Association of Social Work Boards

model social work practice act

Model Law Task Force, 1996 - 1997
with amendments, 1998 - 2012
with amendments, 2013 – 2015
with amendments, 2018

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ASWB Model Practice Act

Introduction

The Association of Social Work Boards Model Social Work Practice Act was formally adopted by the AASSWB (now ASWB) Delegate Assembly at its Annual Meeting in the fall of 1997. As a fluid document and a resource to the ASWB member boards, the Model Act has been modified on several occasions through actions of the Delegate Assembly. Historically, the Model Act was the result of two years of intensive work by an eight-member Model Law Task Force created in 1996. At that time, ASWB was operating under its previous name, the American Association of State Social Work Boards (AASSWB). The current name of the association was adopted by the Delegate Assembly at its Annual Meeting in the fall of 1999.

During its development, extensive input for the Model Act was solicited from social work regulatory boards, social work professional organizations, credentialing groups, and accrediting bodies. The numerous comments received by ASWB helped to inform the development of this comprehensive model designed to assist legislatures and boards in addressing social work regulation.

The purpose of the ASWB Model Act is simple: to provide a resource to legislatures and social work boards when addressing issues related to the public protection mission of regulating the practice of social work. Informed by a national perspective, the Model Act establishes standards of minimal social work competence, methods of fairly and objectively addressing consumer complaints, and means of removing incompetent and/or unethical practitioners from practice. Social work Boards can better protect the public when they have access to resources, such as the ASWB Model Act, that reflect current issues in professional regulation.

Consistent with the mission of ASWB and its member boards, the public is well-served by the actual implementation of the Model Act in the laws of individual jurisdictions. For example, the Model Act facilitates greater standardization of terminology and regulation from jurisdiction to jurisdiction. Greater standardization promotes increased public understanding of social work, and increased mobility for qualified social workers increasing the public protection benefits of increased understanding of social work practice and greater access to vital mental health practitioners and services. Standardization also promotes consistency in legal decisions related to licensure, renewal, discipline and other board activities.

The ASWB Model Act was also strengthened by its own limits. It was drafted as a resource to member boards and legislatures to promote public protection through regulation of social work practice, leaving professional promotion and related issues to professional associations, societies, credentialing organizations and other membership groups. The ASWB Model Social Work Practice Act addresses protection of the public first and foremost.

The ASWB Model Practice Act was created by members of a Model Law Task Force, a diverse group that included social workers from various practice settings as well as regulatory board administrators and legal consultants. The Task Force met several times over a two year period and confronted many challenging issues during the development process. Of course, input from other stakeholders on various drafts of the document also helped guide the discussions and provide many diverse perspectives. The public protection mission of ASWB and its member boards provided the basis for all ultimate decisions.

ASWB made every attempt to provide a document that is beneficial to the social work regulatory community. The language used throughout the Act represents an attempt to promote uniformity to regulation and terminology. Member boards are encouraged to review and use the Model Act within the context of regulatory and language issues that may be unique to each respective jurisdiction. The Association understands that modifications may be necessary to address existing regulatory, legal, cultural, and political climates.

ASWB acknowledges and thanks the members of the Task Force, commenting stakeholders, and member boards for their valuable input and participation in developing, adopting and continual review and modification of the Model Act. As a resource for its membership, ASWB sincerely believes that the Model Act provides a calculated, uniform perspective that promotes public protection through regulation.

ASWB has a mechanism for the orderly submission, review and Delegate Assembly participation and approval of suggested modification to the Model Act. The ASWB Regulation and Standards Committee (RASC), formerly the Discipline and Regulatory Standards Committee (DARS), is charged with reviewing suggested modifications to the Act submitted by member boards and committees of the Association. RASC also has the ongoing charge of the continuous review of the Model Act to ensure it maintains contemporary application to social work regulation. Suggestions and discussion are encouraged in order to ensure a document that is current and responsive to the needs of the ASWB membership.

Notes on the Text

The text of the ASWB Model Social Work Practice Act is presented in two columns: the left column contains the text of the Model Act and the right column contains comments to the text of the Act. Comments are also shaded for clarity. The text of regulations is italicized. Readers are encouraged to review the comments to the Model Act as a way of understanding the rationale of the various provisions.

Article I. Title, Purpose, and Definition.

