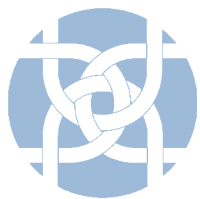


Now available in print and online:

ASWB's first-ever supervision practice analysis. Story page 12.



association news

February 2009
Volume 19, No. 1

newsletter of the Association of Social Work Boards

Inside:

*ACE Chair
Elaine
Halsall on
the way the
program
works,
Page 2*

*Times are
tight, but
members
will still get
all ASWB
services
Page 3.*

*ASWB
Committees
for 2009,
Page 9.*

*Gimme one
large license,
hold the
consent
order:
Counsel's
Column,
Page 10*

A complaint has been filed; let the dilemmas begin. 2009 ASWB education meeting in Quebec to focus on ethical challenges during investigation and discipline

For any regulatory board, the management of a complaint made against a licensee is more than simple management of a process—it's a journey fraught with ethical challenges, legal twists, and not a few philosophical questions. Social work board regulators from across Canada and the United States will have a rare opportunity to discuss this journey with their peers when the Association of Social Work Boards hosts its Spring Education Meeting—"We Have Received a Complaint: Ethical Dilemmas During the Investigative and Disciplinary Process"—set for April 23 – 26 in Quebec City, Quebec.

The tentative schedule for the meeting is designed to address issues in the same rough order as a typical complaint process, and will include individual presenters and panel discussions from a variety of perspectives including educators, legal counsel, investigators, board administrators, and regulators. The agenda also includes opportunities for small

See MEETING, page 4

Sometimes, it's not nice to share. A web-based exam-cheat effort is shut down thanks to some alert board administrators.

Test security professionals consider the Internet a major source of risk to examination questions. In January ASWB had its first real experience with Web-based cheating, and only quick reaction by several board administrators prevented what could have been a serious financial impact.

A failed Clinical examination candidate

See EXAM, page 4



The 2009 ASWB spring meeting will be held at the iconic Le Chateau Frontenac, a Quebec City landmark.

"A" for "Ambiguity"?

The ADA now has amendments. Has it made the Act more inclusive? Too loose? Will it be harder to implement fairly? Chances are that sooner or later the courts will have something to say about those questions.

The most recent changes to the Americans With Disabilities Act (ADA) may have clarified who is eligible to receive reasonable accommodations in employment and licensing processes, but figuring out what exactly constitutes a "reasonable accommodation" will be left to employers, regulatory boards, test providers, applicants—and perhaps inevitably, the court system.

According to Association of Social Work

See ADA, page 8





BOARD OF DIRECTORS

President

Charlotte McConnell, LICSW
Washington, D.C.

President Elect

Amanda Duffy Randall, Ph.D., LCSW
Nebraska

Secretary

Sandra Starks, Ed.D., LCSW
Kentucky

Treasurer

Patricia Heard, MSW, MBA, LCSW
North Carolina

Directors at Large

Donald Gloade, MSW, RSW
Nova Scotia

Valerie Jones, J.D.
Indiana

Donald Montoya, LISW, MSW, CFAE
New Mexico

Suzan Turley, BS
Public Member
Oregon

Executive Director

Donna DeAngelis, LICSW, ACSW
Association News is published by the Association of Social Work Boards, 400 South Ridge Parkway, Suite B, Culpeper, VA 22701, Kathleen Hoffman and Troy Elliott, editors. The opinions and views expressed in this publication do not necessarily reflect the official views, opinions or policies of ASWB or any member board unless expressly so stated. Copyright by the Association of Social Work Boards. All rights reserved.

800/225-6880
540/829-6880
540/829-0562 FAX
info@aswb.org

No rubber stamps allowed

Whether programs are administered in-person or online, the ASWB Approved Continuing Education Committee sees to it that continuing education providers deliver on their promises.

by ELAINE HALSALL

Chair, ASWB ACE Committee

At the recent fall Association of Social Work Boards (ASWB) meeting held in Rhode Island, I had the opportunity to engage in some lively discussions with several board members, about their concerns with accepting online continuing education credits from their licensees/registrants. It therefore seems timely to both address and hopefully allay these concerns by outlining the process the Approved Continuing Education (ACE) program requires prospective providers to complete when offering online education.

Since its development in 1998, the ACE program has assisted ASWB's member boards to make determinations about a Continuing Education (CE) provider's ability to supply social workers with effective, relevant continuing education. Approval through ACE means that a provider has met rigorous standards, and can provide social workers with high quality learning activities. The approval of a continuing education provider is also a way to bring greater standardization to social work continuing education. Upon approval the CE provider benefits from the recognition of a social work organization that is national and international in scope.

Consistent with the important public protection mission of ASWB, the ACE staff and committee both take very seriously the responsibility of reviewing the organization, staffing, and adherence to professional ethics and standards of all prospective ACE providers. Members of the ASWB Approved Continuing Education Committee (ACE) are appointed by the ASWB president and approved by the Board of Directors. This diverse group is made up of social workers with practice or academic backgrounds who have regulatory board experience.

