



December 2006

### E-mail Guidelines for Public Hospital District Commissioners

**General Rule:** E-mail exchanges will be construed as a violation of the Open Public Meetings Act, chapter 42.30 RCW (the "OPMA"), whenever: (1) at least a quorum<sup>1</sup> of the board are parties to the exchange; (2) the exchange involves the board's business, i.e., issues that could or will come before the board for a vote; and (3) the parties intend to transact the board's business via the e-mail.

- Avoid e-mail exchanges which ultimately involve a quorum of commissioners and discuss hospital business. For example, in a district with a five-commissioner board, one commissioner may communicate via e-mail with one other commissioner on an issue. Care must be taken, however, not to include a third commissioner in the exchange. In other words, if Commissioner X e-mails Commissioner Y and Commissioner Y responds, that is not a meeting. But if Commissioner X or Commissioner Y then forwards a copy of the exchange to Commissioner Z, a majority of the board has now participated and a meeting has occurred. Note that Commissioner Z need not reply to participate since a commissioner may be silent during a regular open meeting without depriving a board of its quorum. This scenario is sometimes referred to as a "rolling quorum."
- Avoid use of the "reply to all" function. While use of this function is convenient, it may trigger an unintended quorum.
- A commissioner may send an informational e-mail to a majority of the board. Make clear in such e-mails that the e-mail is informational only and that no response is desired.
- E-mails to and from hospital staff are okay. For example, if a commissioner wanted to get information from staff and wanted staff to share that information with the rest of the board, both the e-mail requesting the information from staff and the responsive e-mail providing the information would not violate the OPMA.
- Commissioners may send e-mails unrelated to board business. For example, if Commissioner X wants to let the board know that the local theater group is putting on a play and that they can contact Commissioner X for tickets, it is not a meeting when the other commissioners respond. If a reasonable chance exists that an issue relates to business that the board may or will discuss, however, the exchange should be avoided. Also, if using district property, consult your district's e-mail use policies to determine whether such non-business e-mails are consistent with the policy (incidental use).

*Prepared by Angela S. Belbeck, Ogden Murphy Wallace, P.L.L.C. The information set forth above is not intended to serve as a substitute for legal advice. Please note it also does not take into account any changes to the law or in interpretations of the law that may have occurred since the date above.*

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<sup>1</sup> For example, if your Board has five commissioners, three commissioners typically comprise a quorum. Consult your bylaws for the definition of a quorum in your Public Hospital District.