

Open Meeting Law Public Records and Ethics For Board Members

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MAHB Certificate Program 2025



Standard MAHB Legal Disclaimer

- This information is provided for educational purposes only. It is not intended to constitute legal advice.
- For legal advice, please contact your city or town attorney.
- MAHB does not enter into attorney-client relationships.

Policy Behind G.L. c. 30A, §§ 18-25,

The Massachusetts Open Meeting Law

- Democracy is government by participation and invites people of every point of view to involve themselves in the vital work of governing our communities.
- Local government is the true showcase of openness and accessibility of the processes of government in a democracy.
- The Open Meeting Law is designed to widen and guarantee the opportunity to observe, evaluate, and participate in government.
- *Public officials who are informed of the requirements of the law rarely are in violation of its provisions.*

The Basics of OML Compliance

Notice of meetings
must be posted

Meetings must be
open to the public

Minutes must be
kept

Complaint process

The Four Definitive Questions

- 1) Is the communication between or among a quorum of members of a **public body**;
- 2) if so, does the communication constitute a **deliberation**.
- 3) Does the communication involve a matter within the body's **jurisdiction**; and
- 4) if so, does the communication fall within an **exception** listed in the law?



What IS a “Meeting?”

A *deliberation* by a quorum of a public body with respect to any matter within the body’s jurisdiction.

“An oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.”

What IS NOT a “Meeting”

- An on-site inspection of a project or program, ***so long as the members do not deliberate;***
- Attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, ***so long as the members do not deliberate;***
- Attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body ***and do not deliberate;***

What IS NOT a “Meeting”

- A meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it;
- A session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

What IS a “Deliberation?”

A “*deliberation*” is a communication between or among a quorum of members of a public body on any public business within its jurisdiction.

Includes an unresponded-to expression of opinion to a quorum.



What IS NOT a “Deliberation”

- Discussion and distribution of agendas, scheduling, procedural information, or distribution of materials for upcoming meeting
 - Provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body’s jurisdiction.
- Discussion of an issue between members of the Board which do not *aggregate* a quorum.
 - One member may discuss with another member so long as the board is a five-member board, but neither member may serially communicate with another member, as that would implicate a quorum.

What IS a “Public Body?”

“A multiple member board, ... within any ... city, region, or town, however created, elected, appointed, or otherwise constituted, established to serve a public purpose...”



What IS NOT a “Public Body?”

“Public bodies shall not include the General Court ..., bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer...”



Obligation to Post the Meeting

5 REQUIRED Elements to a Posting



One of These is Improperly Posted

Michael Lanoue, Chair
Peter Stanton, Vice Chair
Ruby Chang, MD

www.townofgfb.org

Town Hall, 334 Main Street
Great Barrington, MA 01230

Phone: 413-528-0680
Email: rjunezyk@townofgfb.org



TOWN OF GREAT BARRINGTON
MASSACHUSETTS
BOARD OF HEALTH

JOINT MEETING OF BOARD OF HEALTH AND SELECTBOARD
HYBRID MEETING
GREAT BARRINGTON TOWN HALL
334 MAIN STREET
THURSDAY, DECEMBER 7, 2023
TIME: 6:00PM

Please click the link below to join the webinar:
Passcode: 291425
Webinar ID: 876 6012 6343

Dial-in, audio-only: (929) 205 6099
<https://us02web.zoom.us/j/87660126343?pwd=QnRNTnlvEZVZINDU0hOa3RvT3hhZDQ9>

Remote Meeting via Zoom Video/ Telephone Conference:

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and Governor Healey's March 29, 2023 Revised Order extending remote participation by all members in any meeting of a public body, this meeting of the Great Barrington Board of Health and Selectboard will be conducted