The ACE Committee is responsible for developing selection criteria, reviewing applications and recommending continuing education providers to the ASWB Board of Directors for approval. ACE approved providers include universities, professional associations, and non-profit and for profit organizations offering continuing education programs for social workers.

Any organization responsible for the overall development and implementation of continuing education in social work may apply to become an ASWB ACE Provider. The application is not always easy for providers to complete, and takes time and attention. The staff at ASWB will work very hard with an organization to assist them to comply with the standards and make any improvements that might be needed.

Specific eligibility requirements include:

- Applicant has been operational for a minimum of six months
- Applicant has planned and presented three continuing education activities appropriate for social workers
- Applicant has a licensed social worker involved in the planning, implementation and monitoring of social work continuing education



See ACE, page 5

Tough times, same ASWB services

The association's plans for a lean year do not include program cuts

While 2009 may not prove to be a good financial year for anyone, the Association of Social Work Boards (ASWB) plans to continue providing the same level of service to its member boards, and will not delay work related to the practice analysis now underway (see related story on this page).

According to the 2009 ASWB budget adopted by the Board of Directors last year, the association is using reserve funds to allow for a break-even scenario—a not-unexpected result of rising costs offset by examination fees that have remained unchanged since 2001. Additionally, in order to keep the examination program healthy, the association will be undertaking a practice analysis over the next two years, a costly process based on extensive surveys and analysis of social work practice across North America.

Despite these pressures, ASWB plans to continue offering the same menu of services to dues-paying member boards. These services include:

- Two meetings per year, with no registration fees: a Spring Education Meeting, and fall Annual Meeting of the Delegate Assembly, with expenses paid for one representative from each member board to attend the Annual Meeting of the Delegate Assembly
- Administrators' Forums at spring and fall meetings
- Three sessions of a two and a half day New Board Member Training for up to 20 persons each, with participants' expenses paid
- Printed and web-based resources for boards including the *ASWB Model Social Work Practice Act*, *Analysis of Social Work Practice*, *Analysis of Social Work Supervision*, *Standards for Technology and Social Work Practice*, "Blue Book" on exam issues, the *Association News*, and various brochures covering licensing basics, continuing education guidelines, and other issues
- Ability to use the social work licensing examinations, and participate in the examination development process
- Disciplinary Action Reporting System
- Approved Continuing Education provider program
- Social work regulatory laws and regulations research
- Email groups for regulatory board administrators and members
- Access to association legal counsel
- Participation in committees and task forces; travel expenses paid
- Shared information regarding legal regulation of other professions
- Tracking and providing information on legal actions involving regulation of social work and other professions, social work practice, ADA decisions, etc.
- Formal and informal opportunities for board representatives to share information and experiences with other representatives

Dues for membership in ASWB are based on licensee population within a jurisdiction, and have remained unchanged since 1998. For more information on dues structure, member benefits, and ASWB programs visit the association website at www.aswb.org

Practice analysis pilot survey set to go; fullscale study of social work to follow in Spring

The Association of Social Work Boards (ASWB) is ready to begin conducting what promises to be the most extensive survey of social work practice in North America to date. The survey is a key component in an ASWB-funded analysis of social work practice, and will shape the content of the social work licensing examinations used in Canada and the United States beginning sometime in 2011.

During the spring, ASWB will conduct a pilot survey of 500 social workers in the U.S. and Canada to obtain feedback on the survey instrument that will eventually go to 16,000 social workers in North America. After data are collected from the pilot, changes will be made and the fullscale survey will be released. The survey will be web-based, and respondents will receive continuing education credit for participation. The fullscale survey is scheduled to begin in late spring of this year.

Practice analyses are a crucial part of a licensing examination program. Basically, the analyses are a snapshot of what constitutes safe and competent social work practice across settings. The process began last summer, when the ASWB Practice Analysis Task Force met to develop the survey instrument. Led by co-chairs Rick Gruchy (NS) and Kathy Outland (OR), the 20-member group worked with staff from ASWB as well as from ACT, Inc., the association's testing vendor, to create both the social work and demographic content needed to capture an accurate picture of what knowledge and skills are relevant to competent social work practice at various levels.

MEETING

From page 1

group discussions and, as always, the one-to-one networking that attendees value.

Thursday's opening session addresses the complaints issue from the very beginning—how violations and complaints can be reduced through educational preparation for ethical and competent practice. Speaker M. Jenise Comer, Chair of Social Work at the University of Central Missouri and Chair of the Missouri Board of Social Workers will set the stage for the presentations that follow by addressing these issues from a regulatory perspective, and discussing the responsibility of social work educational programs to provide social workers with the knowledge and tools to understand how the profession is shaped by regulation, and how regulation is shaped by the profession.

Friday's full-day program will begin with a morning discussion of "Ethics and the Gray Areas of Regulation" that will touch on such issues as the link between professional codes of ethics and professional regulation, the application of ethical models to the disciplinary process, and the development of consistency in evaluating behavior. The first afternoon session, a panel discussion titled "Complaints: What Would You Do?",

promises to be an interactive discussion that will shed light on the similarities and differences among complaint processes in different jurisdictions. The last session of the day will focus on the investigation process, particularly around issues of flexibility and consistency.

