



MEMORANDUM

REVISED

DATE	July 22, 2021
TO	Veterinary Medical Board (Board)
FROM	Tara Welch, Board Counsel, Attorney III Department of Consumer Affairs, Legal Affairs Division
SUBJECT	Agenda Item 7. Review of Board Member Conflicts of Interest and Ethics Requirements

Introduction

Each Board member has a responsibility to the Board and the people of California to conduct themselves in an ethical manner so as not to bring discredit to themselves or the State and the Department of Consumer Affairs (DCA). To meet this responsibility, each Board member is required to comply with a code of ethical standards and prohibited from participating in activities in which the Board member has a conflict of interest between Board matters and the Board member's personal or financial interests. This memorandum is intended to provide a general overview of statutory and regulatory prohibitions on conflicts of interest and the code of ethical standards applicable to Board members.

Conflicts of Interest

Conflicts of interest can disqualify a Board member from taking actions on Board matters. Conflicts of interest mainly arise from four general sources: (1) financial conflicts arising under the Political Reform Act of 1974 (Gov. Code, § [87100](#) et seq.) and DCA Conflict of Interest Code; (2) common law conflicts of interest arising from personal interest or bias, or the potential appearance of a bias or personal interest in a matter even in the absence of a financial conflict of interest; (3) general Business and Professions Code (BPC) qualifications and restrictions on public members of a board; and (4) conflicts arising under the DCA Incompatible Work Activities policy.

Financial Conflicts of Interest – Political Reform Act and Conflict of Interest Code

DCA has adopted a Conflict of Interest Code (California Code of Regulations (CCR), tit. 16, § [3830](#), incorporating by reference CCR, tit. 2, § [18730](#)) as required by Government Code section [87300](#). The DCA Conflict of Interest Code, along with the Political Reform Act of 1974 (Gov. Code, § [81000](#) et seq.), establish Board member disqualification and disclosure provisions, as follows:

Disqualifying Acts:

1. No Board member shall 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. (Gov. Code, § [87100](#).)
2. No Board member shall make, participate in making, or in any way attempt to use their official position to influence the making of any Board decision that the Board member knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the Board member's or a member of the Board member's immediate family or on:
 - a. Any business entity in which the Board member has a direct or indirect investment worth \$2,000 or more.
 - b. Any real property in which the Board member has a direct or indirect interest worth \$2,000 or more.
 - c. Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided or promised to, or received by, the Board member within 12 months prior to the time when the decision is made.
 - d. Any business entity in which the Board member is a director, officer, partner, trustee, employee, or holds any position of management.
 - e. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$250 or more in value provided to, received by, or promised to the Board member within 12 months prior to the time when the decision is made. (Gov. Code, § [87103](#); CCR, tit. 2, § [18730](#), subs. (b)(9).)
3. No Board member shall make, participate in making, or use the member's position to influence any governmental decision directly relating to any contract where the Board member knows or has reason to know that any party to the contract is a person with whom the Board member, or any member of the Board member's immediate family has, within 12 months prior to the time when the official action is to be taken engaged in a business transaction(s) on terms not available to members of the public regarding any investment or interest in real property or the rendering of goods or services totaling in value \$1,000 or more. (CCR, tit. 2, § [18730](#), subs. (b)(9.5).)
4. No Board member shall, for compensation, act as an agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance before, or any oral or written communication to, the Board, DCA, or any officer or employee thereof, if the appearance or communication is for the purpose of influencing a decision on a contract, grant, loan, license, permit, or other entitlement for use. (Gov. Code, § [87104](#).)
5. Board members also are prohibited from having a financial interest in any contract made by them in their official capacity. (CCR, tit. 2, § [18730](#), subs. (b)(10).)

Disclosure. When a Board member determines they should not make a governmental decision because they have a disqualifying financial interest in it, they shall immediately prior to the Board's consideration of the matter, do all of the following:

1. Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.
2. Recuse themselves from discussing and voting on the matter.
3. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.
4. Notwithstanding paragraph 3, the Board member may speak on the issue during the time that the general public speaks on the issue. (Gov. Code, § [87105](#).)

However, a Board member will not be prevented from making or participating in the making of any decision to the extent their participation is legally required for the decision to be made. (Gov. Code, § [87101](#); CCR, tit. 2, § [18730](#), subs. (b)(9.3).) This scenario most likely would arise if the Board did not have a quorum of members without the participation of the member who is otherwise disqualified. In the event a disqualified member must participate in the Board action, the member must publicly disclose the existence of the conflict and describe with particularity the nature of the economic interest, whether the conflict involves an investment, business position, interest in real property, or the receipt of income, loans, or gifts, and the legal basis for concluding that there is no alternative source of decision. (CCR, tit. 2, [18705](#), subs. (b).) The fact that the vote of a Board member is needed to break a tie does not make the Board member's participation legally required. (CCR, tit. 2, [18705](#), subs. (c)(1).)

