
Keeps Board informed of progress of Board programs on a regular basis.					
Remains impartial and treats all Board members in a professional manner.					
Functions as effective liaison between Board and Board Staff.					
Provides Board with complete, clear, and accurate reports, minutes, etc.					
Responds promptly to requests for information.					
Is readily available to Board members.					
Responds to constructive suggestions or criticism.					
<b>OVERALL RATING:</b>					

**Relationship with the Board Comments:**

(Attach additional pages, if necessary)



**Executive Officer  
PERFORMANCE APPRAISAL**

		Performance Factor		Ratings				
		2. Execution of Board Policy		Outstanding	Above Average	Average	Needs Improvement	Not Applicable
1	Understands and complies with the overall policies, laws, and regulations of the Board.							
2	Implements Board policies.							
3	Efforts lead toward successful accomplishment of goals.							
4	Ensures effective and efficient management of enforcement and licensing programs.							
5	Keeps Board apprised of licensing and enforcement program and process developments.							
6	Manages Board legislative program and efforts.							
7	Manages sunset review process.							
<b>OVERALL RATING:</b>								

**Execution of Board Policy Comments:**

(Attach additional pages, if necessary)



**Executive Officer**  
**PERFORMANCE APPRAISAL**

**Performance Factor**

**Ratings**

<b>3. Administrative Functions</b>		Outstanding	Above Average	Average	Needs Improvement	Not Applicable
<b>1</b>	Plans, organizes, and directs Board administrative functions and staff.					
<b>2</b>	Provides oversight, direction, and management of the Board's annual budget, expenditures, and revenues.					
<b>3</b>	Keeps Board apprised of budget developments.					
<b>4</b>	Identifies, recommends and, as directed, seeks necessary changes to laws and regulations through proposed legislation and/or the Office of Administrative Law.					
<b>5</b>	Ensures compliance and enforcement of departmental, state, and federal policies and procedures.					
<b>6</b>	Develops and executes sound personnel practices and procedures.					
<b>OVERALL RATING:</b>						

**Administrative Functions Comments:**

(Attach additional pages, if necessary)



**Executive Officer**  
**PERFORMANCE APPRAISAL**

**Performance Factor**

**Ratings**

	<b>4. Public Liaison</b>	Outstanding	Above Average	Average	Needs Improvement	Not Applicable
<b>1</b>	Represents the Board before the public.					
<b>2</b>	Directs consumer outreach programs.					
<b>3</b>	Manages Board's public relations effort.					
<b>4</b>	Directs liaison with educational institutions.					
<b>5</b>	Solicits and gives attention to problems and opinions of all groups and individuals.					
<b>6</b>	Represents the Board before industry associations to provide information regarding the Board's laws, regulations, programs, and policies.					
<b>OVERALL RATING:</b>						

**Public Liaison Comments:**

(Attach additional pages, if necessary)



**Executive Officer**  
**PERFORMANCE APPRAISAL**

**DCA Executive Office Comments:**

(Attach additional pages, if necessary)

Executive Officers are required to:

- Keep Board members informed of key issues related to the industry, budget, or new mandates;
- Prepare Board members with adequate information to fully participate at public meetings, including posting materials in a timely manner;
- Keep DCA Executive Office informed of key issues and accomplishments related to Board operations;
- Maintain positive and respectful partnerships with Board staff, DCA staff, and other DCA boards and bureaus;
- Comply with mandates from the Administration, Agency, DCA, and control agencies;
- Convey verbal and written communications in a professional and respectful manner to all audiences;
- Respond to all inquiries and requests timely and tactfully;
- Ensures self and staff fulfill all mandated training within the required period;
- Implements legislative changes timely and effectively, meeting deadlines established in law.
- Conforms to existing rules and regulations and collaborates with DCA's Regulation Unit effectively.
- Manages all aspects related to staff hiring, development, and performance effectively.
- Maintains and manages the Board's budget effectively.
- Adequately oversees the Board's contracts, purchases, fleet management, and space/facilities planning.
- Monitors validity/defensibility of examinations and provides appropriate recommendations for action, if applicable.