Saturday's half-day program will address how to take defensible actions from a legal perspective, as well as how the disciplinary process may benefit from responsiveness to generational differences. In keeping with ASWB tradition, Saturday afternoon will include an optional group sightseeing tour.

On Sunday, the entire issue will be brought back to almost where it began, when panelists participate in "The Role of the Regulator: Can Violations Be Prevented?" The discussion is targeted at a review of the tools available to boards to bolster ethical and competent practice from the beginning.

Host city Quebec City is one of the most historic cities in North America, and the conference hotel, the Frontenac, is itself a landmark that sits on a bluff overlooking the St. Lawrence River. Finalized agendas and details on meeting registration and travel arrangements will be available in late February.

EXAM

From page 1

started an email group that he described as a place for people to collaborate on the answers to the "toughest questions" they recalled from taking and failing the exams. Several questions were posted as test-takers recalled them, and other previously failed candidates joined in a discussion of why A, B, C or D was the correct response.

But the founder of the email group contacted several member boards, inviting them to circulate the information about the "Disappointed Social Workers" effort to their own candidates. The idea was to help those struggling with the exam with advanced knowledge of the questions that would be asked. Two administrators contacted ASWB with reports of the invitations.

A review of the emails indicated that there was an intention of passing along questions illegally to other candidates, and the association moved quickly to stop the postings. ASWB legal counsel Dale Atkinson sent a letter by email and U.S. mail to the candidate who started the group, reminding him that he had agreed with a computer screen during testing not to share questions, and detailing the consequences of posting such questions.

Test-takers also sign an "Examinee Agreement and Sign-In" that states, in part, that the "examination questions remain the property of the agency sponsoring my examination and/or the developing organization(s) and I shall maintain the confidentiality of the questions and answers."

Atkinson also forwarded a warning to the site about the illegality of the activity. Replies virtually halted, and the site quickly became inactive.

Before the warning was put in place, a total of five questions had been posted. Matching up emails and candidate records, several of the participants, including the originator of the group, were identified. According to association policy, letters have been written to the boards of those test-takers identified to have posted or discussed items. Two questions had to be removed from the bank after a word search by ACT because they were too similar to the recalled questions.

The cost of a question with good statistics, from training an item writer to pretesting, is well over \$1,000. Since the discovery, Web word searches by staff have turned up a number of blogs, chat rooms and online study groups, but none that have revealed recalled questions.

Test security is a hot topic for everyone

Once addressed through a few sessions scattered throughout the Association of Test Publishers (ATP) conference, test security is now the subject of an entire one-day "summit" devoted exclusively to issues around cheating and other threats.

Again this spring, ATP will be offering an all-day "Test Security Summit" aimed at keeping testing entities up to date with the latest technologies and measurement techniques designed to respond to a seemingly exponential growth in attempts to compromise examination programs. The summit will precede the ATP conference set for February 23-25 in Palm Springs, CA.

Session topics include discussions on the use of innovative test questions and their implications for test security; the use of enhanced candidate authentication technologies; personality predictors for cheating; and developments in forensics for exams.

More information on ATP and the security summit is available online at www.innovationsintesting.org.

- Applicant can supply evaluation and documentation of programs

After successfully completing the ACE approval process, the first year of approval is considered probationary. During this probationary period, the provider is required to submit additional information following an outline provided by ACE. After the first probationary year, application for renewal occurs at three-year intervals.

Approved providers are required to collect and maintain records and must submit summaries of these records at the time of approval renewal and/or as requested by ASWB.

Records must include:

- Organizational changes
- Co-sponsored events, including co-sponsoring agreements
- Personnel records for continuing education directors and social worker consultants
- Instructor information for each course offered
- Participant attendance
- Social worker attendance
- Participant evaluations
- Number of credits issued for each course
- Grievances and resolutions
- Requests made for accommodations for persons with disabilities and such services provided to participants

Online education is defined by ACE as the acquisition of knowledge and skills through mediated information and instruction, encompassing all technologies. Instructors and students remain at different locations and are linked by a communications medium. It is an alternative method to face-to-face contact for the delivery of continuing education, distance education includes home study through studying a book, and audio or videotape and completing a test, as well as interactive course work completed using the Internet. All ACE approval criteria apply. Those providers seeking approval for online education are also expected to:

- Provide instructions, including passwords and codes, to allow reviewers to access the online course material, pre and/or post-tests, and evaluation for course submission
- Provide a field-tested method of determining credit hours

This field test process is used to determine the length of time it takes a participant to complete a workshop or course by presenting the course in its entirety to a sample group of participants. This method is used by a continuing education provider

to assign an accurate number of continuing education credits based on the number of hours required to complete the course. Fifty instructional minutes per sixty-minute hour is the standard for assigning continuing education credits.

- Provide scheduled access to a contact person
- Provide scheduled interaction between instructor and participant
- Have the capacity for completed assignments to be faxed, mailed, or e-mailed to qualified instructors for correction, grading, comment, and subject matter guidance
- Return corrected assignments to participants in a timely manner
- Provide a method for verifying that the individual participated in the continuing education activity, and that the person awarded the credit did all work
- Employ electronic security measures, and reliable technology
- Use post-tests containing questions appropriate to content and credits are also required in distance learning courses.

