

...and other
**rules of verbal
engagement**
for professional
licensing board
members

Division of Corporations, Business and
Professional Licensing

November 2017



Main objective

Ensure staff and board members have a working understanding of best practices in board member communications

- ★ with the *public* and
- ★ among *themselves*

Hey, what's the big deal?

The people have rights! That's the big deal!



It is the policy of the state that:

- ★ Governmental units generally exist to aid in the conduct of the people's business.
- ★ It is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly.

Hey, what's the big deal?

The people have rights! That's the big deal!



It is the policy of the state that:

- ★ The people of this state do not yield their sovereignty to the agencies that serve them.
- ★ The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

Hey, what's the big deal?

The people have rights! That's the big deal!



It is the policy of the state that:

- ★ The people's right to remain informed shall be protected so that they may **retain control** over the instruments they have created.
- ★ The **use of teleconferencing under this chapter is for the convenience** of the parties, the public, and the governmental units conducting the meetings.

(AS 44.62.312)

Hey, what's the big deal?

The people have rights! That's the big deal!



It is the policy of the state that:

AS 44.62.310 (c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to **avoid exemptions from open meeting requirements and unnecessary executive sessions.**

(AS 44.62.312)



There are **THREE** main reasons why board members must be careful of *loose lips*:

- ★ Protect legally **confidential** information
- ★ Protect the licensee's **due process rights**
- ★ Maintain **fairness and integrity of a process**



Legally confidential information

★ Alaska Public Records Act

Every person has a right to inspect a public record in the state, except

- ★ certain records pertaining to **juveniles**
- ★ certain **educational** records
- ★ **medical** and related public health records
- ★ records required to be kept **confidential by another law**
- ★ certain records or information compiled for **law enforcement** purposes
- ★ certain **attorney-client** and **legislative** records
- ★ records that are **proprietary, privileged, or a trade secret**

(AS 40.25.120)



Legally confidential information

★ Executive Session

- ★ matters which would clearly have an adverse effect upon the *finances* of the public entity
- ★ subjects that tend to *prejudice the reputation and character* of any person, provided the person may request a public discussion
- ★ matters which by *law, municipal charter, or ordinance* are required to be confidential

(AS 44.62.310)



Legally confidential information

★ Executive Session

- ★ This section does not apply to a governmental body performing a *judicial or quasi-judicial function* when holding a meeting *solely* to make a decision in an adjudicatory proceeding
- ★ This means that if the board is **ONLY** meeting to discuss license action, it does not have to publicly notice the meeting. It may not take up any other business.

(AS 44.62.310)



Licensee's due process rights

★ Executive Session

- ★ If a matter has the strong potential to **negatively impact the character and reputation** of a person, the board may vote to enter executive session to discuss the matter.
- ★ The subject of the discussion has a right to request that the discussion be held in public.



Fairness & integrity of a process

★ Adopting regulations

- ★ Discussion not allowed during the public comment period—with individual board members or the board as a whole unless publicly noticed
- ★ Gives everyone the **same opportunity** to comment and be heard
- ★ Provides the board members with the **same information** for deliberation
- ★ Maintains an **accurate public record** of rulemaking



Fairness & integrity of a process

★ Conflicts of interest

★ Professional conflicts

- ★ Employer/employee relationship
- ★ Stakeholder in a business
- ★ Significant and specific financial gain

★ Personal conflicts

- ★ Family relationship
- ★ Inability to remain impartial or inability to **appear** to remain impartial for any reason



Fairness & integrity of a process

★ Ex parte communication

- ★ “An oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given....”
- ★ In other words, “Does everyone have the **same information?**”



Fairness & integrity of a process

★ Ex parte problems: License action

- ★ Deliberation on **whether to issue a license**
- ★ Deliberation on **conditioning or revoking a license**

Hey, what's the big deal?

The people have rights! That's the big deal!



