The Brown Act

CCC Behavioral Health Board Training

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August 6, 2025

Legal Framework

What is an Open Meeting Law?

- Open meeting laws promote transparency in government operations.
- The purpose is to give the public advance notice of what government bodies are doing, and to foster public participation in the governmental decision making process.
- Open meeting laws require that the Behavioral Health Board and its committees take certain actions to ensure public notice and participation.

The open meeting laws applicable to the County Behavioral Health Board:

- The Ralph M. Brown Act (Cal. Gov. Code §§ 54950-54963.)
- CCC Better Government Ordinance (CCC Ord. Code Chap. 25-2)

Are We Subject to the Brown Act?

Open meeting laws apply to:

- The County Behavioral Health Board (Gov. Code, § 54952.)

Open meeting laws apply whenever there is a public meeting

- The Board must comply with the open meeting laws each and every time there is a meeting.

The Rule:

- **Members of the Board may only discuss the body's business at properly noticed meetings that the public can attend.**

Are We Meeting?

Ask this question whenever a quorum of the Board will be present.

Definition of Meeting (Gov. Code, § 54952.2(a).)

- A majority of the members of the Board at the same time and place
- They hear, discuss, deliberate, or take action on any item within the Board's jurisdiction.
- Telephone or videoconferences with a majority of the members of the Board is a meeting
- The Board does not have to take action for it to be a meeting. A majority of Board members holding a training on matters within the Board's jurisdiction can be a meeting.

Can't We Just Do It By E-mail? (Gov. Code, § 54952.2/A.B. 992 (Eff. 2021).)

No use of Social Media, cell phones, intermediaries, serial conversations.

Prohibitions:

- A majority of Board members from being on the same email string
- A majority of Board members using social media
- A majority of Board members using intermediaries
- A series of individual conversations about the Board's business

Why? Because use of these devices or private conversations avoids transparency and excludes the public from the decision-making process.

Exceptions: Staff may talk individually to Board members to answer questions or to provide information. Staff cannot share Board member positions, questions, request, etc. that are learned during such interactions with other Board members outside of a public meeting.

Can’t We Just Do It By E-mail? (Gov. Code, § 54952.2)

Example of Communications that can lead to an illegal meeting:

A majority of Board members use email, cell phones, text, X (Twitter), Facebook, Instagram, or a staff intermediary to conduct a group conversation, or to have a series of individual conversations about the Board’s business.

But Everyone Else is Doing it!

What Can Board Members Do?

- Board members may use social media to communicate with the public without causing a serial meeting;
  - "Social Media" is an internet-based, online service that is *open and accessible* to the public;
- A Board member may engage in separate conversations or communications about agency business on any internet-based social media platform that is open and accessible to the public, for the following purposes:
  1) To answer questions
  2) To provide information to the public
  3) To solicit information from the public regarding a matter in the board's jurisdiction.

But Everyone Else is Doing it!

BEWARE….

- Beware of Facebook, Instagram, X (Twitter), comment sections on news articles, chatrooms
- Beware of replying or reacting to anything another Board member posts or shares on social media regarding anything in the Board's jurisdiction
  - No "likes" or "dislikes"
  - No emojis

What is Not a "Meeting"?

- Individual contacts between a Board member and a member of the public, e.g., a constituent or reporter. (Gov. Code, § 54952.2(c)(1).)
- Attendance of a majority of Board members at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public, or of issues of local community concern. A majority of members must not discuss the Board's business, except as part of the scheduled program. (For example, a congressional representative's town hall meeting.) (Gov. Code, § 54952.2(c)(2),(3).)
- Attendance of a majority of Board members at an open and noticed meeting of another public body – e.g., the Board of Supervisors. (Gov. Code, § 54952.2(c)(4).)

What is Not a "Meeting"?

- Meetings generally do not include social or ceremonial occasions. At such occasions a majority of the Board members must not discuss among themselves matters within the jurisdiction of the Board. (e.g., a holiday party; member's wedding.) (Gov. Code, § 54952.2(c)(5).)

- Attendance at a meeting of a subcommittee of the Board on which a Board member is not a member, but only if the Board member attends the subcommittee meeting as an observer. (Gov. Code § 54952.2(c)(6).)

How to Prepare for a Meeting

How About We Meet at Starbucks?

- Meeting locations are restricted. (Gov. Code, § 54954). Generally meetings must be held within the jurisdictional boundaries of the body.
- The meeting space must be open to the public. A body cannot hold meetings in facilities that are not accessible to the disabled or that exclude members of a gender, nationality, or race. (Gov. Code, § 54961.)
- The Brown Act also prohibits meetings in facilities where members of the public must pay or purchase to be present. (Gov. Code, § 54961)

How About We Meet on Zoom?

2 Options until January 1, 2026

Option 1: Traditional Brown Act teleconferencing (GC § 54953(b).)

Option 2: AB 2449 Teleconferencing (GC § 54953(e).)

Traditional Brown Act Teleconferencing (GC § 54953(b).)

When is it available?