All providers must include a participant evaluation that asks about:

- Author or course effectiveness, presentation, and clarity of subject matter
- Whether the technology was appropriate to support participant learning
- (For online courses) User-friendliness of course technology
- (For online courses) Was the technology responsive to participants
- (For online courses) Rate the technology overall
- Accessibility for distance learning consultation (Were your questions or problems addressed effectively and in a timely manner?)
- For on-site and distance learning courses, ACE providers must have procedures for documenting participation; e.g. an attendance roster or sign-in log
- Whether learning objectives were met

Currently, ASWB has 29 approved providers listed who offer online continuing education course for Social Workers in both Canada and the United States. The ACE committee welcomes your comments and concerns, in particular around how we can improve acceptance of online social work education. Please contact ACE at ace@aswb.org.

Another administrator has left one of the association's member boards. **CHARLES HORTON's** last day with the Texas board was Dec. 31; he has moved on to the Texas Board of Professional Geoscientists. He wrote on the administrators email group that "It has been a pleasure getting to know those of you who regulate social workers across the U.S . . . All of the parties work together to add quality to the regulatory process in the profession. What a super organization!" **CAROL MILLER** has taken over the administrator position in Texas. Welcome **CAROL!**

* * * *

Rough winter so far, and as usual having members in far off climes tends to emphasize this. North Dakota administrator **TOM TUPA** emailed in December that it had been three days since the temperature had gotten above zero. "It is time to start looking for my winter wardrobe," he said thoughtfully. He added that in the aftermath of the two big snowstorms, he had had both vehicles hit by careless drivers, the starter on his big snow blower went out, the switch on the smaller blower froze up, and his out-

side Christmas decorations were either blown over by the winds or buried deep in the snow accumulations. But on the bright side, retirement is nearing.

* * * *

Association Asides

Another weather plus small-world with ASWB story: while she was in Kissimmee, FL, enjoying New Year's in a warm climate with a newly purchased time share, **MAUREEN EGAN** was taking a picture of a Christmas tree and "snow" on the front walkway of the hotel when a person walked in front of her camera. She found herself looking at the back of Iowan **JOYCE WESTPHAL's** head as **JOYCE** headed to her vehicle. **JOYCE** apparently felt watched; she turned around and both women started laughing—connections all over.

* * * *

AMANDA DAVIDSEN, an administrative assistant on the ASWB staff, has been elected to "Who's Who Among Students in American Junior Colleges" for her work at Germanna Community College near Culpeper.

* * * *

DAN WHEELAN reported with some pride that his hometown (Narragansett, RI), had a ferry boat that had been subcontracted to the New York Port Authority in the off-season—and had the distinction of picking up 17 passengers, a flight attendant and the pilot from the airliner that had to be ditched in the Hudson River.

* * * *

Former item writer **SIGNE WHITSON** of Pennsylvania is the coauthor of a new book, *The Angry Smile: The Psychology of Passive Aggressive Behavior in Families, Schools, and Workplaces*. Information can be found at <http://www.proedinc.com>. **SIGNE** is working as the program administrator for the Life Space Crisis Intervention Institute (www.lsci.org).

ASWB Calendar

February

22 -25 Association of Test Publishers, Palm Springs, CA

March

6-8 ASWB ACE Committee, Culpeper, VA

13-15 ASWB New Board Member Training, Reston, VA

18-22 Baccalaureate Program Directors, Phoenix, AZ

26-29 ASWB Examination Committee, Reston, VA

April

7-10 National Association of Black Social Workers, Louisville, KY

23 ASWB Board of Directors, Quebec City, QC

23 ASWB Administrators Forum, Quebec City, QC

23-26 ASWB Spring Education Meeting, Quebec City, QC

24 ASWB Nominating Committee, Quebec City, QC

May

15-17 ASWB Examination Committee, Dulles, VA

June

26-28 ASWB Item Writer Training, Arlington, VA

26-28 ASWB New Board Member Training, Arlington, VA

July

2-3 CLEAR International Conference, Dublin, Ireland

11 ASWB Bylaws and Resolutions Committee, Herndon, VA

11 ASWB Regulation and Standards Committee, Herndon, VA

11 ASWB Program and Education Committee, Herndon, VA

August

14-16 ASWB Board of Directors, Iowa City, IA

14-16 ASWB Examination Committee, Iowa City, IA

28-30 ASWB New Board Member Training, Arlington, VA

REGULATORY HAPPENINGS

**By Dwight Hymans, LCSW, ACSW
ASWB Director of Board Services**

For anyone hoping to get a bead on the world of social work regulation it quickly becomes clear that the target is constantly moving. Keeping up with all the changes is nearly impossible, but sometimes we can share a few highlights from recent regulatory activities. Here is a snapshot of a few of the current happenings in social work regulation.