Provide information regarding the Executive Officer's ability to meet these requirements in the past evaluation period:

# Appendix F







Code: GOV

Section: 87200-87210



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**GOVERNMENT CODE - GOV**

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 7. Conflicts of Interest [87100 - 87505]** ( Chapter 7 added June 4, 1974, by initiative Proposition 9. )

**ARTICLE 2. Disclosure [87200 - 87210]** ( Article 2 added June 4, 1974, by initiative Proposition 9. )

**87200.** This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of the High-Speed Rail Authority, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

*(Amended by Stats. 2012, Ch. 626, Sec. 1. (AB 41) Effective September 27, 2012. Note: This section was added on June 4, 1974, by initiative Prop. 9.)*

**87201.** Every candidate for an office specified in Section 87200 other than a justice of an appellate court or the Supreme Court shall file no later than the final filing date of a declaration of candidacy, a statement disclosing the candidate's investments, the candidate's interests in real property, and any income received during the immediately preceding 12 months.

This statement shall not be required if the candidate has filed, within 60 days prior to the filing of the candidate's declaration of candidacy, a statement for the same jurisdiction pursuant to Section 87202 or 87203.

*(Amended by Stats. 2021, Ch. 50, Sec. 198. (AB 378) Effective January 1, 2022. Note: This section was added on June 4, 1974, by initiative Prop. 9.)*

**87202.** (a) Every person who is elected to an office specified in Section 87200 shall, within 30 days after assuming the office, file a statement disclosing the person's investments and the person's interests in real property held on the date of assuming office, and income received during the 12 months before assuming office. Every person who is appointed or nominated to an office specified in Section 87200 shall file such a statement not more than 30 days after assuming office, provided, however, that a person appointed or nominated to such an office who is subject to confirmation by the Commission on Judicial Appointments or the State Senate shall file such a statement no more than 10 days after the appointment or nomination.

The statement shall not be required if the person has filed, within 60 days prior to assuming office, a statement for the same jurisdiction pursuant to Section 87203.

(b) Every elected state officer who assumes office during the month of December or January shall file a statement pursuant to Section 87203 instead of this section, except that:

(1) The period covered for reporting investments and interests in real property shall begin on the date the person filed the person's declarations of candidacy.

(2) The period covered for reporting income shall begin 12 months prior to the date the person assumed office.

*(Amended by Stats. 2021, Ch. 50, Sec. 199. (AB 378) Effective January 1, 2022. Note: This section was added on June 4, 1974, by initiative Prop. 9.)*

**87203.** Every person who holds an office specified in Section 87200 shall, each year at a time specified by commission regulations, file a statement disclosing the person's investments, interests in real property, and income during the period since the previous statement filed under this section or Section 87202. The statement shall include any investments and interest in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.

*(Amended by Stats. 2021, Ch. 50, Sec. 200. (AB 378) Effective January 1, 2022. Note: This section was added on June 4, 1974, by initiative Prop. 9.)*

**87204.** Every person who leaves an office specified in Section 87200 shall, within thirty days after leaving the office, file a statement disclosing the person's investments, interests in real property, and income during the period since the previous statement filed under Sections 87202 or 87203. The statement shall include any investments and interests in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.

*(Amended by Stats. 2021, Ch. 50, Sec. 201. (AB 378) Effective January 1, 2022.)*

**87205.** A person who completes a term of an office specified in Section 87200 and within 45 days begins a term of the same office or another such office of the same jurisdiction is deemed not to assume office or leave office.

*(Amended by Stats. 2005, Ch. 200, Sec. 6. Effective January 1, 2006. Note: This section was added on June 4, 1974, by initiative Prop. 9.)*

**87206.** If an investment or an interest in real property is required to be disclosed under this article, the statement shall contain:

(a) A statement of the nature of the investment or interest.

(b) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged.

(c) The address or other precise location of the real property.

(d) A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000) but does not exceed ten thousand dollars (\$10,000), whether it exceeds ten thousand dollars (\$10,000) but does not exceed one hundred thousand dollars (\$100,000), whether it exceeds one hundred thousand dollars (\$100,000) but does not exceed one million dollars (\$1,000,000), or whether it exceeds one million dollars (\$1,000,000).

