



# **Model Board Member Code of Conduct**

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## INTRODUCTION

The Federation of Associations of Regulatory Boards (FARB) is pleased to introduce the *FARB Model Board Member Code of Conduct*. Whether the discussion concerns licensing or disciplinary decisions, open meeting or public record questions, or any of the myriad other topics included in professional regulation, one thing is clear: public protection starts with the board members. It is the hope of the FARB Board of Directors that introduction of this model document will provoke a conscious conversation among regulators about expectations for board member qualifications and behavior.

FARB is a not-for-profit and tax exempt association under 501(c)(3) of the Internal Revenue Code. FARB governing members are federations and associations of regulatory boards from a wide variety of the regulated professions. In addition to its educational conferences, FARB develops and distributes model documents which promote uniformity, benefitting both the regulatory community and the public.

The *FARB Uniform Model Practice Act*, the *Model Application for Licensure and Renewal*, the *Model Consent Agreement*, and this new *Model Board Member Code of Conduct* are guides for regulatory boards, departments, or agencies. To assist in its implementation, the FARB presents its *Model Board Member Code of Conduct* in legislative format. FARB recognizes that, in the short term, individual constituencies may find it more appropriate to adopt the Code as a rule or policy of the regulatory entity.

The *FARB Model Board Member Code of Conduct* sets forth behavioral expectations for individual members of the regulatory authority of a designated profession. It guides board members in the fulfillment of their regulatory roles. By establishing specific standards, it becomes a tool to assist in the recruitment and selection of members for regulatory boards and can serve as a means of evaluating potential nominees. It also establishes the expected behaviors and actions of individuals serving on the board and provides a rationale for removal of board members whose service fails to meet expectations or is otherwise unacceptable.

FARB is pleased to provide this new and improved document to legislators, regulatory boards, attorneys, appointing authorities, and the regulatory community. While the principles contained in this Code have widespread applicability, in adapting this Code for use in your particular jurisdiction, please consult your substantive and procedural state laws and seek legal advice as necessary. To the extent any users have comments or suggestions to improve the document, please forward your remarks to the FARB Executive Director at [FARB@FARB.org](mailto:FARB@FARB.org).

## **AN ACT TO ESTABLISH A BOARD MEMBER CODE OF CONDUCT**

### **Section 1. Statement of Purpose.**

- (1) The purpose of this part is to set forth a code of conduct particular to members serving on professional and occupational regulatory boards, commissions, or councils. A board member code of conduct defines the expected character and conduct of such individuals and establishes a standard for removal from serving in order to sustain public confidence in the ability of a regulatory board to carry out its mission to protect the public health, safety, and welfare through the regulation of professions and occupations in the State of [ \_\_\_\_\_ ].
- (2) Pursuant to [CITATION], the practice of the regulated professions in the State of [ \_\_\_\_\_ ] is deemed to affect the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of [PROFESSION], as defined under this Act, merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of [PROFESSION] in the State of [ \_\_\_\_\_ ]. This Act shall be liberally construed to carry out these objectives and purposes.
- (3) In the interest of this public protection perspective and to set forth the mandates of the relevant agency of the state legislatively delegated with the authority to enforce laws and promulgate and enforce rules, board members shall at all times maintain a perspective consistent with the enforcement of the relevant law in the interest of public protection. Board members are required to adhere to the code of conduct set forth herein and other applicable ethical obligations imposed upon public servants.

### **Section 2. Definitions.**

- (1) Adjudicatory Proceedings – a proceeding before the board in which the legal rights, duties, or privileges of specifically named persons are required by constitutional right or by any provision of [STATE] law to be determined after an opportunity for a hearing before the board.
- (2) Agency – the state board, commission, department or officer authorized by law to make rules or to determine adjudicatory proceedings.
- (3) Board – the board of [PROFESSION] created in [CITATION].
- (4) Board Member – any individual appointee to the board, whether a licensed member of the profession or a public member.
- (5) Executive Director – an individual employed by the board who is responsible for the performance of the administrative functions under the oversight of the board and such other duties as the board may direct.
- (6) Good Standing – a license that is not restricted in any manner and which allows the licensee full practice privileges.

Throughout this Act, the terms “law” and “rule” are utilized in place of words like statute, code, and regulation. A State may wish to replace “law” and “rule” with more specific language tailored to the requirements of the State’s laws and practices.

- (7) Industry Trade Association – an organization that promotes the business of the profession and participates in public relations activities that include, but are not limited to, advertising, education, political donations, lobbying, and publishing.
- (8) Presiding Officer – the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

**Section 3. Executive Branch Appointee.** Pursuant to [CITATION], board members are appointed by and accountable to the executive branch of government. Each board member must adhere to relevant executive branch policies as well as the legislatively enacted practice act and rules duly promulgated thereunder.

**Section 4. Personal Performance of Duties – Practice.**

- (1) A board member shall:
  - (a) maintain a working knowledge of the laws, rules, policies, and procedures under the jurisdiction of the board,
  - (b) regularly attend and meaningfully participate in board meetings and other board proceedings that may be required,
  - (c) if practicing as a member of the regulated occupation or profession, be licensed in good standing, and
  - (d) act professionally in all interactions with other board members, executive director, board staff, consultants, advisors, other state officers and employees, and the public.