Board members are required to file an annual Statement of Economic Interest ([Form 700](#)) that provides necessary information to the public about the Board members' personal financial interests to ensure they are making decisions in the best interest of the public and not enhancing their personal finances. (Gov. Code, § [87302](#), subd. (b).)

A violation of any provision of the DCA Conflict of Interest Code or Political Reform Act would subject the Board member to the administrative, criminal, and civil sanctions provided in the Political Reform Act (Gov. Code, § [81000](#) et seq.). In addition, a Board decision that included the action of a Board member in violation of the disqualification provisions of DCA Conflict of Interest Code and Political Reform Act may be set aside as void. (Gov. Code, § [91003](#); CCR, tit. 2, § [18730](#), subs. (b)(12).)

Common Law Conflicts of Interest

Common law conflicts of interest stem from precedential judicial decisions rather than statutory law. Under the common law doctrine, Board members must exercise the powers conferred on them "with disinterested skill, zeal, and diligence and primarily for the benefit of the public." (*Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51; citations omitted.) The common law doctrine prohibits a decision maker from participating in a decision if the

decision maker has a private, personal interest in the decision. The common law doctrine also requires disclosure, disqualification, or both, of the Board member if a non-financial personal interest may be affected by the Board member's official action.

In *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, the Court of Appeal, Second District overturned a city council vote that denied building construction permits because, in part, a city council member had a personal interest in the decision. The city council member lived near the property owners and had complained when the city's planning commission approved the building project. The city council member had a personal non-financial conflict of interest in the matter before the city council because the council member had an interest in preserving the ocean view from his residence and harbored personal animosity toward the property owners. The *Clark* case demonstrates the common law doctrine's prohibition on personal non-financial conflicts of interest; if a member votes on a matter in which that member has a personal conflict of interest, the action taken by the body of which the person is a member is invalidated. (*ibid.* at p. 1171.)

Public Member Conflicts of Interest

Public members of the Board are subject to additional prohibitions on conflicts of interest. First, a public Board member cannot be, or have been within the period of five years immediately preceding their appointment, any of the following:

1. An employer, or an officer, director, or substantially full-time representative of an employer or group of employers, of any licensee of the Board, except if the person maintains infrequent employer status with a licensee, or maintains a client, patient, or customer relationship with a licensee that does not constitute more than two percent of the practice or business of the licensee.
2. A person maintaining a contractual relationship with a licensee of the Board that would constitute more than two percent of the practice or business of the licensee, or an officer, director, or substantially full-time representative of that person or group of persons.
3. An employee of a Board licensee, or a representative of the employee, except if the person maintains an infrequent employee relationship or renders professional or related services to a licensee if the employment or service does not constitute more than two percent of the employment or practice of the Board member. (BPC, § [450.](#))

In addition, to avoid a potential for a conflict of interest, a public Board member shall not be a current or past licensee of the Board or be a close family member of a Board licensee. (BPC, § [450.2.](#)) No public Board member, either at the time of their appointment or during their tenure in office, shall have any financial interest in any organization subject to regulation by the Board. (BPC, § [450.3.](#)) Further, a public Board member, within five years immediately preceding or during their appointment, cannot have been engaged in pursuits that lie in the field of the veterinary medical industry or profession, or have provided representation to the industry or profession regulated by the Board. (BPC, § [450.5.](#))

DCA Incompatible Work Activities Policy

The DCA Incompatible Work Activities policy reflects the statutory prohibitions on work activities established under Government Code section [19990](#), which prohibits Board members from engaging in an activity or enterprise that is inconsistent, incompatible, in conflict with, or inimical to their duties as a Board member, and includes the following:

Using Prestige or Influence – Using the prestige or influence of the State or the appointing authority for the Board member's private gain or advantage or the private gain of another. Examples of such activities include:

1. Soliciting business from persons licensed by the Board under the guise that the licensee may receive special benefits from the Board.
2. Soliciting money from a licensee or from DCA or Board employees for the Board member's private gain.
3. Providing or using the names and/or addresses of licensees, vendors, or other entities subject to regulation by DCA for mailing lists or solicitation unless authorized to do so as part of the Board member's duties.
4. Using the badge, uniform, or identification card of a State position for private gain or advantage.

Using Confidential Information – Using, or having access to, confidential information available due to State employment for private gain or advantage or providing confidential information to persons to whom issuance of said information has not been authorized may be inconsistent, incompatible or in conflict with a Board member's duties. Examples of such activities include:

1. Disclosing confidential investigative reports or confidential examination materials or information.
2. Providing or using, unless authorized to do so by DCA, the Board, or by someone to whom that responsibility has been delegated, licensee social security numbers, birth dates, gender, and/or complaint activity reports.
3. Requesting, acquiring, examining, or disseminating confidential or employee personnel records or personal information maintained by DCA or the Board unless authorized in the assignment of related duties.
4. Willfully misusing, misplacing, or destroying confidential information, including but not limited to, the disclosure of passwords or permitting access to computer information systems, programs, or other data to unauthorized personnel.