(e) In the case of a statement filed under Sections 87203 or 87204, if the investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal.

(f) For purposes of disclosure under this article, "interest in real property" does not include the principal residence of the filer or any other property which the filer utilizes exclusively as the personal residence of the filer.

*(Amended by Stats. 2000, Ch. 130, Sec. 8. Effective January 1, 2001. Note: This section was added on June 4, 1974, by initiative Prop. 9.)*

**87206.5.** If an official must disclose a leasehold interest, the official shall do all of the following:

(a) Identify the interest as a leasehold interest.

(b) Disclose the number of years remaining on the lease.

(c) Provide the leased property's address or other precise location.

(d) Provide the exact date the lease became effective or terminated if the lease became effective or terminated during the period covered by the statement.

(e) Disclose the value of the leasehold interest as specified in subdivision (d) of Section 87206.

*(Added by Stats. 2019, Ch. 312, Sec. 19. (AB 902) Effective January 1, 2020.)*

**87207.** (a) If income is required to be reported under this article, the statement shall contain, except as provided in subdivision (b):

(1) The name and street address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

(2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least five hundred dollars (\$500) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but was not greater than ten thousand dollars (\$10,000), whether it was greater than ten thousand dollars (\$10,000) but not greater than one hundred thousand dollars (\$100,000), or whether it was greater than one hundred thousand dollars (\$100,000).

(3) A description of the consideration, if any, for which the income was received.

(4) In the case of a gift, the amount and the date on which the gift was received, and the travel destination for purposes of a gift that is a travel payment, advance, or reimbursement.

(5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

(b) If the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this article, the statement shall contain:

(1) The name, street address, and a general description of the business activity of the business entity.

(2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(c) If a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interests. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

*(Amended by Stats. 2019, Ch. 102, Sec. 4. (AB 903) Effective January 1, 2020. Note: This section was added on June 4, 1974, by initiative Prop. 9.)*

**87208.** Except in statements required by Section 87203, investments and interests in real property which have been disclosed on a statement of economic interests filed in the same jurisdiction within the previous 60 days may be incorporated by reference.

*(Added by Stats. 1976, Ch. 1161.)*

**87209.** When a statement is required to be filed under this article, every person specified in Section 87200 shall disclose any business positions held by that person. For purposes of this section, "business position" means any business entity in which the filer is a director, officer, partner, trustee, employee, or holds any position of management, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction or has done business in the jurisdiction at any time during the two years prior to the date the statement is required to be filed.

*(Added by Stats. 1997, Ch. 455, Sec. 3. Effective September 24, 1997.)*

**87210.** A person shall not make a gift totaling fifty dollars (\$50) or more in a calendar year to a person described in Article 2 on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the gift both the intermediary or agent's own full name, street address, and business activity, if any, and the full name, street address, and business activity, if any, of the actual donor. The recipient of the gift shall include in the recipient's Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor.

*(Amended by Stats. 2021, Ch. 50, Sec. 202. (AB 378) Effective January 1, 2022.)*

# Appendix G





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**GOVERNMENT CODE - GOV**

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 7. Conflicts of Interest [87100 - 87505]** ( Chapter 7 added June 4, 1974, by initiative Proposition 9. )

**ARTICLE 1. General Prohibition [87100 - 87105]** ( Article 1 added June 4, 1974, by initiative Proposition 9. )

**87100.** A public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.

(Amended by Stats. 2021, Ch. 50, Sec. 190. (AB 378) Effective January 1, 2022.)

# Appendix H







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**TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]** ( Title 2 enacted by Stats. 1943, Ch. 134. )

**DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986]** ( Division 3 added by Stats. 1945, Ch. 111. )

**PART 1. STATE DEPARTMENTS AND AGENCIES [11000 - 11898]** ( Part 1 added by Stats. 1945, Ch. 111. )

**CHAPTER 1. State Agencies [11000 - 11148.5]** ( Chapter 1 added by Stats. 1945, Ch. 111. )

**ARTICLE 12. State Agency Ethics Training [11146 - 11146.4]** ( Article 12 added by Stats. 1998, Ch. 364, Sec. 1. )

**11146.** For purposes of this article, the following terms have the following meanings:

(a) "State agency" has the same meaning as set forth in Section 82049, but does not include the Legislature.

