NEW YORK STATE | Office of Addiction Services and Supports

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NYS Opioid Settlement Fund Advisory Board

Code of Ethics | Open Meetings Law | Purpose & Procedures

MAY 8, 2025

Agenda

Code of Ethics for Board Members
(Public Officer's Law §74)

Open Meetings Law (OML)

Purpose, Legal Framework, Bylaws, Public Participation, Procedures

Code of Ethics for Board Members

(Public Officer's Law §74)

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Purpose of the Code of Ethics

Public Officers Law (PBO) § 74

- Prohibits Members from using position and/or authority to benefit themselves/others
- Ensures impartiality, confidentiality and integrity of Board's process
- Applies to actual conflicts of interests & appearance of conflicts/impropriety

NYS Commission on Ethics and Lobbying in Government (NYS COELIG established July 2022)

To ensure compliance with state ethics and lobbying laws and regulations:

- Oversight over commissions, **boards**, State public benefit corporations, public authorities, SUNY, CUNY, and the statutory closely-affiliation corporations; the four statewide elected officials; members of the Legislature and candidates for those offices; employees of the Legislature; certain political party chairpersons; and registered lobbyists and their clients

- Provide information, education, and advice regarding ethics and lobbying laws and promotes compliance through audits, investigations, and enforcement proceedings.

- Issues formal and informal advisory opinions and promulgates regulations on the applicable laws and the effect on those subject to their jurisdiction.

Who is Covered by PBO § 74

Members of the Legislature

- Legislative Employees

- Officers or employees of specific "closely affiliated corporations"

(Youth Research, Inc.; The Research Foundation for Mental Hygiene, Inc.; Health Research, Inc.; The Research Foundation of SUNY; and Welfare Research, Inc.)

Officers/employees of any State agency, department, division, board, commission, or any public benefit corporation/public authority

- Includes unpaid/per diem officers & members

[i.e., board/commission where at least one member is appointed by the Governor]

Relevant Statutory Language (PBO § 74)

[NYS] officers and employees, members of the Legislature or legislative employees, board members shall not…

"have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his (or her) duties in the public interest."

Prohibition on Outside Employment/ Confidential Information

Members of the Board cannot:

- Engage in employment outside the Board that will impair independent judgement in official duties
- Accept employment or engage in any business/professional activity that would require disclosure of confidential information obtained as part of the Board
- Disclose confidential information acquired in the course of official duties or use that information to further personal interests

Unwarranted Privileges

Members of the Board cannot:

- Use/Attempt to use position to obtain privileges or exemptions for self/others
- Otherwise misappropriate to self/others any property, services or other resources for private business or other compensated nongovernmental purposes

Financial Conflicts

Members of the Board:

- Cannot participate in a transaction as a Board representative with a business entity involving a direct or indirect financial interest that conflicts with proper discharge of official duties

- Must abstain from making personal investments in enterprises that may be directly involved in Board member decisions which would create a substantial conflict between one's duty in the public interest and one's private interest

Improper Influence/Public Trust

Act in a way that gives reasonable basis for the impression that any person can improperly influence Board Member or unduly enjoy Board Member's favor in the performance of their official duties, or that they are affected by the kinship, rank, position or influence of any party or person.

"Should endeavor to pursue a course of conduct which will not raise suspicion among the public that [they] are likely to be engaged in acts that are in violation of [their] trust."

Gifts – PBO § 73

Receipt of a gift from an entity/individual interested in the outcome of a subject the board is considering represents a direct conflict

Gift Examples:

- Money | Services | Loans
- Travel | Lodging |Meals
- Refreshments | Entertainment
- Forbearance or a promise having a monetary value that is not "nominal in value"

Gift Rule of Thumb:

Anything valued <$15 is normally not considered a gift, if accepting the item/service doesn't create appearance of a conflict of interest