ANYTIME!
(Even after January 1, 2026)

Traditional Brown Act Teleconferencing (GC § 54953(b).)

a. Post agendas at all teleconference locations
b. Each teleconference location must be identified on the agenda
c. Each teleconference location must be accessible to the public
d. At least a quorum of the members must participate from locations within the boundaries of the jurisdiction of the Board
e. All votes must be by roll call
f. Must allow for public access to the meeting and public comment

AB 2449 Teleconferencing: Options for Use (Only until January 1, 2026)

Just Cause Option:

- Member notifies the Board as soon as possible

- Just Cause means any of the following:
  1) a childcare or caregiving need,
  2) a contagious illness that prevents in person attendance,
  3) a need related to a physical or mental disability not otherwise accommodated,
  4) travel while on official business of the legislative body or another state or local agency.

- May not be used by any member for more than 2 meetings per calendar year. Includes consideration of use of emergency circumstances option.*

AB 2449 Teleconferencing: Options for Use (Only until January 1, 2026)

Emergency Circumstances Option:

- Member makes request due to emergency circumstances
- Board takes action to approve the request
- Emergency Circumstances means
  - a physical or family medical emergency that prevents a member from attending in person.
- Effective January 1, 2025, cannot be used more than 2 meetings *per calendar year* if the Board regularly meets once per month or less- *includes consideration of use of just cause option. (Assembly Bill 2305)

AB 2449 Teleconferencing: Options for Use (Only until January 1, 2026)

Just Cause & Emergency Circumstances Options:

What must Member do during meeting when using these Options:

- Disclose if individuals 18 years or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.
- Member must participate through both audio and visual technology.
- Agenda does not need to be posted at each teleconference location
- Agenda does not need to identify each teleconference location

AB 2449 Teleconferencing (Until January 1, 2026)

All of the following are required if using AB 2449 teleconference options:

a. A quorum of members participate in person from a single physical location identified on the agenda that is open to the public and within the boundaries of the territory of the Board.
b. Give notice on the agenda of how the public may access the meeting and comment remotely
c. Allow for public comment remotely and in-person
d. No public comments required to be submitted in advance. Real-time comments must be allowed.
e. May use a third-party internet website or online platform that requires registration to log in.
f. If there's a disruption that prevents broadcasting the meeting to the public using the call-in option or the internet-based option, or from offering public comment, the Board must cease taking any further action until remote public access to the meeting is restored
g. At least one of the following means for the public to remotely hear and visually observe the meeting and remotely address the Board:
    i. A two-way audiovisual platform; or
    ii. A two-way telephonic service and a live webcasting of the meeting

How About We Meet on Zoom?

Any Other Options??

Disability? Teleconference as a Reasonable Accommodation (CA Atty. Gen. Opinion No. 23-1002)

Procedure for requesting teleconference option as a reasonable accommodation for a disability:

Submit a written request to appear remotely to the Clerk of the Board at least 1 week before the meeting.

a. Send request by mail or email at clerkoftheboard@cob.cccounty.us
b. Include in subject line of request: "Advisory Body Reasonable Accommodation"
c. Request must include the following information:
   - Self-attestation that the accommodation is needed due to a disability
   - Brief description explaining the need for the accommodation (less than 20 words).
     - Do not disclose the medical diagnosis
     - No medical note is required
   - Duration of the requested accommodation
   - Name of advisory body on which the member sits (e.g., CCC Behavioral Health Board)

Disability? Teleconference as a Reasonable Accommodation (CA Atty. Gen. Opinion No. 23-1002)

Procedure for requesting teleconference option as a reasonable accommodation for a disability:

- Clerk of the Board will consult with the member about request
- Clerk of the Board will determine if the request is approved and how best to provide the accommodation
- Clerk of the Board will communicate a response in writing or orally with a written follow-up
- If the accommodation request is approved, the member may appear remotely at meetings for the approved duration of the accommodation.

Disability? Teleconference as a Reasonable Accommodation (CA Atty. Gen. Opinion No. 23-1002)

Procedure for attending meetings with an approved reasonable accommodation for a disability:

- The member must use two-way, real-time video and audio streaming; and
- The member must disclose the presence of other adults at the teleconference location and nature of the member's relationship with these individuals
- The teleconference location does not need to be identified on the meeting agenda and the agenda does not need to be posted at the teleconference site
- Public access to the teleconference location is not required.
- Member is eligible to vote when attending meeting remotely as an approved reasonable accommodation
  - Roll Call votes required when members teleconference

What's Needed for a Meeting?

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- Each meeting must have an agenda.

- Must post the agenda for a full 96 hours before a regular meeting
  - 96 hours is a BGO Requirement
  - The Brown Act = 72 hours in advance (Gov. Code, § 54954.2.)

NO POSTING, NO MEETING!

What's Needed for the Meeting?

PUBLIC COMMENT

- **Right to observe.** All meetings must be open and public, and all persons must be permitted to attend.
- **Right to anonymity.** The Board cannot require the public to sign in to attend. A sign in sheet must be voluntary and should say so.
- **Right to record.** Members of the public may record or video tape meetings.
- **Right to read.** The public is entitled to see agendas, agenda materials, and documents that are handed to the Board by any person during the meeting. Unless privileged, these documents are disclosable public records. (Gov. Code, § 54957.5.)

Consequences of Violating the Brown Act

- Civil Remedies
  - Invalidation of Action
  - Cure & Correct Opportunity
  - Civil Action to Prevent Future Violations
- Criminal Penalties
  - Intent to deprive the public of information
  - Misdemeanor

Questions?

Thank You!