A graphic for a Williamstown Select Board meeting. At the top is a silhouette of three mountains. Below it, a black rectangle contains the text 'TOWN OF WILLIAMSTOWN' in white. To the right is a circular 'RECEIVED' stamp from the 'TOWN OF WILLIAMSTOWN - TOWN CLERK' dated 'DEC 07 2023' with the initials 'D.O' and 'AM'. The main text, in all caps, reads: 'WILLIAMSTOWN SELECT BOARD', '31 NORTH STREET', 'AGENDA', 'MONDAY, DECEMBER 11, 2023', and '7:00 PM.' Below this, a paragraph states: 'This meeting of the Williamstown Select Board will be held in person with remote participation via Zoom and streaming live on Willinet.org., 8 broadcast live on Willinet's Spectrum cable TV channel 1303.' Further down, it says: 'Please click the link below to join the webinar:' followed by the URL 'https://us02web.zoom.us/j/84214344124' and the phone number '+1 312 626 6799'. At the bottom, it provides the 'Webinar ID: 842 1434 4124' and a list of topics: '1. OPENING STATEMENT', 'Acknowledgements:', 'Holiday Season:', 'Holiday Walk:', '2. PERMITS AND LICENSES', and '7:05 PM HEARINGS.' A bulleted item follows: '• Williams Concessions, LLC d/b/a Williams Inn Amendment for Change of Manager, represented by Elizabeth Blasco and...'.

 **Town of Mattapoisett
Board of Health**
16 Main Street
P.O. Box 434
Mattapoisett, MA 02739

Carmelo Nicolosi
Board Member

Russell Bailey
Board Member

Michele Bernier
Board Member

MEETING NOTICE

Date: 6/30/2022
Time: 10:00 AM
Location: Mattapoisett Transfer Station
100 Tinkham Hill Road

2022 JUN 28 AM 8:33
RECEIVED
TOWN CLERK
MATTAPOISETT, MA

IN PERSON MEETING, BOARD ATTENDANCE REQUIRED

If anyone in the audience is recording or video-taping, they need to acknowledge such currently. All items within the meeting agenda are subject to deliberation and vote(s) by the Board of Health.

Board Members: Carmelo Nicolosi, Michele Bernier, Russell Bailey
Agent: Gail Joseph **BOH Clerk:** Marianne DeCosta

Invitees: Connor Miller, Andrew Brouseau, Tom LeClaire, Michael Lorenzo,

OFFICE OF
BOARD OF HEALTH
106 VILLAGE STREET
MEDWAY, MASSACHUSETTS 02943
Office (508) 321-4923 • Fax (508) 321-4882

June 27th
Agenda
Monday June 25, 2016
6:30 pm
Medway Public Library
26 High Street
First Floor
Medway, MA

Notice of Meeting & Agenda

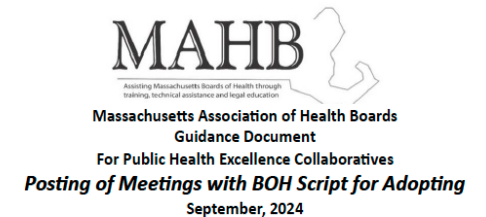
Call to Order

- Acceptance of minutes from June 13, 2016
- Board to sign off on various permits/appl
- Discussion of Animal Regulations

RECEIVED
JUN 28 2016
TOWN CLERK

Nuances Can be Fatal to Posting

- 48 Hour Rule: Post at least 48 hours prior to convening (Excludes weekends and holidays)
- Emergency Meeting to be posted ASAP, prior to meeting
 - Poor planning is *not* an emergency!
- 24/7 Visibility from the street required
- Must post in all cities & towns in a district/collaborative
 - Unless special step are taken
- Website crash >6 hours voids ALL postings in town!
- Use CLEAR LANGUAGE to identify subject matter of each topic
 - No Acronyms!
- Placeholders are no longer allowed!
 - “New Business,” “Old Business,” “Director’s Report” (K-P thing)
 - Need more detail in agenda



Background: The Massachusetts Attorney General's Office of Open Government enforces the standards for posting of public meetings in the Open Meeting Regulations under 940 CMR 29.03, as set forth in the Open Meeting Law (OML), G.L. c. 30A §§ 18 – 25.

Question Presented: Does a Public Health Excellence (PHE) collaborative's governance board comprise a "public body",¹ and if so, does a meeting of the governing board require compliance with the OML?