Introductory Comment to Article I

ASWB believes that the public interest must be the central precept of any professional regulatory act and its administration, and that regulatory Boards must constantly strive to ensure that this basic principle is upheld. These beliefs are clearly articulated in the Model Social Work Practice Act ("Act").

Article I of the Model Social Work Practice Act establishes the foundation upon which the Act is constructed. This article clearly states that safeguarding the public interest is the most compelling reason for regulating the practice of social work, and identifies the activities included within the practice of social work. Definitions of other terms used throughout the Act are also included in this article.

An ACT concerning the regulation of the practice of social work and related matters.

Be it enacted…

Section 101. Title of Act.

This Act shall be known as the "(Name of state or other jurisdiction) Social Work Practice Act."

Section 102. Legislative Declaration.

The practice of social work in the _____ of _____ is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of social work, as defined in this Act, merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of social work in the _____ of _____. This Act shall be liberally construed to carry out these objectives and purposes.

Section 102. Legislative Declaration.

Social work is a learned profession affecting public health and welfare and should be declared as such by the Legislature.

Section 103. Statement of Purpose.

It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the effective regulation of the practice of social work; the licensure of social workers; the licensure, control, and regulation of persons, in or out of this state, that practice social work within this state.

Section 103. Statement of Purpose.

The Statement of Purpose defines the general scope of the Social Work Practice Act. It reflects the basic principles that a Board must have full knowledge of the social worker practicing social work within its jurisdiction, and must effectively protect the public through regulation. This section provides for the regulation of the practice of social work and the licensure of social workers engaged in this practice, and also stipulates that the regulation of the practice of social work is extended to all social workers practicing in the jurisdiction, regardless of the actual place of residency.

Section 104. Practice of Baccalaureate Social Work.

Subject to the limitations set forth in Article III, Section 306, the practice of Baccalaureate Social Work means the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate Social Work is generalist practice that includes assessment, planning, intervention, evaluation, Case Management, information and referral, counseling, Supervision, Consultation, education, advocacy, community organization, research, and the development, implementation, and administration of policies, programs, and activities.

Section 104. Practice of Baccalaureate Social Work.

The definition of the practice of social work is one of the most important—and most-discussed—clauses in the ASWB Model Act. Social work has been a very dynamic profession, particularly over the past several years, and any definition of practice needs to contain a degree of flexibility that will allow the Board to make necessary adjustments from time to time to meet a changing health care environment, an evolving practice, and the ongoing needs of consumers. The definitions in sections 104, 105, and 106 are purposely broad in order to provide substantial latitude to the Board in the adoption and implementation of rules. However, the definitions do identify three practice categories—Baccalaureate Social Workers, Master's Social Workers, and Clinical Social Workers—with each category containing its own definition and range of acceptable activities at entry level. The rules process would function as an important tool in the Board's efforts to adapt the definitions to the needs of its jurisdiction, since any new or amended rules that the Board may implement would be promulgated within the requirements of the jurisdiction's Administrative Procedures Act, and would afford all interested parties an opportunity to provide review and comment.

Each practice category includes provisions for Independent Practice, but the requirements for independent status vary, as does the acceptable range of activities that may be undertaken in each category. Under Article III, Section 306, both the Master's Social Workers and the Baccalaureate Social Workers are authorized to engage in Independent Practice [as defined in Article I, Section 108(q)], after completing two (2) years of full time supervised practice.

There are no exemptions to social work licensure in the Model Act, except for students currently participating in an Approved Social Work Program, when completing an internship, an externship, or other social work experience requirements for such programs. Exempting any social worker or group of social workers from regulatory oversight is contrary to the purpose of the Act as stated in Section 103.

As stated in the Introduction to the Act, "A model social work practice act must be

concerned with the protection of the public first and foremost". If social workers' practice is beyond the purview of legal regulation through licensing, the public will have less recourse to protection from or remedies for incompetent or harmful practice.

The Model Act is intended to serve as an ideal to which all jurisdictions should aspire. Exempting certain groups of social work practitioners from regulatory oversight may shift the focus from the values, skills and responsibilities that social workers and the social work profession have in common to differences in categories of practice. In order to adequately ensure public protection, there must be a minimum level of value, skill and responsibility for all who practice social work or who call themselves social workers.