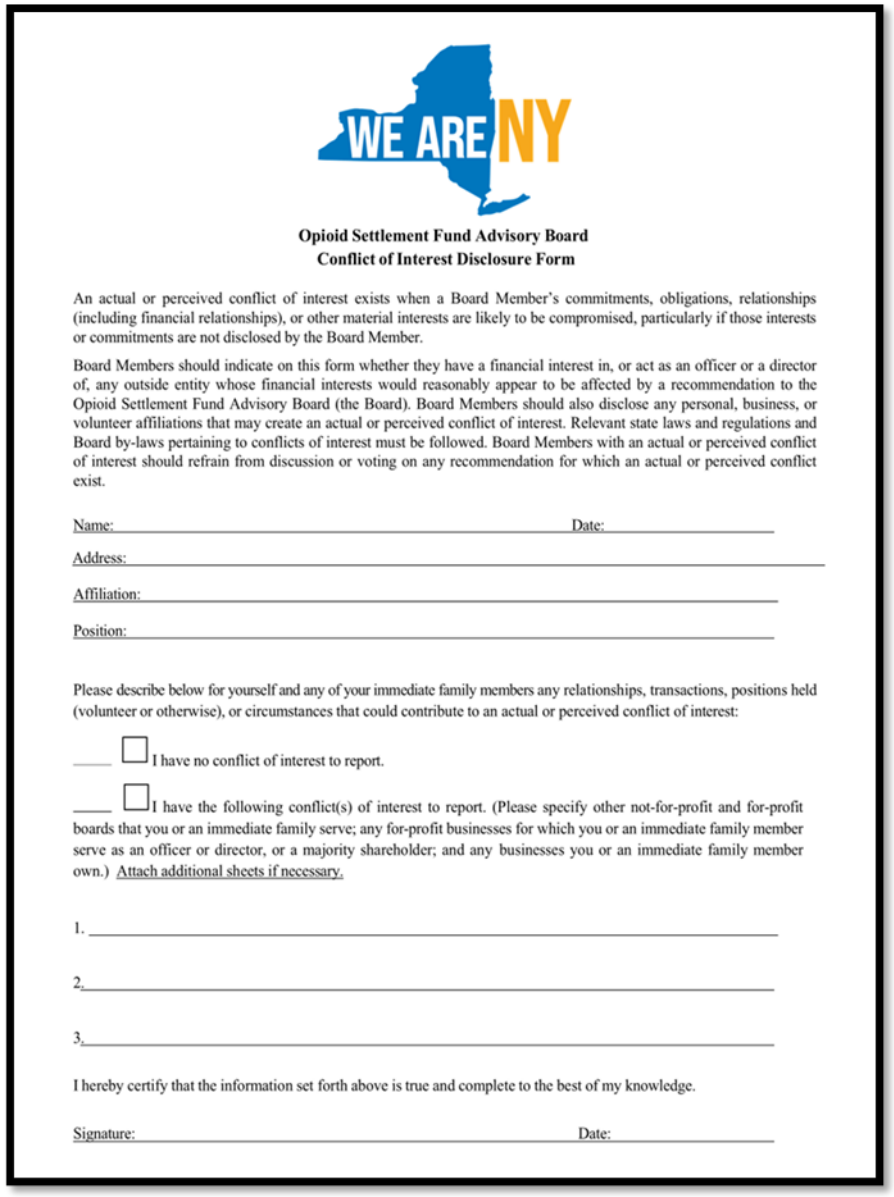
Conflicts/Recusals

Members of the Board:

- Shall not take any action to direct settlement funds to any entity in which they or their family members have any interest (direct or indirect) or receive any commission or profit whatsoever (direct or indirect)

- Shall recuse themselves from any discussion or vote relating to directing funds to such interest

Conflict of Interest Form



Opioid Settlement Fund Advisory Board
Conflict of Interest Disclosure Form

An actual or perceived conflict of interest exists when a Board Member's commitments, obligations, relationships (including financial relationships), or other material interests are likely to be compromised, particularly if those interests or commitments are not disclosed by the Board Member.

Board Members should indicate on this form whether they have a financial interest in, or act as an officer or a director of, any outside entity whose financial interests would reasonably appear to be affected by a recommendation to the Opioid Settlement Fund Advisory Board (the Board). Board Members should also disclose any personal, business, or volunteer affiliations that may create an actual or perceived conflict of interest. Relevant state laws and regulations and Board by-laws pertaining to conflicts of interest must be followed. Board Members with an actual or perceived conflict of interest should refrain from discussion or voting on any recommendation for which an actual or perceived conflict exist.

Name: _____ Date: _____

Address: _____

Affiliation: _____

Position: _____

Please describe below for yourself and any of your immediate family members any relationships, transactions, positions held (volunteer or otherwise), or circumstances that could contribute to an actual or perceived conflict of interest:

____ ☐ I have no conflict of interest to report.

____ ☐ I have the following conflict(s) of interest to report. (Please specify other not-for-profit and for-profit boards that you or an immediate family serve; any for-profit businesses for which you or an immediate family member serve as an officer or director, or a majority shareholder; and any businesses you or an immediate family member own.) Attach additional sheets if necessary.