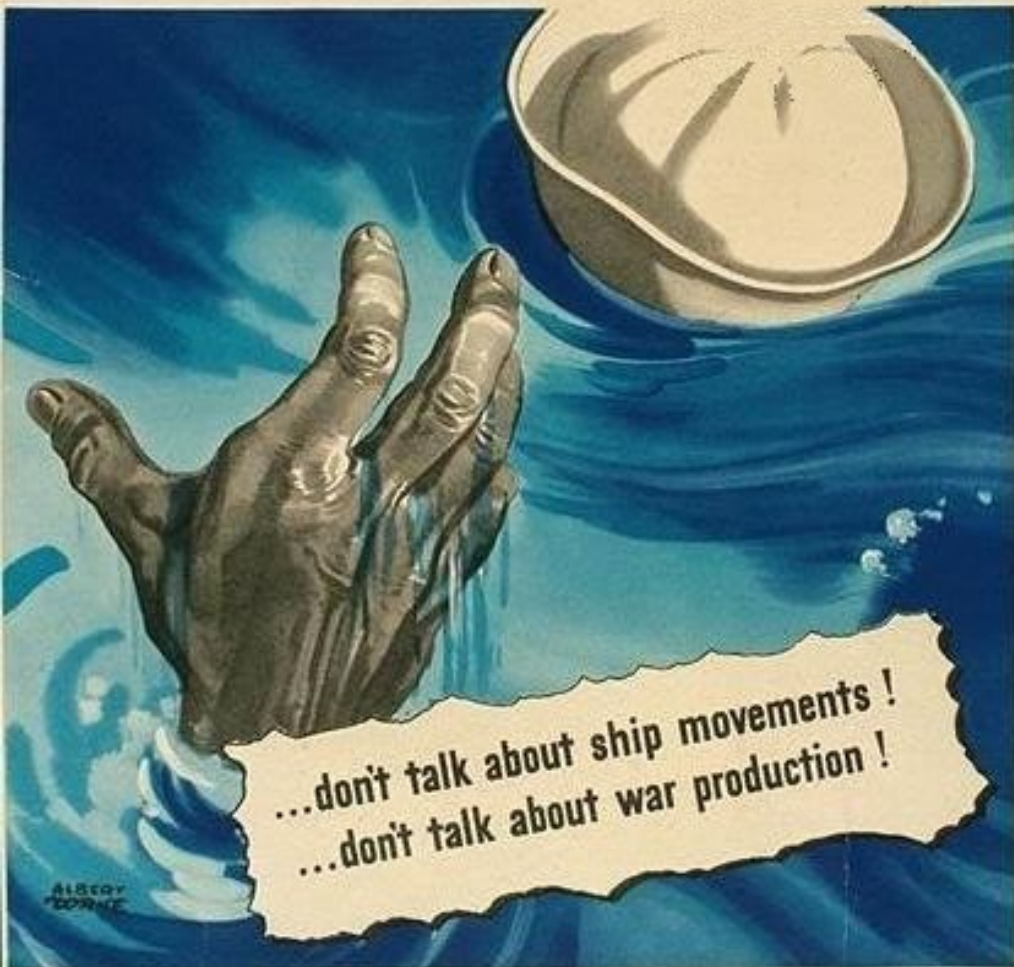
★ Open Meetings Act

★ What constitutes a meeting?

- Three or more members discussing a matter upon which they have the power to take action
- Committees of the board, including standing and ad hoc committees
- In person, phone, email, or text—it's still a meeting
- All must be publicly noticed on the state's Online Public Notice System and a major newspaper of the state

(AS 44.62.310)

SOMEBODY BLABBED



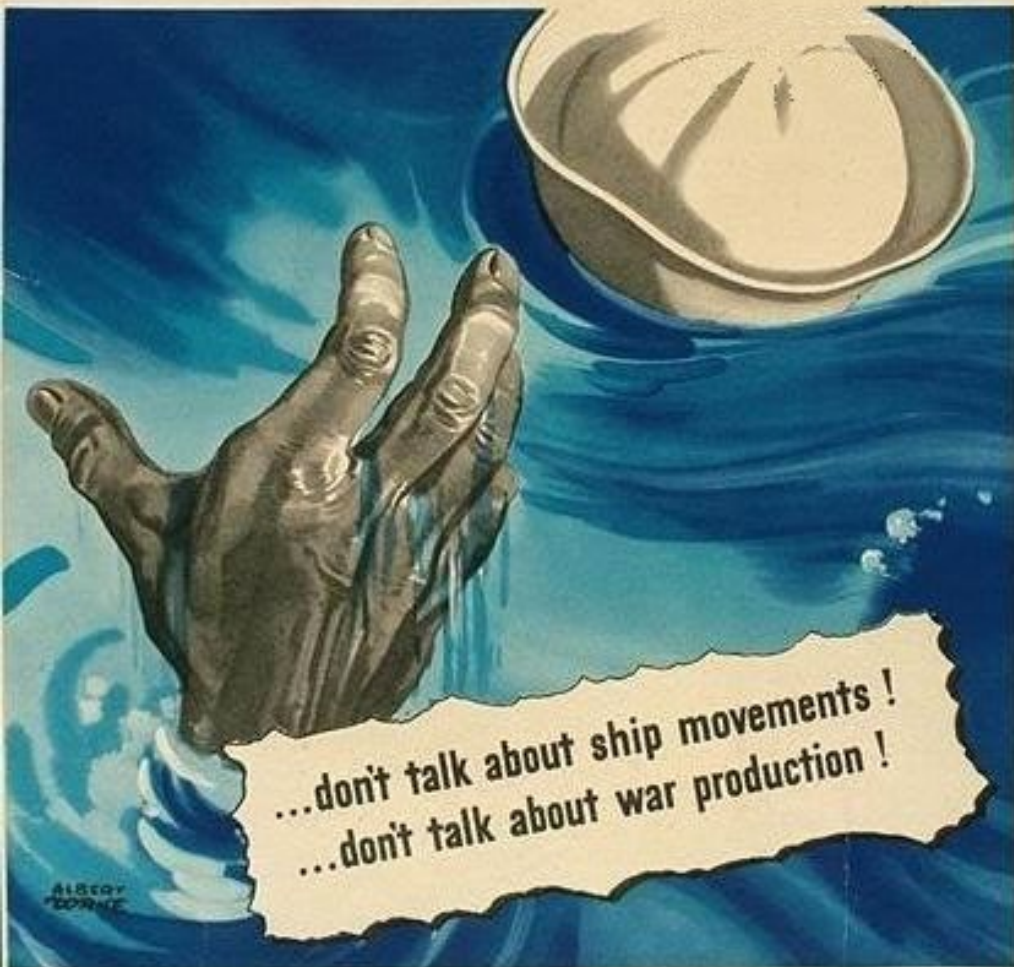
BUTTON YOUR LIP!