Please note that written communications between a Board member and the public are disclosable records under the California Public Records Act (Gov. Code, § [6250](#) et seq.), unless an exemption to disclosure applies.

Accepting Money or Other Consideration – Receiving or accepting money, or any other consideration, from anyone other than the State for the performance of his or her duties as a public officer. Examples of such activities include:

1. Requesting or accepting money, or other consideration, from applicants or licensees for the priority processing of license applications.
2. Charging a fee for helping an applicant complete documents for licensure.

Gratuities, Gifts, and Other Things of Value – Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or other thing of value from anyone who is doing or seeking to do business of any kind with the Board, or whose activities are regulated or controlled by the appointing authority under circumstances from which it could reasonably be substantiated that the gift was intended to influence the Board member in their official duties, or was intended as a reward for any official action performed by the Board member. A Board member is not precluded from accepting all gifts, but if the intent of the giver is to influence future, or reward past, official actions, the gift cannot be accepted. Since determining intent may be difficult, the following DCA guidelines are provided:

1. Does the value of the gift, in itself, suggest an intent other than routine hospitality or gratuity? It may be useful to apply the Fair Political Practices laws as a general guide. These laws require that certain employees (only those who meet specific "Designated Employee" criteria) shall not receive gifts that exceed \$520¹ during any twelve-month period from any one source ([Gov. Code, § 89503, subd. \(c\)](#); [CCR, tit. 2, § 18940.2, subs. \(a\)](#)); establish a financial interest between the source and the recipient; and must report gifts worth \$50 or more ([CCR, tit. 2, §§ 18940, subs. \(b\)](#)). Thus, it follows that gifts approaching these value limits could raise questions under Government Code section [19990](#).
2. Gifts considerably below these limits can also be inappropriate if they raise concern under any of the following standards:
 - a. Do the circumstances surrounding the gift suggest an improper intent? For example, a gift given on the eve of an important decision involving the donor is of much greater concern than a routine holiday gift or an invitation to an annual reception. Gifts directly or indirectly identified as a reward for specific past decisions or actions usually raise questions of improper relationships.
 - b. Is the gift characteristic of the gratuities, hospitalities, or other items typically received from organizations and/or individuals, similar to the donor? The key here is to not accept a gift from one party, which could be viewed as an attempt to gain an advantage over others who have a similar relationship with the recipient.
 - c. How strongly does the form of the gift suggest that it is a routine part of an on-going business relationship as opposed to something more? For example, occasional business lunches or the receipt of mementos bearing the name or insignia of the donor raise fewer questions than gifts of cash,

¹ Reflects 2021 revisions to regulation and differs from \$460 limit reflected in 2014 DCA Incompatible Work Activities policy.

merchandise, extraneous travel or entertainment that have value beyond the business relationship.

Please note that in addition to the DCA Incompatible Work Activities policy on accepting gifts, the Fair Political Practices Act enumerates prohibitions on receipt of gifts (Gov. Code, § [89503](#)).

Use of State Time, Facilities, etc. – Using State time, facilities, equipment, or supplies for private gain or advantage. Examples of such activities include:

1. Using State vehicles or credit cards for personal gain or for personal transactions.
2. Using State letterhead stationery for private correspondence.
3. Using State office supplies, State postage stamping facilities, State copy machines, or computer equipment and software for home or personal business.
4. Selling products such as cosmetics, jewelry, stationery, plastics, etc., at times other than regularly scheduled breaks and lunch periods, or to Board employees when they are not on such breaks.

Code of Ethical Standards

Board members are required to attend once every two years an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § [11146.3](#).) The Political Reform Act also includes ethics requirements, known as the Ethics in Government Act of 1990 (Gov. Code, § [89500](#), et seq.), which prohibits Board members from accepting honorarium, specified gifts, and specified payments, advances, or reimbursements for travel (Gov. Code, §§ [89502](#), [89503](#), [89506](#).) Violations of the Political Reform Act may result in a misdemeanor conviction and, in addition to other penalties provided by law, for each violation a fine of up to the greater of \$10,000 or three times the amount the person failed to report properly or unlawfully contributed, expended, gave, or received. (Gov. Code, § [91000](#).)

Conclusion

Board members should take care to analyze their financial and personal relationships regarding any matter before or regulated by the Board. Participation by a Board member who has a financial or personal conflict of interest may void the Board action and subject the Board member to severe penalties, including misdemeanor convictions and fines. 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's Executive Officer.