1. _____

2. _____

3. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Signature: _____ Date: _____

- Members will receive a copy of the Conflict of Interest Form from the Chair prior to the next meeting
- Must submit annually
- In the event of a new conflict, submit an amended form
- Requires written disclosure of professional/personal financial interests related to Board recommendations/decisions
- Requires written disclosure of professional, personal and volunteer affiliations that are in actual conflict or merely has appearance of conflict

Violations of PBO § 74

Knowing and Intentional Violations of the PBO may be subject to:

- "a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation" in the event of the use or disclosure of confidential information or "use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others"

- "a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation" in the event of a conflict of interest.

Specific Ethical Concerns

Questions regarding specific ethical concerns, conflicts or gifts should be directed to the Chair

The Chair will refer to OASAS Legal for further review and consultation with NYS COELIG if necessary.

Key Takeaways

- Avoid conflicts, appearance of conflicts, or the perception that you can be swayed to use your position on the Board inappropriately
- Avoid accepting gifts; Nominal gifts <$15 generally ok
- Recusal required when there is a professional/personal interest in the recommendation/decision being considered by the Board
- Annual written financial disclosure & amended disclosures as needed

Additional Information

For additional information on Ethics and the NYS COELIG please visit the NYS COELIG Website here:

- https://ethics.ny.gov/ethics-laws-and-regulations-0

Open Meetings Law (OML)

Intent of the Open Meetings Law

"It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it."

Who is Covered by the Open Meetings Law

Public Bodies (Mental Hygiene Law §25.18)

Entities consisting of two or more people that conduct public business and perform a governmental function for NYS, for an agency of the state, or for public corporations (i.e., cities, counties, towns, villages & school districts)—and for which a quorum is required

The Opioid Settlement Fund Advisory Board is such a public body

Quorum

- Majority of persons/officers of the public body, are gathered together

- Not less than a majority of total number which a body would have were there no vacancies & were none of the persons or officers disqualified from acting

- Members participating from a physical location that has been properly noticed and is open to in-person public attendance count toward a quorum and may fully participate/vote

- Members videoconferencing from a remote location that is not open to in-person public attendance do not count toward a quorum. They may, however, fully participate and vote if a quorum has otherwise been met

Meetings

"[T]he official convening of a public body for the purpose of conducting public business."

- When a quorum gathers to discuss public business, the meeting must be convened 'open to the public', whether or not there's an intent to take action & regardless of characterization of the gathering

- There is no authority for a public body to take action outside of a meeting

Meeting Examples

- General training and education sessions do not constitute a meeting
- Discussion pertaining to specific goals, vision, or mission statement would constitute a meeting subject to the OML
- Informational meeting with quorum to discuss public business is covered by OML
- Team building and interpersonal relationships are not covered

Notice

- Time/place of all meetings be given prior to every meeting

- If scheduled at least a week in advance, notice must be given to the public and news media not less than 72 hours prior to meeting

- When scheduled less than a week in advance, notice must be given to the public and news media "to the extent practicable" at a reasonable time prior to meeting

- Public notice must be accomplished by posting in one or more designated public locations and online

- There is no requirement that notice be published in the newspaper.

Minutes

"Unabridged video recordings, unabridged audio recordings or unabridged written transcripts can meet this requirement."

- Executive Sessions minutes are necessary only if an action is taken by formal vote
- Available to public within two weeks for open session and one week for executive session
- Does not matter whether minutes are unapproved or in draft form

Recordings

- Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means

- Agency is not obligated to record unless a member is participating remotely as authorized under Section 103-a (which is repealed as of 7/1/2026)

- Agency may establish reasonable rules to limit disruption/interference (model rules available on COOG website)

Executive Session

- Not separate from an open meeting but rather is a portion of an open meeting during which the public may be excluded

- Motion must be made, voted upon during open meeting, and passed by majority

  - Motion must identify purpose, circumstances, and subject to be discussed

    - Purpose/subject can include: imperiling the public safety, identity of law enforcement or informer, criminal offenses, proposed, pending, or current litigation, collective negotiations, and matters related to a particular person

Public Participation

- Law is silent with respect to public participation

- If the public body chooses to permit the public to speak all persons must be treated in a like manner

- Public body can adopt reasonable rules to ensure fairness, such as allowing those who want to speak a specific timeframe to express views

