

**BRAD SHERMAN
REGULATORY CONFERENCE**
(formerly CARE Conference)
Compliance and Regulatory Education:
Best Practices for Athletic Trainer Regulation



Boards Behaving Badly

WWYBD (What Would Your Board Do)?

boc BOARD OF CERTIFICATION
FOR THE ATHLETIC TRAINER

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Navigating a Board's Behavior

This workshop will explore the legal issues and ethical dilemmas that may arise when regulatory board members fail to uphold their responsibilities or act outside of their authority. Some of the topics may include:

- Board roles
- Conflicts of interest
- Communication protocols
- Lapses in accountability
- Delegation of authority
- Communication protocols and confidentiality
- Open meetings and public records

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- The materials provided in this presentation and any comments or information provided are for **educational purposes only** and should not be considered legal advice or a legal opinion.
- The opinions and statements (and errors!) are my own and **do not represent** the position of The Federation of State Massage Therapy Boards or the BOC.

Disclaimers

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Objectives

1. Identify board member conflicts of interest and ethical requirements.
2. Increase understanding of the practical implications of the different roles of board member, board chair, board staff, executive director, and board counsel.
3. Identify and analyze applicable open meetings and public records issues, and confidentiality requirements within those issues.
4. Review and recognize potential communication concerns within the board, between board and staff, and with members of the public.

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Take Home Points



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After the entire Board staff resigns due to a damaging auditor's report (encouraged by the state trade association), that state trade association rep is appointed as the new Board Chair. A new Executive Director is also hired. The new ED is a former student of the Board Chair, which creates an interesting dynamic at meetings. The new chair is connected politically and frequently speaks to legislators and third parties (schools and industry representatives) on behalf of the Board without Board approval or achieving consensus.

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Scenario 1:
Who's the Boss?

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Considerations

- What are the key issues for the Board?
- What are the issues for the Executive Director?
- How can/should the Board handle the Board Chair?
- How can the Executive Director handle the Board Chair?
- What if the Board Chair was also an elected leader of the state trade association?

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Part 1 –

The Board Chair is consulting with their spouse, who is an attorney, on legal matters faced by the Board. The Board Chair will relay this legal advice during board meetings.

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Scenario 2:
Will the Real Board Counsel Please Stand Up?

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Considerations

- What should the Board members do?
- What should the Executive Director do?
- What should the Board Counsel (the real board counsel) do?

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Part 2 –

When the situation is addressed by the Board counsel (the real board counsel!), the Board member resigns as Chair but remains on the Board.

Scenario 2 (cont'd):
Will the Real Board Counsel Please Stand Up?

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Considerations

- Does your Board have legal counsel present at each meeting?
- Are there any issues or concerns with the board member remaining on the Board?

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Many board members are affiliated with organizations that appear before the board, requiring frequent conflict of interest disclosures and recusals. As multiple members step aside on the same issues, decisions are often made by a small subset of the Board, raising public concerns about full representation of the board. Internally, repeated recusals also limit some members' participation, leading to uneven engagement and influence.

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Scenario 3:
Recusal Ripple Effect

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Considerations

- What is a conflict of interest (COI)? How can they be addressed or resolved?
- Does the conflict have to be financial? Does it matter whether it is actual or potential?
- What rules apply to evaluate COI? Does your board have a policy? Is there a state ethics board/agency that can provide guidance?
- What training/guidance do board members receive on COIs? Is there a disclosure form that members are required to sign?
- Does it matter whether the person/org before the board is requesting action or just providing input, i.e., CE course approval versus public comment on a rule change?
- Who decides whether a member has a COI, should recuse, should abstain?

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Conflict of Interest

Conflict of interest occurs when personal, financial, or professional loyalties risk compromising your primary legal duty to make objective, impartial decisions that protect public safety and welfare.

- Financial
- Personal/familial ties
- Dual roles

Rule of Necessity – narrow exception; strictly limited

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A massage therapy board regularly faces criticism from an advocacy group that has protested at its meetings. One of the group's issues is to legalize sex work in massage parlors. The board anticipates potential disruptions during an upcoming meeting but still wants to provide the opportunity for public comment. During the meeting, members of the group speak during public comment, some of whom admit to unlicensed practice. The board acknowledges the comments but does not respond to the request for action. Frustrated by the lack of direct reply, the group begins to behave disruptively, creating challenges in maintaining order and progressing through the agenda.