(b) "Filer" means each member, officer, or designated employee of a state agency who is required to file a statement of economic interests under either Article 2 (commencing with Section 87200) or Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 because of the position he or she holds with the agency.

(Amended by Stats. 2002, Ch. 663, Sec. 1. Effective January 1, 2003.)

**11146.1.** Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials.

(Added by Stats. 1998, Ch. 364, Sec. 1. Effective January 1, 1999.)

**11146.2.** Each state agency shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to Section 11146.1 for a period of not less than five years after each course is given. These records shall be public records subject to inspection and copying consistent with Section 81008 and otherwise subject to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1).

(Amended by Stats. 2021, Ch. 615, Sec. 165. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)

**11146.3.** Except as set forth in Section 11146.4, each filer shall attend the orientation course required in Section 11146.1, as follows:

(a) For a filer who holds a position with the agency on January 1, 2003, not later than December 31, 2003 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2005.

(b) For a person who becomes a filer with the agency after January 1, 2003, within six months after he or she becomes a filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.

(Amended by Stats. 2002, Ch. 663, Sec. 2. Effective January 1, 2003.)

**11146.4.** (a) The requirements of Section 11146.3 shall not apply to filers with a state agency who have taken an equivalent ethics orientation course through another state agency or the Legislature within the time periods set forth in subdivision (a) or (b) of Section 11146.3, as applicable.

(b) State agencies may jointly conduct and filers from more than one state agency may jointly attend an orientation course required by Section 11146.1, as long as the course content is relevant to the official duties of the attending filers.

(c) Before conducting each orientation course required by Section 11146.1, state agencies shall consult with the Fair Political Practices Commission and the Attorney General regarding appropriate course content.

*(Added by Stats. 1998, Ch. 364, Sec. 1. Effective January 1, 1999.)*

# Appendix I





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**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 9.5. Ethics [89500 - 89522]** ( Chapter 9.5 added by Stats. 1990, Ch. 84, Sec. 13. )

**ARTICLE 1. Honoraria [89501 - 89502]** ( Article 1 added by Stats. 1990, Ch. 84, Sec. 13. )

**89501.** (a) For purposes of this chapter, "honorarium" means, except as provided in subdivision (b), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

(b) The term "honorarium" does not include:

(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches. The commission shall adopt regulations to implement this subdivision.

(2) Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the State Controller for donation to the General Fund, or in the case of a public official of a local government agency, delivered to the public official's agency for donation to an equivalent fund, without being claimed as a deduction from income for tax purposes.

(c) Section 89506 applies to all payments, advances, or reimbursements for travel and related lodging and subsistence.

(Amended by Stats. 2021, Ch. 50, Sec. 223. (AB 378) Effective January 1, 2022.)



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Section:



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**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 9.5. Ethics [89500 - 89522]** ( Chapter 9.5 added by Stats. 1990, Ch. 84, Sec. 13. )

**ARTICLE 1. Honoraria [89501 - 89502]** ( Article 1 added by Stats. 1990, Ch. 84, Sec. 13. )

**89502.** (a) An elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall not accept any honorarium.

(b) (1) A candidate for elective state office, for judicial office, or for elective office in a local government agency shall not accept any honorarium. A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after the person is sworn into the elective office, or, if the person lost the election, after the person has terminated the person's campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.

(2) Paragraph (1) does not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.

(c) A member of a state board or commission or designated employee of a state or local government agency shall not accept an honorarium from any source if the member or employee would be required to report the receipt of income or gifts from that source on the member's or employee's statement of economic interests.

(d) This section does not apply to a person in the person's capacity as judge. This section does not apply to a person in the person's capacity as a part-time member of the governing board of any public institution of higher education unless that position is an elective office.

(Amended by Stats. 2021, Ch. 50, Sec. 224. (AB 378) Effective January 1, 2022.)