**Section 5. Conflict of Interest – Ethics.**

- (1) A board member shall:
  - (a) comply with conflict of interest and ethics laws and rules including, but not limited to, [CITATION],
  - (b) decline to deliberate, participate, or otherwise attempt to affect the outcome of any matter before the board when to do so may result in a conflict of interest or the appearance of a conflict of interest,
  - (c) comply with the requirements of the open meetings and public records laws of this state regarding all communications, whether written or electronic, between board members and between board members and board staff including, but not limited to, emails, social media, and telephone text messages,
  - (d) follow applicable communication protocols regarding dissemination of board information, including maintaining confidentiality of matters discussed in executive session and under the attorney-client privilege, and
  - (e) exercise licensing and rulemaking decisions independent of external influences.

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- (2) A board member shall not:
- (a) have private contracts or business dealings with the board, other than board member compensation or reimbursement as may be otherwise provided by law,
  - (b) receive any payment or benefit from transactions of the board, other than the benefit derived from licensure by the board if the board member is a licensee of the board,
  - (c) solicit or receive a gift or favor from any person, company, organization, or any intermediary interest which may compromise or appear to compromise the independent judgment of the board member regarding fulfillment of any board or board member obligations,
  - (d) attempt to obtain favorable treatment by the board for any individual or entity, and
  - (e) use his or her position on the board to advance any private interest.

## **Section 6. Membership in Professional Organizations – Industry Trade Association Prohibitions.**

- (1) In fulfilling their responsibilities to the licensing board, a board member shall at all times maintain a perspective consistent with the enforcement of the relevant laws and rules in the interest of public protection, and not in protection of the professional interests of the licensees.
- (2) A board member shall not be an officer or hold any leadership position in state or national industry trade associations or other organizations serving the profession of [PROFESSION] during the term of the board member’s appointment to the board. In this capacity, a leadership position is defined as including, but not limited to, a voting member of the executive board, service on an ethics committee, membership committee, examination committee, or other committee or similar position of the association or organization.
- (3) A board member shall not be a registered lobbyist for any professional organization or industry trade association.

## **Section 7. Communication Protocols.**

- (1) As an agency of the state legislatively delegated with the authority to enforce laws and promulgate and enforce rules, board members shall recognize the parameters of the board’s authority and ensure the board maintains its public protection mission in undertaking all of its duties and responsibilities,
- (2) Within the parameters of the board’s authority, board members shall:
  - (a) ensure the effectiveness and efficiencies of the board,
  - (b) delegate to and oversee administrative functions of the board staff, including certain activities identified to occur between board meetings,
  - (c) select leadership of officers of the board to preside over the customary board activities including, but not limited to, board meetings, committee structures,

application and renewal processing, complaint processing, rulemaking, and matters related to board budgets, and

- (d) recognize the importance of communications related to board business and adopt policies that establish communication protocols and assure that the majority opinions of the board are promoted.

(3) A board member shall:

- (a) authorize and provide general direction to the executive director to address day-to-day administrative decisions including, but not limited to, personnel matters,
- (b) make requests for board staff assistance through approved procedures including, but not limited through, the presiding officer or the executive director,
- (c) refer board staff and members of the public who attempt to use individual board members as an avenue to influence board decisions to the executive director, and
- (d) provide other general direction and delegate functions and tasks to the executive director as appropriate under law.

### **Section 8. Disclosure of Board Information.**

(1) A board member shall:

- (a) obtain the permission, vote, or approval of the board as to the information that may be shared when speaking on behalf of the board,
- (b) promptly refer any requests for comment by the media to designated board staff unless such comment has been previously sanctioned and approved by a board majority to speak on behalf of the board, and
- (c) exercise due diligence to avoid any breach of duty as a board member arising out of negligence, intentional action or omission, or unauthorized communication with any individuals.

(2) All information disseminated by board members shall be factual and limited to information that is otherwise appropriate to be disclosed to the public.

(3) This section shall not be construed to limit the freedom of expression of a board member as an individual member of the public.

### **Section 9. Removal from Service – For Cause.**

(1) A board member may be removed from the board for cause including, but not limited to:

- (a) ceasing to meet the qualifications for board membership,
- (b) being found guilty of a felony or unlawful act that involves moral turpitude, or conviction of any crime other than a minor traffic offense,
- (c) being found guilty of malfeasance, misfeasance, or nonfeasance in relation to board duties,

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- (d) being declared mentally incompetent by a court of competent jurisdiction,
- (e) a final adjudication by a recognized body, including the courts, that the board member has violated this Act or the board’s practice act, or that the board member has misused the position to obtain any financial or material gain, or any advantage personally or for another, through such office,
- (f) the refusal or inability for any reason to perform the duties of a board member in an efficient, responsible, and professional manner, or
- (g) failing to attend [NUMBER] successive board meetings without just cause as determined by the board.

### **Section 10. Conflict with Other Laws.**

- (1) The provisions of this Act shall not excuse any board member from adherence to any other state or federal law or rule and to the extent this Act conflicts with such law or rule, the state or federal law or rule shall prevail.
- (2) To the extent possible, the provisions of this Act shall be interpreted to coincide and be read to coexist with all other laws of this State. In the event this Act is alleged to conflict with any other provisions of law, this Act shall prevail to the extent the statutory provisions at stake involve substantive issues related to the practice of [PROFESSION]. If the alleged conflict addresses procedural issues related to administrative processes, the Administrative Procedures Act [CITATION] shall prevail. In all other respects, conflict of laws issues shall be determined by interpretation and construction principles.