Colorado

Licensed Social Workers in “The Centennial State” may see some changes in what they must do to show maintenance of professional competency at the time of license renewal. A bill has been introduced in the 67th General Assembly that would require licensed clinical social workers and licensed social workers to show that they have maintained a minimum level of competency through the creation of a continuing professional competency program. If created by this legislation, the continuing professional competency program would assess a licensee’s “ongoing ability to learn, integrate and apply the knowledge, skill, and judgment necessary to practice the profession according to generally accepted industry standards and professional ethical standards...” dependent upon the licensee’s practice setting. For more information on this bill, HB 09-1086, go to the Colorado General Assembly website at <http://www.leg.state.co.us/Clitics/CLICS2009A/csl.nsf/MainBills?openFrameset>.

Delaware

The Board of Clinical Social Work Examiners in “The First State” has proposed revisions to its rules and regulations clarifying the nature of professional supervision. The proposed changes provide licensees with additional guidelines that define the nature of professional supervision, address who may provide supervision when a licensed clinical social worker is not available to supervise and prohibits the provision of simultaneous supervision. To review the proposed regulations go to <http://www.dpr.delaware.gov/boards/socialworkers/2008/12december.shtml>.

Kansas

The Behavioral Sciences Regulatory Board in “The Sunflower State” recently finalized regulations defining unprofessional conduct. The comprehensive set of rules outlines over fifty behaviors and standards expected of a licensed individual who is practicing social work. It covers a broad range of activities including notification and communication with the regulatory board, conduct, record keeping and provision of services with clients, and recognition of one’s own practice limitation. To access the full rules go to http://www.ksbsrb.org/statutes_regs/regulationssw.html#unprocon.

Nebraska

Efforts are underway in “The Cornhusker State” to create a new license category that recognizes macro social workers engaged in non-clinical practice at the masters level. Current statutes only recognize those practicing in the clinical area with certifications available to other social work practice categories. The application for the new license category was submitted by NASW-NE and as required by Nebraska law will undergo an extensive review process by the “Technical Review Committee,” including an opportunity for public comment. The review process is in the early stages. For additional information contact the Nebraska Chapter of the National Association of Social Workers at www.naswne.org.

Virginia

“The Old Dominion” adopted new rules regarding supervision in November of 2008. All applicants for licenses that require supervision must register with the Board of Social Work prior to beginning their supervision. Previously there were some settings that were exempt from this requirement. Additional changes were made in the following areas: requirements for the supervisor, allowing for some portion of supervision to be provided in a group setting, and allowing applicants for Licensed Social Worker to take the exam prior to completion of their supervision hours. For additional information go to the Virginia Board of Social Work website at www.dhp.virginia.gov/social.

*New legislation? Rules changes? Recent happenings? Let us know.
Email dhymans@aswb.org*

Boards legal counsel Dale Atkinson, the Americans with Disabilities Act Amendments Act signed into law in September 2008 “attempts to clarify...whether an individual is disabled” by establishing “a more comprehensive recognition of disability, rejecting the narrow interpretation imposed by the judiciary.” Atkinson’s explanations of the amendments have been set out in a memorandum shared with ASWB member boards late last year, and were the subject of a presentation at the most recent Federation of Association of Regulatory Boards (FARB) Forum, held in Tampa, FL in late January. Atkinson also serves as Executive Director of FARB.

The ADA Amendments Act (ADAAA) was developed

as a reaction to court decisions that have generally leaned in the direction of tightened definitions of what constitutes a disability. Under the ADAAA, the definitions of a disability are intended to be understood in a more broad way.

Both the original Act and the Amendments define “disability” in the same way – as a “physical or mental impairment that substantially limits one or more of the major life activities” that is accompanied by a “record of such impairment” or a history of “being regarded as having such an impairment.” This impairment need not actually exist: according to the ADAAA, a person who has been “misclassified” as having an impairment in the past may be eligible for accommodations as if the impairment actually existed.

The bulk of the changes rests in the how those terms are defined, and often, the terms used to define the definition.

According to Atkinson, one of the most significant impacts of the ADAAA is the kind of definitional chain reaction that occurs when the concept of a “substantial limitation” is dealt with. The ADAAA states that the “substantial limitation” has to create an impairment in a “major life activity.” In turn, a “major life activity” is defined as “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” While the ADAAA does not set out a definitive or complete list of “major life activities,” the amendment act does include additional examples like standing, lifting, bending, concentrating, thinking, communicating, and working, as well as a subset of “major bodily functions” including effects on the immune system, cell growth, and

systems related to the bowel, bladder, brain, respiratory function, and reproductive function. Under the ADAAA, impairments to any of these could require accommodations.

Of course, defining “major life activities” sheds little light on what exactly constitutes a “substantial limitation” of those activities. For the most part, the definitions of this term arose through regulations adopted by the Equal Employment Opportunity Commission (EEOC) as part of the original ADA. Those regulations used words such as “prevents or severely restricts” to define what is meant by

a substantial limitation. Here again, Atkinson says, the intent of the ADAAA was to lower an EEOC threshold that Congress felt was set

Atkinson: ADAAA will affect "all phases of your operations," including the possibility of increased requests for accommodations.

too high. Atkinson believes that the EEOC will be forced to come up with less restrictive definitions. In fact, the Findings and Purposes section of the ADAAA states that Congress expects the EEOC to come up with a more broad definition than its current “substantial restriction” language.