# Appendix J





## Overview of Board Member Role in Disciplinary Actions

<p>Administrative Proceedings B&amp;P Code, §§ _____ Gov. Code, § 11500 <i>et seq</i></p>	<p>An administrative proceeding refers to any action to deny, restrict or revoke a license. The proceeding begins when the Executive Officer files a charging document – usually a <b>Statement of Issues</b> (to deny a license) or an <b>Accusation</b> (to restrict or revoke a license). Rarely, the EO issues a citation, which may be appealed through an administrative proceeding.</p>
<p>Most Common Types of Decisions: Default, Stipulation, Proposed Decisions</p>	<p>If the licensee fails to respond to a charging document, a <b>default</b> decision is prepared and submitted the Board members for vote. If the licensee and the Executive Officer agree to particular enforcement outcome, a <b>stipulation</b> is prepared and presented to the Board members for vote. If neither of the above occurs, the case is sent to a formal hearing before an administrative law judge (ALJ). After considering the evidence from the hearing (usually documents and witness testimony), the ALJ issues a <b>proposed decision</b> (a recommended resolution), which is then presented to the Board members for vote.</p>
<p>Review of Decisions Gov. Code § 11500, <i>et seq.</i>; B&amp;P Code, § _____; Title 16, C.C.R. § _____</p>	<p>Board members, by <b>majority vote of a quorum</b>, must approve any decision (proposed decision, stipulation or default) before the decision becomes final and the formal discipline (penalty), if any, can take effect.</p> <p>Each Board member reviews any decision presented for vote. Each case is evaluated on a case-by-case basis, but things a member might consider:</p> <ol style="list-style-type: none"> <li>1. Whether the Board’s highest priority, protection of the public, is effected by the decision;</li> <li>2. Whether the Board’s Disciplinary Guidelines are satisfied or whether variation is warranted;</li> <li>3. Whether the standards of practice were used as a basis for reaching the decision; and</li> <li>4. Whether the decision may be reasonably and practically implemented and</li> <li>5. Whether the case contains factual or legal errors.</li> </ol>
<p>Member Questions and Communications about Decisions Gov. Code § 11430.10, <i>et seq.</i></p>	<p>Communications with staff concerning pending proceedings, including decisions, are limited by the provisions of the Administrative Procedure Act. There are two parties to any disciplinary proceeding – complainant (the Executive Officer and other staff) and respondent (the licensee). The Board members decide the case and therefore act as judges. To avoid the fact or appearance of bias or impropriety, communications between one party (staff or the licensee) and Board members are limited.</p>

	<p>There are two common exceptions to this restriction. First, staff may answer questions of procedure and ministerial questions (<i>e.g.</i>, when is a vote due, when will a decision become effective).</p> <p>Second, EO or other board staff or the Deputy Attorney General may communicate about stipulated decisions – and only stipulated decisions – <u>only</u> to explain why the stipulated decision should be adopted.</p> <p>Board members may direct questions about a decision to the Board’s legal counsel, who is not involved in the investigative stage of the proceeding. Questions about permissible or impermissible communications should also be directed to legal counsel.</p>
<p>Mail Ballots Gov. Code, § 11526 Board policy</p>	<p>Proposed decisions, stipulations and default decisions are generally mailed (electronically or otherwise) to each Board member for voting. The Board member may vote to adopt, reject (non-adopt) or seek to hold the case (discussed in detail below).</p> <p>A ____ calendar day deadline is generally given for a mail ballot to be completed and returned to the Board’s office. Board staff reviews the ballots and, if there is not a request to hold, and a quorum of votes has not been received by the Board, prepares the decision for the President’s signature.</p>
<p>Holding Disciplinary Cases for Closed Session Board Meetings Board Policy</p>	<p>When voting on a mail ballot, a Board member may wish to discuss a particular aspect of the decision before voting. If two members mark their ballot to “hold for discussion,” the case will be scheduled for the closed session of the Board’s next meeting. At the time the ballot is prepared, the Board member should record his or her concern. Recording the concern facilitates the discussion by allowing staff, legal counsel and other members an opportunity to prepare to respond to the concern as appropriate. Since there can also be a delay before the next meeting, it can also help preserve the member’s memory about his or her concerns.</p> <p>When a matter is held for closed session, Board legal counsel will be present to advise and assist the Board.</p>
<p>Closed session: Stipulations</p>	<p>If the board is deliberating about what to do with a stipulation, it can</p> <ul style="list-style-type: none"> <li>• Adopt</li> <li>• Reject and set for hearing</li> <li>• Make counter offer and if accepted, will dispose of the matter</li> <li>•</li> </ul>
<p>Closed session: Proposed Decision</p>	<p>If a board is deliberating on a Proposed Decision, it can</p> <ul style="list-style-type: none"> <li>• Adopt the proposed decision of the ALJ</li> </ul>