The definitions of practice at the Baccalaureate, Master's, and Clinical levels include lists of activities in which social workers engage. Accordingly, social workers whose employment or position entails any or all of these activities must maintain a valid social work license authorizing that particular scope of practice. Therefore, based on the definitions of practice, examples of positions that require social workers to maintain a license include, but are not limited to:

- Social work services in government
- Case Managers
- Program Evaluators
- Supervisors
- Social Service Administrators
- Social Work Educators
- Community Organizers
- Policy Makers
- Researchers

Section 105. Practice of Master's Social Work.

Subject to the limitations set forth in Article III, Section 306, the practice of Master's Social Work means the application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master's Social Work practice includes the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and

evaluation, Case Management, information and referral, Counseling, Supervision, Consultation, education, research, advocacy, community organization, and the development, implementation, and administration of policies, programs, and activities. Under Supervision as provided in this Act, the practice of Master's Social Work may include the practices reserved to Clinical Social Workers.

Section 106. Practice of Clinical Social Work.

The practice of Clinical Social Work is a specialty within the practice of Master's Social Work and requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Treatment methods include the provision of individual, marital, couple, family and group Counseling and Psychotherapy. The practice of Clinical Social Work may include Private Practice and the provision of Clinical Supervision.

Section 106. Practice of Clinical Social Work.

Clinical Social Workers are qualified to diagnose using the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), the *International Classification of Diseases* (ICD), and other diagnostic classification systems in assessment, diagnosis, Psychotherapy, and other activities.

Section 107. Electronic Social Work Services.

(a) The practice of Baccalaureate Social Work, Master's Social Work, or Clinical Social Work in this jurisdiction through Electronic Social Work Services or other means, regardless of the location of the practitioner, shall constitute the practice of social work and shall be subject to regulation under this Act.

(b) The practice of Baccalaureate Social Work, Master's Social Work, or Clinical Social Work by a practitioner in this jurisdiction through Electronic Social Work Services or other means, regardless of the location of the Client(s), shall constitute the practice of social work and shall be subject to regulation under this Act.

(c) Social workers providing Electronic Social Work Services shall take all necessary measures to ensure compliance with relevant practice standards.

Section 107. Electronic Social Work Services

Many factors, including technological advancements, increase the likelihood of the practice of social work across jurisdictional lines. While federal legislation or the judiciary may have the final word on regulating professions across jurisdictional lines, this section is designed to specifically address the issue of where practice takes place. ASWB adopts the position that social work practice through electronic means takes place in both the jurisdiction where the Client is receiving such services (irrespective of the location of the practitioner) and in the jurisdiction where the practitioner is located at the time of providing such services (irrespective of the location of the Client). The provision of Electronic Social Work Services shall constitute social work practice as defined in the statute.

ASWB recognizes that social work practice via digital and electronic technology is a reality in the health care and behavioral science fields. In 2015, ASWB published *Model Regulatory Standards for Technology and Social Work Practice* to serve as guidance as regulators think through amending rules and regulations related to social work services. Relevant language from these

standards has been integrated into appropriate sections of this Act.

Because the Board's mission is to protect the public in its jurisdiction, the Act is intended to provide Board authority over practitioners (regardless of their location) providing services to Clients within its borders as well as practitioners providing service from within its borders (regardless of the location of Clients).

Section 108. Applicability of Terms.

(a) Except as otherwise provided in this Act, reference to the practice of social work shall be applicable to the practice of Baccalaureate Social Work, Master's Social Work, and Clinical Social Work.

(b) Except as otherwise provided in this Act, reference to the term social work shall include Baccalaureate Social Work, Master's Social Work, and Clinical Social Work.

Section 109. Definitions.

(a) Approved Clinical Supervisor means a licensed Clinical Social Worker who has met the qualifications to be a Clinical Supervisor as determined by the Board.

(b) Approved Provider of Continuing Education means an individual, group, professional association, school, institution, organization, or agency approved by the Board to conduct educational program(s).

Section 109(b). Definitions.

See comment to Section 213(a)(4), Section 309(b) and section 310 regarding the role in the approval process of programs and providers.

(c) Approved Social Work Program means a school of social work or a social work educational program that has been approved by the Board.

(d) Approved Supervisor means an Approved Clinical Supervisor or licensed social worker who has met the qualifications to be a supervisor as determined by the Board.

(e) Baccalaureate Social Worker means a person duly licensed to practice Baccalaureate Social Work.

(f) Board or Board of Social Work means the Board of Social Work created under this Act.