Analysis: PHE collaboratives are a creation of an Intermunicipal Agreement/ Memorandum of Understanding adopted by municipalities. These IMA/MOUs detail the structure of a governance body often termed an "Advisory Board." These bodies contain one or two representatives from each participating municipality. Generally, the membership of these governing boards of PHE collaboratives can be traced back to the appointing authority of the executive branch of a given municipality in the adoption of the IMA/MOU. As such, these governing boards satisfy the definition of a "public body" pursuant to the provision of the OML. Therefore, meetings in which a deliberation of a quorum of governance board members are subject to all provisions of the OML, including posting of meetings² and compiling minutes.³

Therefore, best practices are that any "meetings" where a quorum of the governance boards of the PHE collaboratives will be present, and during which public business will be discussed,

¹ As defined in the relevant portions of 940 CMR 29.02, a "Public Body" is "a multiple-member board, commission, committee or subcommittee ... within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; ... and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

² A "Meeting" is defined in the statute as "a deliberation by a public body with respect to any matter within the body's jurisdiction." And a "Deliberation" is "an oral or written communication through any medium, ... between or among a quorum of a public body on any public business within its jurisdiction. Importantly, the law is clear that a deliberation doesn't include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, so long as no opinion of a member is expressed. G.L. c. 30A, § 18.

³ Minutes are required by the OML, and, thus, the procedure for compiling them can be found in G.L. c. 30A §22. Requests for the production of those minutes is handled by the Secretary of the Commonwealth Public Records Division. G.L. c. 66, § 10.

What IS an “Executive Session?”

1. *With notice, to discuss reputation/ character, physical condition or **mental health**, rather than professional competence, of an individual,*
2. To conduct strategy sessions in preparation for negotiations certain personnel
3. *To discuss litigation if needed*
4. To discuss the deployment of security personnel or devices
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints
6. To consider certain real estate deals.
7. *To comply with, any general or special law or federal grant-in-aid requirements if they require secrecy*
8. *To consider or interview job applicants or appointment under specific conditions*
9. To meet or confer with a mediator, under certain specific conditions
10. *To discuss certain trade secrets or confidential, competitively-sensitive information*

Special Procedures for Exec. Session

- Where a board member is participating remotely, the member must state at the start of the session that no other person is present or able to hear the discussion at the remote location.
- The board may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant's location.
- While in executive session, the board must keep accurate records, all votes taken must be recorded by roll call.
- The board may only discuss matters for which the executive session was called.

Minutes

Ordinary Meeting Minutes

- Later of next 3 meetings or 30 days, unless can show good cause for further delay.
 - Whenever possible, approve at the next meeting
 - Routine staffing shortages or unavailability do not constitute good cause for delay in approval
- If requested prior to being voted on as final, only in draft form, they must be provided!

Executive Session Minutes

- Response due in 10 days, should be reviewed to determine if appropriate
 - If appropriate can be produced, if not, must respond saying why.

Conducting the Meeting

- The Open Meeting Law does not mandate that any particular person be allowed to speak at a meeting
- OML does not require that the public body allow any kind of public participation or public comment
- Instead, the OML gives the Chair has sole discretion as to who may speak, and for how long

Allowing the public to speak, or restricting such speech based upon issues other than time, place and manner, has serious constitutional implications.

“Although civility can and should be encouraged in political discourse, it cannot be required.” *Baron v. Kolenda (SJC)*

Conducting the Meeting

Public Participation

Whether to allow public participation remains a policy decision with several significant implications, for example:

When will the public participation period occur?

How long will the period be?

How long will each person be permitted to speak?

Whether people will be permitted to speak more than once?

Conducting the Meeting

Policy Issues for Public Speak Periods

Any rules about public participation must relate to the process for such participation and may not relate to speech protected by constitutional principles-any restrictions on speech, including as to time, must be content neutral and narrowly tailored to the public body's interest.

1. Avoid debate
2. Avoid responding to a comment before the board has had the opportunity to discuss it OR when the matter is controversial
3. Leave matters raised during public speak “unresolved”
4. Not engaging and instead placing the item on an upcoming agenda for which formal notice of the item appears

Final Nuts & Bolts for OML

Recording Meeting

- Any member of public may record BUT *with notice*
- Chair gives notice to all
- Record with respect
- Chair can exclude from meeting if intrusive

Subcommittees are Open Meetings

OML Complaint

- Immediately contact your CEO
- Do not engage complainant, this is a matter for counsel!

ADA Accessibility

- All meetings must be wheelchair accessible w/o need for assistance
- ASL interpreters must be available, subject to reasonable notice

Retain All Documents Seen

- They are public records!

Policy Behind

The

Massachusetts

Public Records

Law

The Massachusetts Public Records Law (Public Records Law) and its Regulations provide that each person has a right of access to public information. This right of access includes the right to inspect, copy or have a copy of records provided upon the payment of a reasonable fee, if any.