	<ul style="list-style-type: none"> <li>• Reject (Non-adopt) the proposed decision and after review of the transcripts and the record and develop its own decision</li> <li>• Remand (return) the decision to the ALJ for the taking of additional evidence. The proposed decision must address all points of evidence submitted. If it does not, the decision can be returned to the ALJ for additional consideration</li> <li>• Make technical or minor changes to the proposed decision.</li> <li>• Mitigate (lessen, reduce) the proposed penalty</li> </ul> <p>NOTE: Board cannot increase cost recovery.</p>
<p>Closed Session: Rejection (non-adoption) Gov. Code, § 11517</p>	<p>If the Board votes to reject a Proposed Decision of an ALJ, absent specific direction to the contrary from the Board, the transcript and exhibits of hearing will be ordered and it will provide an opportunity for written argument. The Executive Officer will fix the date for submission of written argument to ensure Board members have time to review any materials prior to a Board meeting. The board meets in closed session to determine the outcome of the case and board counsel writes the decision.</p>
<p>Petition for Reconsideration Gov. Code, § 11521</p>	<p>At any time before the effective date of the decision, the board on its own motion or either of the parties may request reconsideration.</p> <p>The board may grant a stay of up to 30 days to allow a party to file a petition for reconsideration.</p> <p>The EO, president or full board may grant a stay of up to 10 days to consider a petition for reconsideration.</p> <p>If granted for a case in which a hearing was held, the record (transcript and exhibits) is ordered. The members deliberate in closed session to determine if they would like to issue a revised decision.</p>
<p>Appeals of Decisions (Writs of Mandamus) Gov. Code, § 11523</p>	<p>In the event one of the parties believes there to be legal basis to challenge a board decision, the party may file an appeal through a writ of mandamus.</p> <p>In the event the court remands the matter to the board for further action, the board allows written argument. After considering argument, the board deliberates in closed session about the decision to take. Board counsel sits with the board and writes any new decision.</p>
<p>Petitions for Penalty Relief Gov. Code, § 11522; B&amp;P Code, § _____</p>	<p>If a licensee files a petition for penalty relief (for either reinstatement or modification or termination of existing probation), as long as that petition meets statutory requirements, the matter</p>

<p>Board Policy</p>	<p>will be heard by the Board members themselves at a Board meeting. Absent direction to the contrary, an ALJ sits with the members to preside over the hearing.</p>
<p>Enforcement Actions – Disclosure to the Public Gov. Code, § 6250, <i>et seq.</i> B&amp;P Code, §125.9 Department of Consumer Affairs' <i>Guidelines for Access to Public Records</i></p>	<p>Enforcement actions, including citation and disciplinary actions, are a matter of public record.</p>

# Appendix K



<b>IN THE MATTER OF THE ACCUSATION AGAINST:</b>	<b>Date: XXXX, 2018</b>
<b>John Smith, RPH 000001 CASE NO. 00001</b>	<b>DUE DATE: XXXX, 2018</b>

**ORDER TYPE\*:**

- DEFAULT DECISION**
- PROPOSED DECISION**
- STIPULATED SETTLEMENT**

**Pharmacist License No. RPH 00001** issued to Respondent **John Smith** shall be publicly reprovved. Respondent subject to additional terms and conditions as indicated in the decision.

- I VOTE:**
- YES: I would affirm the decision**
  - NO: I would not affirm the decision OR I vote to hold for discussion at next meeting. Please note concerns here:**
  - ABSTAIN OR RECUSE DUE TO CONFLICT**  
If recusal, explain conflict:

**COMMENTS:**

**POLICY ISSUE FOR DISCUSSION. I have voted above.**

**ISSUE:**

\_\_\_\_\_  
**BOARD MEMBER SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
**DATE**