(g) Case Management means a method to plan, provide, evaluate, and monitor services from a variety of resources on behalf of and in collaboration with a Client.

(h) Client means the individual, couple, family, group, organization, or community that seeks or receives social work services from an individual social worker or an organization. Client status is not dependent on billing or payment of fees for such services.

(i) Clinical Social Worker means a person duly licensed to practice Clinical Social Work under this Act.

(j) Clinical Supervision means an interactional professional relationship between an Approved Clinical Supervisor and a social worker that provides evaluation and direction over the supervisee's practice of Clinical Social Work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of Clinical Social Work in an ethical and competent manner.

Section 109(j). Definitions.

Supervisors are legally and ethically accountable for the practice of their supervisees. While providing their supervisees with support, education, and administrative assistance in developing competence, Supervisors must maintain their paramount focus on the quality of services that Clients are receiving from Licensees. The Model Law's emphasis on the supervisory relationship as the context for providing evaluation and direction means that Supervisors of Licensees must be ready to direct interventions on behalf of Clients' best interests even when such directions could require that supervisors override the decisions, judgment or interests of the licensee. (In contrast to Supervision, Consultation does not carry this degree of legal and ethical accountability since by definition the suggestions offered by consultants are intended for Licensees to use or not use as the Licensees judge best.)

(k) Continuing Education means education and training which are oriented to maintain, improve, or enhance competent social work practice.

(l) Continuing Education Contact Hour means a sixty (60) minute clock hour of instruction, not including breaks or meals.

(m) Consultation means an advisory professional relationship between a social worker and a person with particular expertise, with the social worker legally and ethically maintaining responsibility for all judgments and decisions regarding service to the Client.

Section 109(m). Definitions.

See comment on Section 109(j)

(n) Conviction means conviction of a crime by a court of competent jurisdiction and shall include a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered on admission of guilt, a no contest plea, a plea of nolo contendere, and a guilty plea.

(o) Counseling means a method used by social workers to assist individuals, couples, families, and groups in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

(p) Electronic Social Work Services mean the use of computers (including the Internet, social media, online chat, text, and email) and other electronic means (such as smartphones, landline telephones, and video technology) to (a) provide information to the public, (b) deliver social work services to Clients, (c) communicate with Clients, (d) manage confidential information and case records, (e) store and access information about Clients, and (f) arrange payment for professional services.

(q) Examination means a standardized test or examination of social work knowledge, skills and abilities approved by the Board.

(r) Felony means a criminal act as defined by this state or any other state or by definition under federal law.

(s) Final Adverse Action means any action taken or order entered by the Board, whether through a consent agreement, as the result of a contested hearing, issued through a letter of reprimand/admonition/warning, or other action against a Licensee, applicant or individual which is public information under applicable law and which impacts the licensure status or record, practice status or record, or other related practice privileges. Final Adverse Actions include, in addition to the above and without limitations, denial of licensure applications, denial of licensure renewal applications, and surrender of licensure. Board actions or orders are Final Adverse Actions irrespective of any pending appeals. To the extent applicable, Final Adverse Actions under this statute are intended to encompass, at a minimum, all actions that require reporting to state or federal authorities, including but not limited to the Healthcare Integrity Protection Databank (HIPDB)/National Practitioners Data Bank (NPDB).

(t) Independent Practice means practice of social work outside of an organized setting, such as a social, medical, or governmental agency, in which the social worker assumes responsibility and accountability for services provided.

(u) Licensee means a person duly licensed or registered under this Act.

(v) Master's Social Worker means a person duly licensed to practice Master's Social Work.

(w) Private Practice means the provision of Clinical Social Work services by a licensed Clinical Social Worker who assumes responsibility and accountability for the nature and quality of the services provided to the Client in exchange for direct payment or third-party reimbursement.

(x) Program of Continuing Education means an educational program offered by an Approved Provider of Continuing Education.

(y) Psychotherapy means the use of treatment methods utilizing a specialized, formal interaction between a Clinical Social Worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained and sustained to understand unconscious processes, intrapersonal, interpersonal and psychosocial dynamics, and the assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions.

(z) Supervision for Licensure means the professional relationship between a supervisee and an Approved Supervisor who provides oversight, direction, and evaluation over the services provided by the supervisee and promotes continued development of the supervisee's knowledge, skills, and abilities to provide social work services in an ethical and competent manner.

Section 109(y). Definitions.