What Are Public Records?

The Public Records Law broadly defines “public records” to include “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, *regardless of physical form or characteristics, made or received by any officer or employee*” of any Massachusetts governmental entity. G.L. c 4, § 7

Important Considerations

- Every government record is presumed to be public unless a specific statutorily defined exemption applies
- Electronic records are treated the same as paper records
 - Email communications
 - Text messages
- The use of personal email addresses by government officials, employees and/or board and commission members while conducting any day-to-day business of a government entity renders the emails public records.

Anti-Harassment Protections

- 950 CMR 32.06(4)(f): Petition for Modification or Waiver by a Records Access Officer to the Supervisor.
 - “if, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the custodian of its obligation to provide copies of the records sought.”
- **High Standard of Review**
 - **Must demonstrate to the Supervisor that the request is frivolous and not “frivolous or designed to intimidate or harass, and the requests are not intended for broad dissemination to the public about actual or alleged government activity.”**

You know I can't take this because they're assholes in my opinion!!

Some of them I swear they are the most disgusting human beings I've ever met

😞😞😞 It's so painful

Good night you did well on enough of the abuse

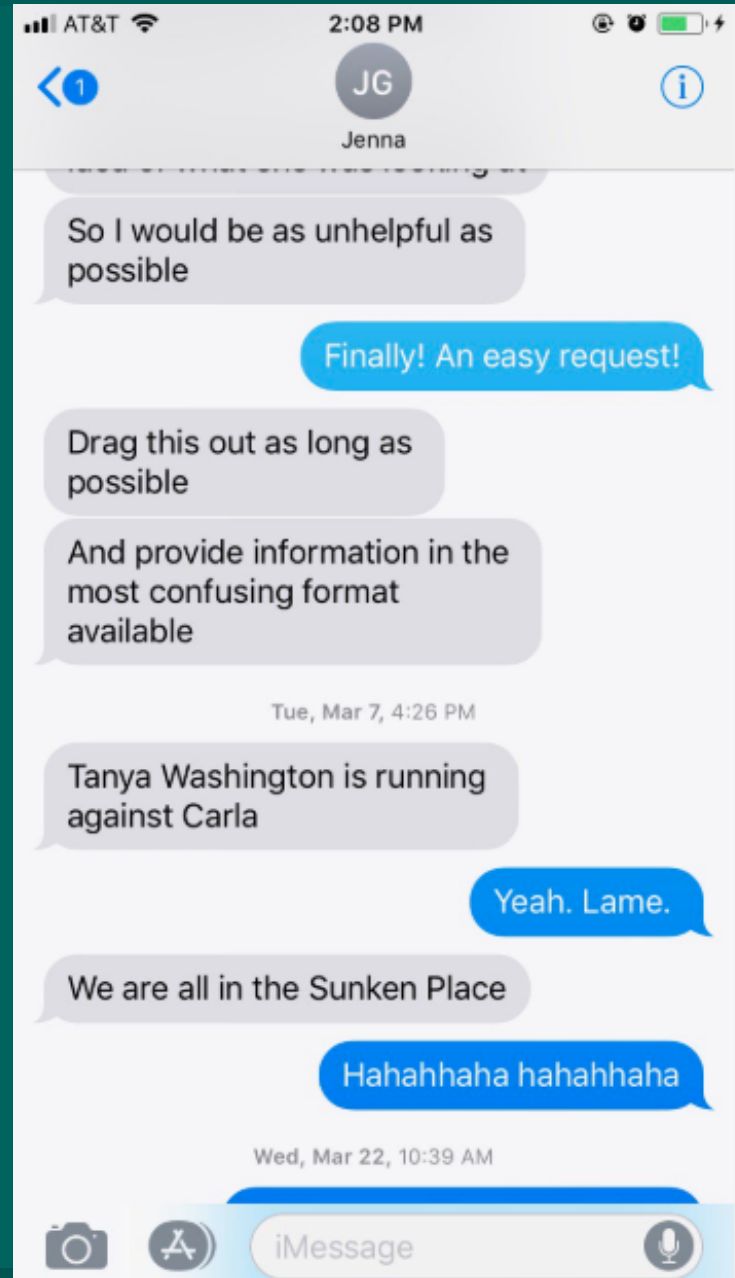
I'm eating frozen chocolate yogurt then going to bed. I have hockey in the morning to sweat out all the negative energy from CC.