Whatever definitions are developed will also need to incorporate the ADAAA’s very explicit statements that with the exception of ordinary eyeglasses or contact lenses, any artificial aid or medication used or taken to ameliorate a disability cannot be factored into the decision about whether a disability exists. In other words, the use of a medication to bring a condition under control could not serve as the reason for denying an accommodation request. As far as the ADAAA is concerned, the disability exists regardless of the measures being taken to lessen its impact on daily life. The same approach is taken for conditions that may be “episodic” or in remission: the ADAAA states that these conditions must be understood as a disability if they create substantial limitations “when active.”

For regulatory boards, the impacts of the amendments are likely to affect “all phases of your operations,” according to Atkinson, if for no other reason than the probability that “as more individuals may be determined to be disabled under the new more liberal definitions...programs may see an increase in requests for accommodations.” Because the ADAAA does not shed much light on what accommodations are reasonable, and under which circumstances, Atkinson believes that “the courts will likely continue to assess litigation regarding reasonable accommodation on a case by case basis.”

2009 ASWB committee and task force appointments

Recently-completed committee appointments approved by the Association of Social Work Boards Board of Directors continue the association's efforts to broaden participation both geographically and in terms of various regulatory roles wherever possible. This year, the various standing committees are accompanied by a 20-member Practice Analysis Task Force that was first appointed in 2008. Volunteers from a total of 37 of ASWB's 61 member jurisdictions serve on an elected or appointed committee for ASWB this year in over 80 volunteer positions. Committees for 2009 are:

Examination Committee

Janice James (KY), co-chair
 Bynia Reed (MD), co-chair
 Ruth Weinzettle (LA), co-chair
 Shannon Bender-Bell (BC)
 Leslie Bonney (ME)
 Claire Lenker (AL)
 Melanie McCoy (MD)
 Jane Matheson (AB)
 Jay Memmott (KS)
 Charles Rizzuto (MA)
 Virginia Spielman (NY)
 Susanna Sung (MD)
 Carl Hokanson (MN)
 Kristi O'Dell (MS)
 Trevor Gates (IL)
 Julie Niven (TX)
 Keeva Hartley (MN)
 Debby Jones (BC)
 Board liaison: Sandra Starks (KY)

Approved Continuing Education (ACE) Committee

Elaine Halsall (BC), chair
 Joyce Westphal (IA)
 Micki Lilly (NC)
 Molly Tucker (OH)
 Mel Harrington (SD)
 Teresa Young (AL)
 Laura Neal (MO)
 Michael Hickerson (LA)
 Board liaison: Donald Gloade (NS)

Finance Committee

Pat Heard (NC), chair
 Terry Housteau (TN)
 Ralph Westwood (AB)
 Jim Mellow (MD)
 Amanda Randall (NE)

Audit Committee

Jonathan Finck (MO), chair
 Kate Zacher-Pate (MN –admin)
 Suzan Turley (OR)

Bylaws and Resolutions Committee

Laura Schmid-Pizzato (WY), chair
 Emma Lucas-Darby (PA)
 Mary Macomber (FL)
 Treasa Glinnwater (MT)
 Maureen Egan (RI)
 Board liaison: Valerie Jones (IN)

Regulations and Standards (RAS) Committee

Cedric Davis (AZ), chair
 Richard Hazel (SK)
 Hal Agler (MO)
 Jane Anker (SC)
 Lynne Davies (AB)
 Mark Oldham (OR)
 Arlene Robinson (DC)
 Board liaison: Suzan Turley (OR)

Program and Education Committee (terms begin following 2009 Spring Meeting)

Richard Silver (QC), chair
 Whitney Crossman (NY)
 Brenda Holden (AL)
 Bob Johnson (AB)
 Dorinda Noble (TX)
 Jamie Zachary (FL)
 Lynn Melton (SC)
 Board liaison: Donald Montoya (NM)

Nominating Committee

Marcia Heitz (IL)
 Robin Jenkins (DC)
 Jerry Satterwhite (AL)
 Amanda Randall (NE)

Administrator Forum program

Jim Rough (OH) chair

New Board Member Training

Amanda Randall (NE), coordinator
 Roger Kryzanek (OR), coordinator

Practice Analysis Task Force

Richard Gruchy (NS) co-chair
 Kathy Outland (OR), co-chair
 Gary Bailey (NC)
 Terry Cluse-Tolar (OH)
 Cynthia Costello (MA)
 Fran Franklin (DE)
 Mary Ellen Glaser (CA)
 Mary Pender Greene (NY)
 Robin Jenkins (DC)
 Kay Lindgren (SD)
 Glenda McDonald (ON)
 Andrew Marks (TX)
 Amelia Franck Meyer (MN)
 Melinda Pilkinton (MS)
 Henry Pretty On Top (MT)
 Roxroy Reid (NM)
 Jerry Satterwhite (AL)
 Greta Slater (IN)
 Wade Tyler (LA)
 Chi Ying Wong (BC)
 Board liaison: Charlotte McConnell (DC)