See comment on Section 109(j)

Article II. Board of Social Work.

Introductory Comment to Article II

The state's first step in regulating the practice of social work is the establishment of a way in which the regulations will be administered—the creation of the Board. Article II of the Act defines and creates the Board by specifying elements necessary to its formation, organization, and operation. Each section in this article covers elements that ASWB considers necessary to the proper formation and efficient operation of the Board. Several of these sections, especially those containing innovative or infrequently used provisions, are supplemented by explanatory comments.

One of the most important guiding principles of this Article, and in fact the Act as a whole, is the philosophy that the public is best served when statutes focus on general areas, and provide a framework within which the Board develops rules that effectively respond to the regulatory needs in that jurisdiction. It is impossible for legislatures to enact comprehensive provisions dealing with all the matters with which a Board may be confronted, or to somehow legislatively anticipate the changing conditions of the professions and the delivery of mental health and social services. Statutes are the best way to articulate the overarching values and intent of regulation, but are extremely impractical tools for responding to public needs in a timely way. Statutes should create goals, guidelines, and policies in general areas, and allow the Board to provide specifics in its rules. Consequently, ASWB recommends that Boards be granted adequate power to adopt and amend rules with the greatest possible flexibility and autonomy. Section 212 of the Act is designed to accomplish this objective.

Among the sections of Article II that may be of particular interest are Sections 202 and 203(b), pertaining to the inclusion of public members as Board members; Section 207, which provides ground and procedures for removal of Board members; and Section 213(b)(2), which enables Boards to utilize research and study grants and other funds without having to deposit these funds in general revenue accounts.

Section 201. Designation.

The responsibility for enforcement of the provisions of this Act is hereby vested in the Board of Social Work (Board). The Board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this Act, as well as such other duties, powers, and authority as it may be granted from time to time by applicable law.

Section 202. Membership.

The Board shall consist of _____ members, [_____ of whom shall be a representative of the public, and the remainder] [each] of whom shall be social workers who possess the qualifications specified in Section 203. The Board shall at all times be comprised of at least one Baccalaureate Social Worker, Master's Social Worker, and Clinical Social Worker.

Section 202. Membership.

The number of Board members should be determined by each individual jurisdiction according to its particular requirements. Individual jurisdictions may wish to consider Board composition that reflects the diversity of practice environments and interests within their borders. Variable factors such as population, number of social workers, and other local considerations, may all be relevant in determining the number of Board members needed to most effectively enforce the Act. In the event a jurisdiction prefers to limit Board membership to currently licensed social workers, the bracketed language pertaining to a public member should be deleted, as should Section 203(b). In this event the alternative "each"

should be selected, and Section 203(a) should be renumbered as Section 203.

ASWB believes public representation on social work regulatory Boards is extremely important, and recommends an adequate number of consumer members be included. The inclusion of public members is an effective way to ensure that the public is being adequately served and protected by the Board.

Section 203. Qualifications.

(a) Each social worker member of the Board shall at all times as a Board member:

Section 203(a). Qualifications.

Section 203(a) of the Act requires that a social worker be engaged in the practice of social work at the time of appointment as a Board member and have at least one (1) year of experience out of the last five (5) years in the practice of social work prior to appointment. Because the practice of social work is defined in Sections 104, 105, and 106 in broad terms, a social worker engaged in almost any element of practice would be eligible for appointment. This provision helps to ensure the development of candidates who have a wide range of backgrounds and experiences, and who are knowledgeable in the affairs of the profession. Further, equal representation on the Board by Baccalaureate, Master's, and Clinical Social Workers adds to this diversity.

(1) Be a resident of this state;

(2) Be currently licensed and in good standing to engage in the practice of social work in this state;

(3) At the time of appointment, have been actively engaged in the practice of social work, for at least one (1) out of the last five (5) years; and

(4) Have at least three (3) years of experience in the practice of social work.

(b) Public member(s) of the Board shall be residents of this state who have attained the age of majority and shall not be, nor shall ever have been a Baccalaureate Social Worker, Master's Social Worker or Clinical Social Worker, or the spouse thereof, or a person who has ever had any material financial interest in the provision of social work services or who has engaged in any activity directly related to the practice of social work.

Section 203(b). Qualifications.

Specific qualifications for the public member(s) have been deliberately omitted from this section. Reliance has been placed on the Governor to determine what attributes an individual should possess in order to meaningfully serve on a Board. In order to assure that such a member would be truly independent in judgments, those who have a possible substantial relationship with the profession are rendered ineligible by this section.