Electronic Records: Personal Email/Text Messages

Public records, including emails made or received in an individual's capacity as a government employee, must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request.

Whenever original public records are created outside the municipal offices, they shall be transferred on a regular and frequent basis to secure storage in the municipal building.

**And Never
Forget That There
Can be a
Followup
Request for
“Further
Information!”**



Summary of Conflict of Interest and Municipal Employee Ethics

Policy Underpinnings

Conflict of Interest

- **The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service.**
- When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

**If you are
reading this,
You Are a
Municipal
Employee**

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes.

Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law.

Bribes, Gifts and Gratuities



- A bribe is *anything of value* corruptly received by a municipal employee in exchange for the employee being influenced in his official actions. **Giving, offering, receiving, or asking** for a bribe is illegal.
- Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position.

Misuse of Position

**ABUSE OF
DOMINANT
POSITION**



- Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited.
- A municipal employee may not use her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals.

Self-Dealing and Nepotism



- Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited.
- A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest.
- He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

False Claims



- Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited.
- A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more or cause another person to do so.

Appearance of a Conflict



- Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited.
- A municipal employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone or that she can be improperly influenced.
- If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties.
- However, a municipal employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts.
- An appointed employee must make the disclosure in writing to his appointing official.

Confidential Information



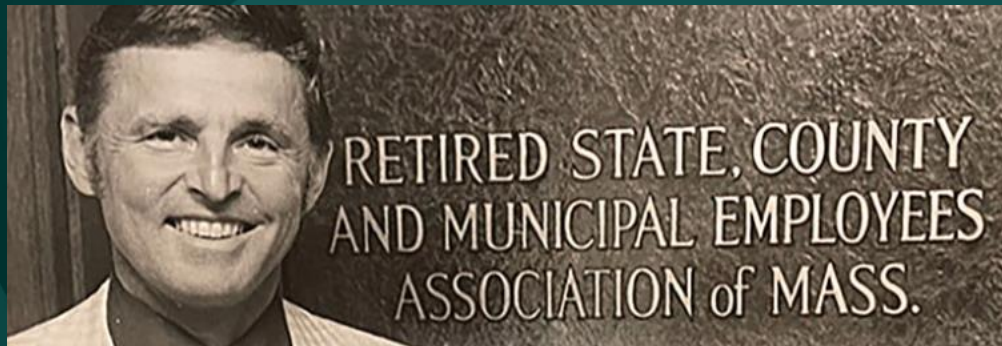
- Improperly disclosing or personally using confidential information obtained through your job is prohibited.
- Municipal employees may not improperly disclose confidential information or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

After Hours Restrictions



- (a) Taking a second paid job that conflicts with the duties of your municipal job is prohibited.
 - A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her municipal job.
- (b) *Divided loyalties*. Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited.
 - Acting as agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid.
- (c) *Inside track*. Being paid by your city or town, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies.
 - A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job.

After Leaving Municipal Employment



- (a) Forever ban. After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee.
- (b) One year cooling-off period. For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service.
- (c) Partners. Your partners will be subject to restrictions while you serve as a municipal employee and after your municipal service ends.

Top 10 Things to Know About Conflict of Interest and BOH

1. **Don't accept Bribes.**
2. **Don't ask for or accept meals, gifts, tickets or other good stuff from people you deal with.**
3. **You owe undivided loyalty to your municipality. Don't work against the municipality's interests.**
4. **If you serve on a board, you serve the municipality. Don't work on the other side of the table representing people, organizations and business before any board in town.**
5. **Don't trade on what you did as a public official when you leave office.**

Top 10 Things to Know About Conflict of Interest and BOH

6. Keep out of matters involving family members and organizations and businesses you are involved in.
7. Don't double dip. If you get paid for doing two separate things for your municipality, get an exemption.
8. Don't use your position to get special benefits the general public can't get.
9. Don't create appearances of conflicts. Disclose any significant relationships you have when matters concerning those people come before you.
10. Get Advice! When in doubt, call 617-371-9500 and ask.

Thank You

Michael Hugo, J.D.

Massachusetts Association of Health Boards

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