Board of Directors

President:

Charlotte McConnell (DC)

President elect:

Amanda Randall (NE)

Secretary:

Sandra Starks (KY)

Treasurer:

Pat Heard (NC)

Directors at large:

Donald Gloade (NS)

Valerie Jones (IN)

Donald Montoya (NM)

Suzan Turley (OR)

COUNSEL'S COLUMN

Not what the Dr. ordered

By DALE ATKINSON
ATKINSON & ATKINSON

Boards of social work are created and empowered to enforce the practice acts in the interest of public protection. In many instances, boards are authorized to only act against those who are licensed or are seeking licensure. The administrative authority over unlicensed activity is a valuable tool in protecting the public and necessary for issuing and enforcing cease and desist letters and other actions necessary to carry out the legislative intent of the enabling legislation.

On occasion, questions arise as to the rights of a board over an applicant for licensure. It is recommended that boards be empowered to assess the credentials and qualifications of applicants and, where necessary, deny applications for licensure. When authorized by law, criminal background checks and other "character" assessments may be necessary to determine licensure eligibility. Perhaps, questions may arise as to options other than application denials. Consider the following.

In May 2007, an individual (Applicant) applied for licensure as a physician before the New Jersey State Board of Medical Examiners (Board). The Applicant was a board certified obstetrician and gynecologist, nationally recognized for his work in reproductive endocrinology and infertility. On his application for licensure, the Applicant disclosed that he was licensed as a physician in California and that he had settled a malpractice action filed by a former client. In response to his disclosures, the Board made various inquiries and interviewed the Applicant.

The Applicant disclosed that he was contacted by a radiologist from Atlanta for consultation regarding fertility procedures for herself. The Applicant provided consultation and treatment, and the two became intimate resulting in the radiologist becoming pregnant. Shortly thereafter, the relationship ended, and the radiologist filed a complaint with the California Medical Board. She also initiated a civil lawsuit against the Applicant alleging professional negligence, infliction of emotional distress, and assault and battery. The civil matter was settled with no admission of wrongdoing just as the Applicant moved and sought licensure in New Jersey.

Based upon inquiries from the New Jersey Board, the California Medical Board stated that its administrative investigation would not result in an "accusation" and that the matter was closed. The California Board also stated that its decision to not pursue administrative action was not based upon any negotiated agreement with the Applicant to avoid administrative action by the California Board.

The New Jersey Board's Credential Committee (Committee) recommended that the New Jersey Board grant the Applicant a license with the condition that he "enter into a public order of reprimand for engaging in conduct which constitutes a

Dale Atkinson is a partner with the Illinois law firm that is counsel to ASWB. He is also executive director of the Federation of Associations of Regulatory Boards, of which ASWB is a member.



violation of the sexual regulations." The Board adopted the Committee's recommendation and informed the Applicant that licensure would be granted conditioned on the execution of a consent order that included a public reprimand. The Applicant, through counsel, contested the Board's determination and requested that licensure be issued without a reprimand or, alternatively, that the Board issue a private reprimand. The Board rejected the Applicant's counteroffer and affirmed its prior position. As an alternative, the Board offered to allow the Applicant to withdraw his application without disciplinary consequences.

The Applicant accepted the Board's offer and agreed to the proposed consent order of licensure. In pertinent part, the consent order stated the following:

Upon review of [Applicant's] application for licensure including his testimony before a Committee of the Board, the Board found it adequately protective of the public safety to grant [Applicant] a plenary license with a reprimand for professional misconduct based on the prior intimate consensual relationship with a patient. In reaching this decision, the Board considered that this was an isolated incident, and boundaries and the appellant's judgment were in part blurred because the patient was a physician.

ORDERED:

1. [Applicant] is hereby reprimanded for violation of [New Jersey law].
2. [Applicant] is hereby granted an unrestricted license to practice in the State of New Jersey.

In making its determination, the Board considered the written statement of the Applicant, his testimony at the Committee inquiry, as well as the Applicant's oral presentation at a Board meeting.

The Applicant filed an action in Superior Court alleging that the actions of the Board were an "ultra vires ultimum" and "usurped its statutory authority." The Applicant argued that the Board only had the authority to grant or deny a license application and had no power to discipline a physician prior to licensure.

ASWB-affiliated foundation will sponsor research projects

Up to \$55k may be available this year for researchers who want to fill in the knowledge gaps around consumer protection, continuing education, complaints against social workers, and other areas

In a state of more or less suspended animation for over 10 years, an Association of Social Work Boards (ASWB)-affiliated foundation is now back up and running, and offering to provide up to \$55,000 in grants to researchers investigating issues relevant to social work regulation.

The American Foundation for Research and Consumer Education in Social Work Regulation (Foundation), a 501(c)(3) nonprofit organization, has announced that it will review applications for research proposals in any of five topic areas related to the regulation of social work. The content areas are focused on the relationship between social work regulation and consumer protection; the effectiveness of the continuing education model; public and professional knowledge about licensure; best practices in effecting regulatory change; and an analysis of complaints against social workers. Up to two \$10,000 grants and one \$25,000 grant will be available.