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Scenario 4 –

**Public Voice,
Rising Tensions**

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Considerations

- Does your board have a public comment policy?
- How is it enforced and by whom?
- What should the board do about the admissions of unlicensed practice or other violations of the law?
- Can/should the board chair shut down the public comments from the group members to prevent further admissions of violations?
- Can the group members be removed from the meeting? Does it matter where your meeting is held – government building or private hotel?
- If the group members cannot be removed, should the meeting be adjourned?

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Part 1 –

A group of unhappy constituents has escalated their complaining to the point of harassing the board and staff members. They call and email the staff and members constantly and attack anyone they are able to contact. These communications indicate a misunderstanding as to what the board is able to do. In an effort to placate the group, the powers that be suggest that the "ringleader" be appointed to the board.

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Scenario 5:

**Adversarial
Board Member**

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Considerations

- Was it a good idea to appoint the ringleader to the Board. What are the pros and cons?
- What if the staff of your state's governor made the request?
- How can this be resolved?

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Part 2 -

Assume that the ringleader gets appointed and has been given an extensive orientation about the board's authority, scope, and processes. The member continues to be adversarial and hostile to both board members and staff. It is also discovered that the ringleader is sharing confidential board files with other boards and members of the public, despite being warned by the executive director to stop.

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Scenario 5 (cont'd):
**Adversarial
Board Member**

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Considerations

- What steps should be taken to address this? Whose job is it?
- Is there greater authority to act now that the member has ignored a directive from the executive director?
- What if it involves a divided issue and the board members are split?

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Part 3 -

Your state's governor has the troublesome member removed from the board before the end of their term. Of course, they are still interested in being heavily involved in the industry. However, your board members and staff avoid these calls and set their e-mail systems to consider the messages as spam (you secretly do not blame them for this approach). In addition to making board work difficult, the conduct has created reputational problems with the press and public and caused other state agencies to be reluctant to collaborate with the Board.

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Scenario 5 (cont'd):

Adversarial Board Member

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Considerations

- Under the law, are your staff and board members allowed to ignore the person?
 - If so, *should* they be allowed to do this?
- Other than ignoring the member, what are some other ideas as to how to handle the person's complaints and questions.
- Is there a process that would still address the complaints without putting the staff and board members in this person's crosshairs?
- Does your board have a policy as to what board members can discuss after leaving the service of the board?

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Cubin v. Gordon (2026)

- Dr. Eric Cubin was appointed by Governor Mark Gordon to serve on the Wyoming Board of Medicine.
- Dr. Cubin was also a member of the Wyoming Medical Society.
- The Wyoming Medical Society was lobbying against passage of Chloe's Law, which banned sex change treatments on children.
- Dr. Cubin was unsuccessful in getting the Medical Society to change its position and started lobbying in support of the bill.
- Governor sent a letter removing him from the Medical Board, citing board efficiency and need for impartiality, but Dr. Cubin resigned instead.
- Dr. Cubin sued the Governor in is official and personal capacities claiming a violation of his free speech rights.

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Part 1 –
The board is scheduled to review two sexual misconduct cases, one involving the current chair and a separate case with very similar allegations against another licensee. The board members are uncomfortable having the chair present during the discussions due to the overlapping factual situation.

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Scenario 6 –
**Impartiality
Under Strain**

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Considerations

- Is this a conflict of interest for the chair? Why or why not?
- Does the procedural posture of the case matter – complaint versus probable cause versus formal hearing?
- Who should address any conflict?

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Part 2 –
Assume the matter involves an investigation report and the board must decide whether to file a formal complaint. The other members of the board have been provided the report and been instructed to not provide the report to the chair. After gaveling in at the public meeting, the chair states that the board will retire to a closed session to discuss the matters (assuming this is authorized under state law). On the way to the separate meeting room, the executive director instructs the chair to stay behind. The chair immediately objects and demands to participate.

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Scenario 6 (cont'd)–
**Impartiality
Under Strain**

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After a complaint is filed and the board discussed the investigation, the board votes to invite the licensee before the board for an interview. Prior to the interview, a board member contacts the licensee and fills them in on the process of what will occur and the different perspectives of the other board members. Another board member learns of the communication and reports it to the executive director.

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Scenario 7 –
Too Friendly

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Considerations

- What should the executive director do?
 - How should the executive director respond to the board member who reported it?
 - To the offending board member?
- Is there a requirement to report the offending board member to any other entity?
- What if the board member denies the communication with the licensee ever took place?
- Is the executive director required to disclose the information to the full board?

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Take Home Points?

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