

Mental Health Services  
Oversight and Accountability  
Commission

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Training on Conflict of Interest  
and Brief Overview of  
Bagley-Keene Open Meeting Act  
November 15, 2012

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Overview of Presentation

- Purpose
- Review of applicable conflict of interest laws
- Additional resources for ethics issues
- Brief review of Bagley-Keene Open Meeting Act

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Purpose

Provide required ethics training:

- Within six (6) months of taking office  
**and**
- At least once every two years

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### Applicable Conflict of Interest Laws

- Political Reform Act
  - Disclosure requirements (Form 700)
  - Conflict of interest rules
- Government Code Section 1090
  - Applies to all contracts
- Government Code Section 8920
  - Code of Ethics
- Government Code Section 19990
  - Incompatible Activities

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### Political Reform Act: Rationale & Public Policy

- Public officials should perform their duties in an impartial manner
  
- Disclosure (Form 700)
  
- Disqualification

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### Political Reform Act: Disclosure Statement of Economic Interest (Form 700)

- Three types of Form 700
  - Assuming office
  - Annual (early spring)
  - Leaving office
  - Submit the Form 700 to MHSOAC Staff
- "Code" Filers vs. "\$87200" filers
- Disclosure based on MHSOAC Conflict of Interest Code

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**Political Reform Act: Disclosure  
Statement of Economic Interest (Form 700)**

**MHSOAC's Conflict of Interest Code**

- Interests in real property, investment and business positions in or income (including loans, gifts, and travel payments) from businesses of the type that:
  - contract with or receive funds from or through the state or local mental health systems; or
  - are licensed by, permitted by, regulated by state or local mental health systems; or
  - provide consultant services to state or local mental health systems

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**Political Reform Act:  
Disqualification & Basic Prohibition**

A public official may not participate in a government decision in which he or she has a disqualifying financial conflict of interest.

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**Political Reform Act:  
8 Step Process**

- #1: Is the individual a public official?
- #2: Is the official making ... a governmental decision?
- #3: Does the official have a disqualifying economic interest?
- #4: Is the economic interest directly or indirectly involved in the governmental decision?

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**Political Reform Act:  
8 Step Process (cont)**

- #5: Will the governmental decision have a material financial effect on the official's economic interest?
- #6: Is it reasonably foreseeable that the official's economic interest will be materially affected?

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**Political Reform Act:  
8 Step Process (cont)**

- #7: Is the effect of the governmental decision on the official's economic interest distinguishable from its effect on the general public?
- #8: Despite a disqualifying conflict of interest is the official's participation legally required?

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**Step 2:  
Participating in Decision**

- Making a decision
  - Voting, appointing person to a position, or entering into a contract
- Participate in making a decision
  - Negotiations, analysis or recommendation to decision maker
- Influencing decision making

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**Step 3:**  
**Disqualifying Financial Interest**

- Investment in business entities
  - \$2,000 or more
- Interest in real property
  - \$2,000 or more
- Sources of income
  - \$500 or more within 12 months

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**Step 3:**  
**Disqualifying Financial Interest (cont)**

- Sources of gifts
  - \$420 or more within 12 months
- Business Positions
  - Officer, director, employee, or any business position
- Personal financial effect rule
  - \$250 or more within 12 months

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**Steps 4 - 8**

- Directly or indirectly involved
- Materiality of impact
- Reasonably foreseeable
- Distinguishable impact
- Legally required participation

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**Political Reform Act: Procedure**

- Publicly disclose interest
- Required Recusal

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**Political Reform Act:  
Limitations on Receipts of Gifts**

- \$420 per calendar year from single source
  - January 2013 amount will be adjusted to reflect consumer price index
- \$50 or more must be disclosed on Form 700
- Receipt from sources covered in the MHSOAC Conflict of Interest Code
- What is a "gift"?
  - Payment or other benefit, including rebate/discounts which are not made to the public