For additional copies write to Graphics Division, Office of Facts and Figures, Washington, D.C. . . . Specify GPO Jacket No. 451043.

So, what can we do about it?

- ★ Make sure that all board members are provided the same information
- ★ Withhold information that is not legally relevant

SOMEBODY BLABBED



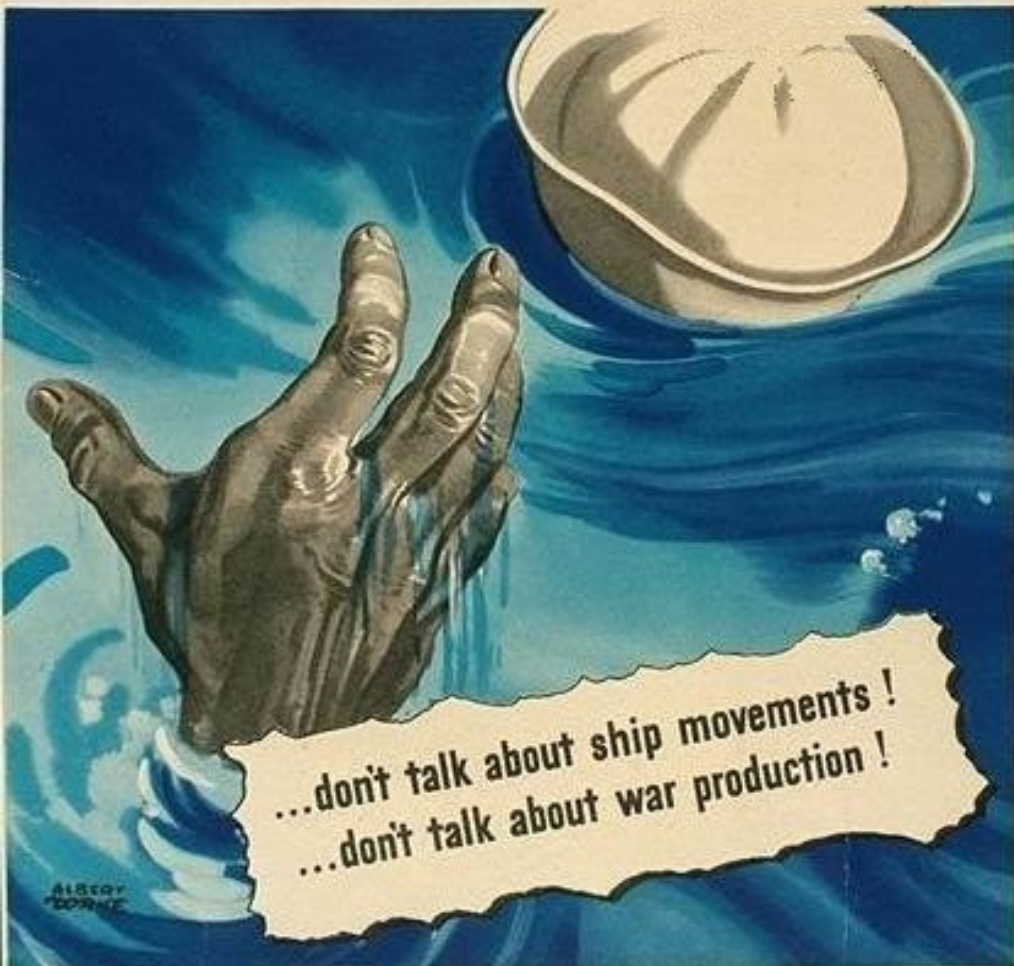
BUTTON YOUR LIP!

For additional copies write to Graphics Division, Office of Facts and Figures, Washington, D.C. . . . Specify GPO Jacket No. 451043.

So, what can we do about it?

- ★ Recuse members who have more/different information:
 - ★ Reviewing board member on a case
 - ★ Ex parte contact with the licensee
 - ★ Ex parte contact with the applicant

SOMEBODY BLABBED



BUTTON YOUR LIP!

For additional copies write to Graphics Division, Office of Facts and Figures, Washington, D.C. . . . Specify GPO Jacket No. 451043.

So, what can we do about it?

- ★ Avoid conversations about board business with each other outside of publicly noticed board meetings
- ★ Avoid conversations with individuals about
 - specific disciplinary cases,
 - license applications, or
 - pending board decisions