Eligibility for the grants is extended to social work faculty, students, members and staff of regulatory boards or provincial colleges in the U.S. and Canada. A general call for

proposals was developed and shared at the most recent meeting of the Society for Social Work Research (SSWR) conference in New Orleans, LA in January; formal application materials are set to be made available in March, with a completed application deadline of May 31, 2009. The Foundation is set to make final grant decisions in July 2009.

The American Foundation for Research and Consumer Education in Social Work Regulation began in the late 1980s as an offshoot of ASWB and sponsored the development and publication of two monographs. In the early 1990s, the Foundation became dormant and remained so until 2006, when the ASWB Board of Directors agreed to reactivate the organization. After repeated attempts to revalidate the Foundation's nonprofit status, the U.S. Internal Revenue Service finally granted the 501(c)(3) designation in late 2008. The Foundation has a separate set of bylaws and Articles of Incorporation, but shares a board of directors with ASWB.

For more information on the Foundation's grant program, email questions to info@aswb.org.

COUNSEL

From page 1

Initially, the court noted the encompassing repercussions resulting from the order, including the requirement of a report to the National Practitioner Data Bank and the requirement that the Applicant disclose such discipline to health and malpractice insurers, hospitals and surgery centers, and Medicaid and Medicare. Thereafter, the court referenced its standard of review of determining whether the agency action violated legislative policies, was supported by the record, and whether the agency clearly erred in reaching its conclusion based upon the legislative policies applied to the facts.

In its analysis, the court stated that regulatory boards are entitled to deference based upon their expertise and superior knowledge in the specialized fields. However, it noted that such discretion is not "unbounded and must be exercised in a manner that will facilitate judicial review. The court continued stating that the right to practice medicine is granted in the public interest and "is always subject to reasonable regulation in the public interest."

Further, the Board's actions are subject to the Uniform Enforcement Act (UEA) and the Medical Practice Act (MPA). Under the MPA, the Board is empowered to consider a wide range of factors, including the fact that applicants must establish "good moral character" as a prerequisite to licensure. Further, under the UEA, the Board may refuse to issue a license upon a showing that an applicant engaged in professional or occupa-

tional misconduct. Also enumerated in the UEA is the power of the Board to issue a letter of reprimand.

The Applicant argued that the Board cannot condition initial licensure and requested that the court modify the Board action to bring it in conformity with the legislative powers. The court rejected this argument, finding that the MPA and liberal interpretation of the UEA intended to grant the Board with a variety of tools to properly and fairly regulate the practice of medicine. It concluded that, based upon its legislative powers, to limit the exercise of the power to grant or deny licensure, separate from the authority to impose a lesser action is irrational and may thwart the effectiveness of the Board's fundamental purposes. Indeed, the court noted the issuance of the license with the sanction, as opposed to the potentially more severe denial of licensure.

Finding that the Board's actions were within the bounds of its authority, the court affirmed the conditional grant of licensure based upon the public reprimand.

This opinion illustrates the importance of legislative language and how a liberal construction of the law can adequately empower a board to protect the public through the licensure process. The issuance of an initial license conditioned upon the entry of a public disciplinary action clearly provides the board with an important public protection tool.

In the Matter of Kim, 958 A. 2d 485 (N.J. Super Ct. 2008)



Association of
Social Work Boards

400 South Ridge Parkway
Suite B
Culpeper, VA 22701

INSIDE:

*Supervision changes in Delaware and Virginia; Macro license in Nebraska?
See REGULATORY HAPPENINGS, page 7*

association news

Hot off the press from ASWB: a supervision study that provides "a foundation aside from custom or anecdotal evidence"

The first attempt to establish an analysis of the practice of social work supervision for licensure is now available in print and online. First shared with attendees to the 2008 ASWB Annual Meeting of the Delegate Assembly in November of last year, the study identifies the skills required of supervisors, and creates a picture of "best practices" in supervision.

The 33-page document is the result of work done by a task force on supervision created in 2007. Through meetings and online work with staff from ASWB and ACT, Inc., the association's testing vendor, the 12-member task force assembled a list of competencies necessary for supervision, and linked those competencies to specific Knowledge, Skills, and Abilities (KSA) statements.

"The results should serve as a strong basis for decision-making by regulatory boards as they work to ensure better qualified supervisors and more productive supervision," the report states. "The report should be equally useful as a foundation for education, training and development programs that support current or future supervisors who guide social workers through the licensure process."

Hardcopy versions of the report are being forwarded to all ASWB member boards for review and use. An electronic version of the report is available on the ASWB website at www.aswb.org.



Supervision task force members, from left, Gary Bailey (NC), Alison Hadley (WA), and Anoma Mullegama (MN) helped create the analysis now available from ASWB. Other task force members were David Boehm (VA), James Campbell (BC), Jacalyn Claes (NC), Jeannie Falkner (MS), Jane Matheson (AB), Anne Brantley Segall (MI), Saundra Starks (KY), and Sallie Watkins (AL). The task force was chaired by Dorinda Noble (TX).