Section 204. Appointment.

The Governor shall appoint the members of the Board in accordance with other provisions of this Article and the state constitution.

Section 205. Terms of Office.

(a) Except as provided in subsection (b), members of the Board shall be appointed for a term of _____years, except that members of the Board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

(b) The terms of the members of the Board shall be staggered. Each member shall serve until a successor is appointed and qualified.

(1) The present members of the Board shall serve the balance of their terms.

(2) Any present Board member appointed initially for a term of less than _____ years shall be eligible to serve for two (2) consecutive full terms.

(c) No member of the Board shall serve more than two (2) consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

Section 206. Vacancies.

Any vacancy which occurs in the membership of the Board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be filled by the Governor in the manner prescribed by Section 204.

Section 207. Removal.

(a) A Board member may be removed pursuant to the procedures set forth in subsection (b) herein, upon one or more of the following grounds

(1) The refusal or inability for any reason of a Board member to perform the duties as a member of the Board in an efficient, responsible, and professional manner;

(2) The misuse of office by a member of the Board to obtain pecuniary or material gain or advantage personally or for another through such office;

Section 207(a). Removal.

In certain jurisdictions, there may be general statutory provisions that establish the procedures and grounds for the removal of appointed public officials.

(3) The violation by any member of the laws governing the practice of social work; or

(4) For other just and reasonable causes as determined solely by the Board pursuant to applicable law.

(b) Removal of a member of the Board shall be in accordance with the Administrative Procedures Act of this state, or other applicable laws.

Section 208. Organization.

(a) The Board shall elect from its members a Chairperson and such other officers as it deems appropriate and necessary to the conduct of its business. The Chairperson shall preside at all meetings of the Board and shall be responsible for the performance of all of the duties and functions of the Board required or permitted by this Act. Each additional officer elected by the Board shall perform those duties customarily associated with the position and such other duties assigned from time to time by the Board.

(b) Officers elected by the Board shall serve terms of one (1) year commencing with the day of their election and ending upon election of their successors and shall serve no more than three (3) consecutive full terms in each office to which they are elected.

(c) The Board shall employ an Executive Director to serve as a full-time employee of the Board. The Executive Director shall be responsible for the performance of the administrative functions of the Board and such other duties as the Board may direct.

Section 208(c). Organization.

ASWB urges that every Board have an Executive Director to perform and supervise the administrative functions for which the Board is responsible on a daily basis. The responsibilities of the Executive Director should include the hiring of necessary staff to fulfill the responsibilities of the Board.

Section 209. Compensation of Board Members.

Each member of the Board shall receive as compensation the sum of $_____ per day for each day on which the member is engaged in performance of the official duties of the Board, and shall be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of such official duties.

Section 210. Meetings.

(a) The Board shall meet at least once every three (3) month(s) to transact its business. The Board shall meet at such additional times as it may determine. Such additional meetings may be called by the Chairperson of the Board or by two-thirds (2/3) of the members of the Board.

Section 210(a). Meetings.

ASWB strongly recommends that Social Work Boards meet at least four times per year. This is a minimum standard that would help Boards maintain an adequate level of efficiency and responsiveness.

(b) The Board shall meet at such place as it may from time to time determine. The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate prior notice.

(c) Notice of all meetings of the Board shall be given in the manner and pursuant to requirements prescribed by the Administrative Procedures Act.

(d) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and, except where a greater number is required by this Act or by any rule of the Board, all actions of the Board shall be by a majority of a quorum.

(e) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to law, conduct any portion of its meeting in executive session, closed to the public.

Section 210(e). Meetings.

Many legislatures have adopted "sunshine" laws that provide for open meetings. Section 210(e) may not be necessary or may need revisions to ensure that the use of executive session complies with these laws.

Section 211. Employees.

The Board may, in its discretion, employ persons in addition to the Executive Director in such other positions or capacities as it deems necessary to the proper conduct of Board business and to the fulfillment of the Board's responsibilities as defined by the Act.

Section 211. Employees.

Professional staff and consultants employed by the Board may be social workers. Boards may wish to consider whether investigators must be social workers.

Section 212. Rules.

The Board shall make, adopt, amend, and repeal such rules as may be deemed necessary by the Board from time to time for the proper administration and enforcement of this Act. Such rules shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act.