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**Political Reform Act:  
Honoraria Ban**

- Prohibition on accepting an honorarium
  - Making a speech, writing an article or serving as a panelist
  - From sources covered in the MHSOAC Conflict of Interest Code
- Prohibition does not apply
  - Travel reimbursement
  - "Earned Income" exception

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**Contractual Conflict of Interest:  
Government Code §1090**

- Person is prohibited from making a contract in which he or she is financially interested
  - "contracts" includes grants
  - "making a contract" includes involvement in any stage of the process
    - Idea, scope, specifications, terms, evaluating applicants, and negotiation
  - "financial interest" broadly defined

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**Contractual Conflict of Interest:  
Government Code §1090 (Cont)**

**Harsh Penalties**

- Contract is void and cannot be enforced
- Person is subject to felony prosecution and civil and administrative sanctions
- Recusal/Disqualification is not a cure

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**Government Code Section 8920:  
Code of Ethics**

- Applies to State elected and appointed officers only
- Can't participate in decisions that will have a direct monetary effect on them
  - Greater benefit than others in same group
- Person must disqualify himself/herself

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### Government Code Section 19990: Incompatible Activities

- Use of state resources and prestige for private gain
- Use of confidential information for private gain
- Acceptance of a gift if it is intended to influence or reward the official and is from a person doing business with the Commission or regulated by the Commission

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### Additional Resources

- Attorney General's on-line course  
<http://ag.ca.gov/ethics/>
- California Fair Political Practice Commission (FPPC)  
<http://www.fppc.ca.gov>

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### Bagley-Keene Open Meeting Act

#### Three Basic Duties

- Conduct meetings in open session
- Give adequate notice of meetings
- Provide an opportunity for public comment

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**Bagley-Keene Act:**  
**Open Session**

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**"State Body"**

- Created by law = the Commission
- Created by the Commission
  - Body that exercises authority delegated to it by the Commission; **or**
  - Advisory body if it was created by formal action of Commission or by a member of the Commission **and**
  - Advisory body consists of 3 or more persons

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**Bagley-Keene Act:**  
**Open Session**

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**Definition of Meeting**

- Any gathering of a majority of the members of the "state body" to hear, discuss, or deliberate
  - Includes using personal intermediaries, phone calls, and emails

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**Bagley-Keene Act:**  
**Open Session**

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**Serial Calls or Emails**

- Series of one-to-one telephone calls or emails between members to discuss, deliberate, or take action is prohibited.

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**Bagley-Keene Act:**  
**Open Session**

- All meetings are to be open and public except authorized closed meeting
- Closed meetings:
  - Personnel
  - Legal advice about litigation
  - Confidential draft of audit report from Bureau of State Audits
- Teleconference
  - Each location accessible to public

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**Bagley-Keene Act:**  
**Adequate Notice**

**Notice Requirements**

- At least 10 days notice of meetings
  - Special meeting exception (48 hour)
- Notice must include specific meeting agenda
  - Enough details to inform the public of subject matter

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**Bagley-Keene Act:**  
**Adequate Notice**

- Commission can take action only on items on the agenda
- Limited Exception
  - 2/3 vote that: (a) there is a need to take immediate action; and (b) the need came to the Commission's attention after the agenda was posted
  - At least 48 hours notice must be posted on internet, newspaper and radio or TV

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**Bagley-Keene Act:**  
**Public Comment**

- Must provide opportunity for public to address each agenda item before or during Commission's discussion or consideration of the agenda item
- May limit total amount of time allocated on particular issues and for each speaker

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**Bagley-Keene Act:**  
**Public Comment**

**Copies of Documents**

- Public documents given to majority of members must be made available for public inspection at meeting if prepared by the Commission or after the meeting if prepared by others

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**Thank You**

Questions/Comments?

[Filomena.Yeroshek@mhsoc.ca.gov](mailto:Filomena.Yeroshek@mhsoc.ca.gov)  
(916) 445-8696

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