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MEMORANDUM

DATE: October 7, 2010

TO: Executive Officers
 Board Presidents/Chairs

FROM: *Doreatha Johnson*
 DOREATHEA JOHNSON
 Deputy Director
 Legal Affairs

SUBJECT: Board Meeting Protocols

Three Duties for Board Meetings

1. Give adequate notice of meetings that will be held and agenda items.
2. Conduct meetings in open session.
3. Provide the public an opportunity to comment.

First Duty

Adequate Notice of Meetings and Agenda Items

1. Timely – Law requires 10 days notice to those on a mailing list and posting notice and agenda on your website.
2. Specific Notice – Detailed, itemized agenda, identifying all items of business to be conducted at the meeting.
 - Items not on agenda cannot be discussed nor can they be acted on.
 - Can't discuss items under the heading of "New or Old Business" unless they are specifically identified.
 - Test for Specific Notice --Is an item specific enough for a member of the public to reasonably ascertain the nature of the business to occur at the meeting?

Second Duty Conduct Meetings

Open Session

General rule: Meetings must be conducted in Open Session and all discussion and actions must take place in the public, unless specifically authorized by law to go into closed session, with regard to that item of business.

Vote in public – Votes must be publically taken. Secret votes or votes by proxy are not permitted.

Closed Session

Business statutorily authorized to be conducted in closed session:

- Disciplinary matters;
- Preparing, approving or grading examinations;
- Pending litigation;
- Matters affecting personal privacy;
- Executive officer appointment, employment or dismissal.

Once in closed session, you can only discuss those matters that were identified as closed session on your agenda.

Third Duty Public Comment At The Meeting

General Rule

Must allow public comment on each open session agenda item.

Suggested script to be read at the beginning of the meeting:

The Board Chair will allow public comment on agenda items, as those items are taken up by the Board, during the meeting. Under the Open Meetings Act, the Board may not take any action on items raised by public comment that are not on the Agenda, other than to decide whether to schedule that item for a future meeting.

If any person desires to address the Board, it will be appreciated if he or she will stand or come forward and give his or her name, and if he or she represents an organization, the name of such organization, so that we will have a record of all those who appear. Please note that a person wishing to provide comment is not

required to identify him or herself when making public comment, but it is appreciated.

In order to allow the Board sufficient time to conduct its scheduled business, public comment will be limited to ___ minutes. Please make your comments focused and relevant to the duties of the Board. It is not necessary to repeat statements or views of a previous speaker, it is sufficient to state that you agree. Written statements should be summarized and submitted to the Board. They should not be read.

If as chairperson/president, I forget to ask for public comment on an agenda item, it is not because I intend to limit comment but just because I forgot. So in that situation, please raise your hand and I will recognize you.

Suggested script to be used for each item on the agenda:

1. Call the Agenda Item
2. Committee Presents the agenda item
3. Ask for a motion
4. Ask for a second, unless the motion is made by the committee (second is not needed)
5. Ask for board discussion.
6. Ask if there is public comment. [You may reverse the order of these 2.]
7. Ask if there is further board discussion.
8. Repeat the Motion
9. Take the vote

Suggested script for public comment on items not on the agenda:

The board values input from the public as part of its consumer protection mission. It invites and welcomes public comment during this section of the agenda. However, board members cannot engage in dialogue with those who testify during this section of the agenda due to constraints imposed on the board and its members by law. The law prohibits the board from substantively discussing or voting on any matter brought up during public comment. A member of the public who would like the board to discuss a general topic not related to a specific case involving one of its licensees can ask the board to consider placing the issue on the board's agenda for a future meeting.

If you have an application or disciplinary charges pending before the board, we ask that you not discuss the details of your case or pending complaint since the board members will be the "judges" and by law are not permitted to receive evidence or information that is not part of the administrative record in the case.

Disruptive persons:

The public has the right to express its disapproval, and may sometimes make emotional presentations. It is the board's duty and obligation to allow that public comment. Since the purpose of the meeting is for the agency to conduct its business, commenters shouldn't be permitted to thwart that purpose and may be

removed from the meeting if disruptive behavior continues after a request that it stop.

Suggested script to use when there is a disruptive person:

Under the Open Meetings Act (Government Code Section 11126.5), if you continue in this manner, I will ask you to leave the meeting and if you do not leave the meeting, you will be removed. Accordingly, I am asking you to discontinue your disruptive conduct so that all participants can be heard in an orderly fashion.

Miscellaneous

Wording of Motions

- Motions must be clearly worded.
- The test: Could a reasonable person reading the motion understand what the board meant to accomplish?
- Chair should restate the motion before the discussion and just before the vote is taken

Improper Disclosure of Information

- Improper for information received during closed session to be publicly disclosed without authorization of the body as a whole.

Role of the Attorney

The attorney's role during board meetings is to advise the agency of its obligations and authority under the law when it appears that the agency may be deviating from it, e.g. Open Meetings Act, quorum requirements, practice acts, regulations. In some cases, it may be necessary for the attorney to assist the agency in identifying an issue, framing a motion that accurately reflects the agency's deliberations and intent or seeking clarification from a speaker or board member.

When a problem is identified, the attorney is expected to assist the board in developing a lawful alternative method of accomplishing the board's goal.

It is not the attorney's responsibility or role to chair the meetings or direct the discussion. And the attorney should refrain from doing so even if requested to take on that role.