Section 212. Rules.

The authority of a Board to adopt, amend, and repeal rules is an extremely important power. ASWB encourages Boards to fully exercise this authority by adopting rules to more specifically set forth regulatory issues. This not only enhances the protection of the public, but also benefits the Board when it becomes necessary to interpret the Act. Further, rules help to maintain consistency in the application of the Act as membership on the Board changes through the appointment process.

Section 213. Powers and Responsibilities.

(a) The Board shall be responsible for the control and regulation of the practice of social work in this state including, but not limited to, the following:

(1) The licensing by Examination or by licensure transfer of applicants who are qualified to

engage in the practice of social work under the provisions of this Act;

(2) The renewal of licenses to engage in the practice of social work;

(3) The establishment and enforcement of compliance with professional standards of practice and rules of conduct of social workers engaged in the practice of social work;

(4) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of social work whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training;

Section 213(a)(4). Powers and Responsibilities.

Language in this section places responsibility with the Board for establishing the standards under which it will recognize and approve the social work education programs attended by licensure candidates. ASWB strongly recommends that Boards retain this responsibility.

Although many jurisdictions have statutes or rules stating approved or accredited degree programs of school or colleges of social work are those approved by the Council on Social Work Education (CSWE), ASWB believes Boards should consider the potential consequences of such provisions. Regardless of the quality or reputation of an outside organization, it is crucial that Boards recognize the risks involved in taking any action that could be construed as improper delegation of power to private entities.

It is a well-established rule of administrative law that any delegation of governmental power must carry with it appropriate limitations and procedural safeguards for affected individuals. Given this principle, a direct, unequivocal grant of the accreditation function to a private organization such as CSWE might be deemed an unauthorized, improper, and invalid delegation of Board or legislative authority. There are multiple judicial opinions in which a court overturned a Board action based on what was deemed to be an invalid delegation to a private body. [e.g., see *Garces v. Department of Registration and Education,* 254 N.E.2d 622 (Ill.App., 1969).]

Here as elsewhere in the Act, the Board's use of its rules can play an important role. After being granted the authority to approve social work programs, the Board may then adopt in its rules the Standards of Accreditation established from time to time by CSWE.

(5) The enforcement of those provisions of the Act relating to the conduct or competence of social workers practicing in this state, investigation of any such activities related to the practice or unauthorized practice of social work, and the suspension, revocation, or restriction of licenses to engage in the practice of social work;

(6) With probable cause that an applicant or Licensee has engaged in conduct prohibited by this Act or a statute or rule enforced by the Board, the Board may issue an order directing the applicant or Licensee to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this section, every applicant or Licensee is considered to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the Board and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the testimony or reports constitute a privileged communication;

(7) The collection of professional demographic data;

(8) The issuance and renewal of licenses of all persons engaged in the practice of social work; and

(9) Inspection of any licensed person at all reasonable hours for the purpose of determining if any provisions of the laws governing the practice of social work are being violated. The Board, its officers, inspectors, and representatives shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to the practice of social work.

(b) The Board shall have such other duties, powers, and authority as may be necessary to the enforcement of this Act and to the enforcement of Board rules made pursuant thereto, which shall include, but are not limited to, the following:

(1) The Board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of social work for the protection of the health and welfare of the public and/or whose activities assist and facilitate the work of the Board.

Section 213(a)(6). Powers and Responsibilities.

This section allows a Board to order a mental or physical examination or chemical dependence evaluation upon a showing of probable cause. This power should be used judiciously, only when the Board has reason to believe that there may be a connection between a mental or physical condition and the alleged conduct. This power is necessary to ensure to the public that an applicant or Licensee's ability to practice social work safely and competently is not impaired.

(2) The Board may receive and expend funds, in addition to its [annual/biennial] appropriation, from parties other than the state, provided:

(i) Such funds are awarded for the pursuit of a specific objective which the Board is authorized to accomplish by this Act, or which the Board is qualified to accomplish by reason of its jurisdiction or professional expertise;

(ii) Such funds are expended for the pursuit of the objective for which they are awarded;

(iii) Activities connected with or occasioned by the expenditures of such funds do not interfere with the performance of the Board's duties and responsibilities and do not conflict with the exercise of the Board's powers as specified by this Act.

(iv) Such funds are kept in a separate, account; and

(v) Periodic reports are made concerning the Board's receipt and expenditure of such funds.