- Rules must be implemented fairly and consistently

Public Participation Guidelines

- Public may observe/comment at set times based upon the agenda
- Advance registration required
- Written submissions due 5 days prior (no handouts)
- Three-minute limit per speaker
- Example: Individuals show up and wish to speak but aren't on the agenda for a specific presentation

Meetings Exempt from OML

- Judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals

- Deliberations of political committees, conferences and caucuses

- Any matter made confidential by federal/state law

(e.g., discussions relating to students made confidential by FERPA; meetings with agency attorney covered by attorney client privilege)

Non-Compliance and Enforcement

- Enforcement is through initiation of a proceeding pursuant to Article 78 of the Civil Practice Law and Rules (CPLR)

- Public body is not allowed to intentionally circumvent the OML

- Court has authority to:

Award costs & attorney's fees
Invalidate action
Require training

Violation Examples

OML enacted to emphasize need for public transparency throughout decision-making process. Intentional circumvention of the law will likely result in a violation, regardless of quorum presence.

Examples:

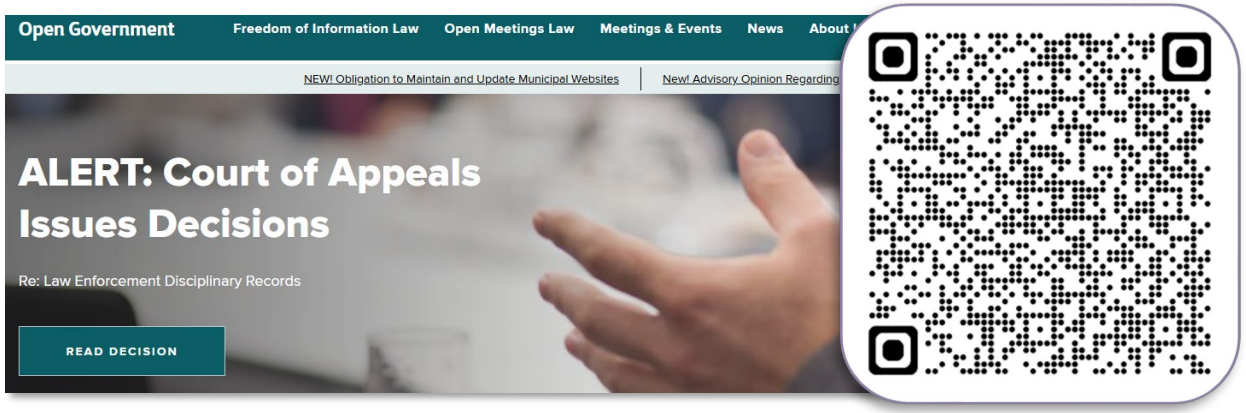
- OASAS or another organization has a planned event that OSFAB members attend – this would be allowable unless there is a quorum, and they discuss official public business

- OSFAB requests a virtual presentation – could be a violation if there was an intent to circumvent the OML by not having a quorum or other bad faith and official public business was discussed

Additional Information

Visit the Committee on Open Government Webpage

- Prepares advisory opinions in response to sets of facts/circumstances
- Opinions are searchable & represent the view of the Committee at the time they were rendered
- May no longer represent those views if, for example, there have been subsequent court decisions/ statutory amendments that bear on issues discussed in the opinions



Purpose, Legal Framework, Bylaws, Public Participation, Procedures

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Introduction to the Opioid Settlement Fund Advisory Board (OSFAB)

- Advisory board under Mental Hygiene Law §25.18
- Recommends opioid settlement fund use
- Focus: prevention, treatment, recovery, harm reduction
- Operates under NYS Open Meetings Law (OML)
- Meet at least quarterly

Statutory Charge (MHL §25.18)

- Advisory role only — no spending authority
- Recommends spending priorities aligned with settlements
- Promotes evidence-based strategies
- Identifies service gaps, recommends outcome measures

Approved Uses [MHL §25.18(c)]

- Treatment for substance use disorders
- Recovery and support services
- Harm reduction
- Prevention programs
- Criminal justice diversion
- Housing, employment supports
- Family/children services
- Research (prevention, treatment, recovery)

Bylaws: Purpose & Membership

- Board makes non-binding recommendations
- Members appointed by Governor, Legislature, AG, NYS Association of Counties
- Public meeting requirement (open meetings law)
- Example: a member proposes a private meeting to draft the report—the open meetings law applies

Bylaws: Quorum & Voting

- Quorum = majority of current members, in-person at one of the state authorized locations
  - Abstentions count toward quorum
- Videoconferencing is permitted and may count towards a vote, but not quorum
  - Example: A vote proceeds with quorum even if several members abstain; abstentions are recorded and count toward quorum only.

Bylaws: Officers & Chair's Powers

- Chair/Vice Chair elected by board majority
- Chair leads meetings, supervises work, represents board, plans meetings
- Chair interprets bylaws, applies Robert's Rules when needed
- Chair sets agenda (implied by supervisory role)—includes scheduling presentations
- Examples: Chair redirects debate; clarifies bylaws when there's disagreement, works with board members to decide on presentations

Bylaws: Voting Oversight

- Chair, Vice Chair, Executive Secretary ensure compliance with voting procedures
  - Ensure votes align with bylaws, laws, settlement terms
- Example: Member disputes vote tally; Chair calls roll call vote to confirm outcome
  - Where bylaws is silent, Robert's Rules may fill gaps (discussed later)

Bylaws: Article III

- 3 consecutive absences may be deemed a vacancy
- All meetings of the board are subject to OML (including committees)
- Voting usually by hand raise; roll call if requested

OSFAB Report

From the bylaws and statute (Article IX, Section 1):

"*On or about November 1 of each calendar year, the Board shall issue a report to the Governor and Legislature containing its recommendations*."

- The board as a whole is responsible for compiling the report in an open process
  - Chair and Vice Chair typically lead draft development/coordination
    - Executive Secretary assists (draft compilation, distribution)

Amending the Bylaws

- Bylaws may be amended by a majority vote of the Board

- Each member must receive proposed amendment at least 30 days prior to voting to amend the bylaws

Robert's Rules: When They Apply

- Used when bylaws/law are silent
- Resolve disputes
- Maintain fairness, order, efficiency
- Still must comply with state laws

Robert's Rules: Key Examples

- Making a motion

- Situation: A member wants the board to act on something

Robert's Rules says:

- Member makes a motion: "I move that we…"
- Another member seconds the motion: "Second"
- Chair states the motion: "It is moved and seconded that…"
- Board debates, then votes

Robert's Rules: Key Examples

Amending a motion or recommendation

Situation: A member wants to modify part of a draft recommendation under discussion.

Robert's Rules process:

- Member moves to amend the motion
- Another member seconds the motion
- Board debates only the amendment (not the main motion)
- Board votes on the amendment first
- If amendment passes, the main motion is updated, and then the board votes on amended motion

Robert's Rules: Real World Example

Closing debate when discussion drags on (called "previous question")

Situation: Discussion is repetitive, and members want to move to a vote.

Robert's Rules process:

- Member moves to close debate ("calling the question" or "moving the previous question")
  - Another member seconds the motion
  - Motion to close debate is not debatable
    - Requires a 2/3 majority to pass
- If passed, board immediately proceeds to vote on the main motion

Robert's Rules: Real World Example

Handling a tie vote when the bylaws are silent

Situation: A motion ends in a tie vote.

Robert's Rules process:

- Tie vote defeats the motion, so the motion fails
- Exception: Chair can vote to break a tie if they have not already voted (OSFAB allows the Chair to vote)
- Without Chair intervention, the motion does not pass

Robert's Rules: Real World Example

Limiting the time of debate by Board Members

Situation: The board wants to limit debate, so the meeting stays on schedule.

Robert's Rules process:

- Member moves to limit debate (e.g., "I move to limit debate to two minutes per speaker" or "to limit total debate to 10 minutes for this item")
  - Another member seconds
  - Motion to limit debate is not debatable
  - Requires a 2/3 vote to pass
- If approved, the time or speaker limits are enforced for that agenda item

Robert's Rules: Real World Example

Correcting an error or misstated motion

Situation: The Chair or member misstated a motion or vote count.

Robert's Rules process:

- Member can raise a point of order: "Point of order — I believe that's incorrect."
  - Chair rules on the point (corrects the error or explains why not)
    - If someone disagrees, they can appeal the Chair's ruling

Robert's Rules: Real World Example

Tabling a topic to a future meeting

Situation: The board runs out of time and needs to postpone a topic.

Robert's Rules process:

- Member moves to lay the matter on the table: "I move to lay this on the table."
  - Another member seconds
  - No debate allowed
  - Majority vote needed
- To bring it back later: member moves to take it from the table

Key Takeaways

- OSFAB is advisory only — no spending power
- Bylaws + Open Meetings Law guide operations
- Chair has broad authority, including agenda-setting
- Robert’s Rules ensure fair, orderly process
- Public participation is central to OSFAB’s work

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