(3) The Board may establish a Bill of Rights for Clients concerning the services a Client may expect in regard to social work services.

Section 213(b)(3). Powers and Responsibilities.

This provision allows for the creation of a Client Bill of Rights. A Bill of Rights establishes what a Client may expect when obtaining social work services. Customarily, the Bill of Rights contains a set of Client expectations that would be translated into standards of professional practice, and/or codes of conduct for the social worker.

If a Board chooses to establish a Bill of Rights, the Bill must be consistent with standards of practice codes of ethics, and regulations that the Board has adopted under the Social Work Practice Act. Boards need to be careful to avoid inadvertently expanding the role and responsibilities of the social worker through a Bill of Rights.

(4) Any investigation, inquiry, or hearing which the Board is empowered to hold or undertake may be held or undertaken by or before any member or members of the Board and the finding or order of such member or members shall be deemed to be the order of said Board when approved and confirmed as noted in Section 210(d).

(5) It is the duty of the Attorney General [State's Attorney] to whom the Board reports any violation of this Act which also is deemed as violative of applicable criminal statutes to cause appropriate proceedings to be instituted in the proper court in a timely manner and to be prosecuted in the manner required by law. Nothing in this paragraph shall be construed to require the Board to report violations whenever the Board believes that public's interest will be adequately served in the circumstances by a suitable written notice or warning.

(6) The Board shall have the power to subpoena and to bring before it any person and to take testimony either orally or by deposition, or both, in the same manner as prescribed in civil cases in the courts of this State. Any member of the Board, hearing officer, or administrative law judge shall have power to administer oaths to witnesses at any hearing which the Board is authorized to conduct, and any other oaths authorized in any Act administered by the Board.

(7) In addition to the fees specifically provided for herein, the Board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this Act or Rules adopted hereunder. Such services rendered shall include but not be limited to the following:

(i) Issuance of duplicate certificates or identification cards;

(ii) Mailing lists, or reports of data maintained by the Board;

(iii) Copies of any documents;

(iv) Certification of documents;

(v) Notices of meetings;

(vi) Licensure transfer;

(vii) Examination administration to a licensure applicant;

(viii) Examination materials.

(ix) Approval of providers or programs for Continuing Education.

(8) Cost Recovery.

(i) If any order issues in resolution of a disciplinary proceeding before the Board, the Board may request the (ALJ/HO) to direct any Licensee found guilty of a charge involving a violation of any laws or rules, to pay to the Board a sum not to exceed the reasonable costs of the investigation and prosecution of the case.

(ii) In the case of an Agency, the order permissible under (i) above may be made as to the corporate owner, if any, and as to any social worker, officer, owner, or partner of the Agency who is found to have had knowledge of or have knowingly participated in one or more of the violations set forth in this section.

(iii) The costs to be assessed shall be fixed by the (ALJ/HO) and shall not be increased by the Board; where the Board does not adopt a proposed decision and remands the case to a(n) (ALJ/HO), the (ALJ/HO) shall not increase any assessed costs.

(iv) Where an order for recovery of costs is made and timely payment is not made as directed in the Board's decision, the Board may enforce the order for payment in the _____ Court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the Board may have as to any person directed to pay costs.

(v) In any action for recovery of costs, proof of the Board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(9) Except as otherwise provided to the contrary, the Board shall exercise its duties, powers, and authority in accordance with the Administrative Procedures Act.

(c) Notwithstanding any other law to the contrary, the Board shall, on a timely basis, publicize Final Adverse Actions ultimately determined against any individual. Publication of such Final Adverse Actions shall include, but not be limited to, reporting to any applicable federal or state repository of final disciplinary actions. The board shall also timely report to any databank Final Adverse Actions maintained by an association of which the board is a member.

Section 213(b)(8). Powers and Responsibilities.

The ALJ/HO used through this section refers to the terms "administrative law judge" or "hearing officer" as determined by individual jurisdictions.

Article III. Licensing.

Introductory Comment to Article III

Article III of the Act sets out the requirements for initial licensure of social workers, as well as licensure transfer and renewal. As in other parts of the Act, this Article establishes basic criteria, and delegates the authority for implementing those criteria to the Board. The Board exercises this authority by utilizing appropriate enforcement mechanisms and issuing specific rules. For example, in the area of initial licensure, the Act would be implemented by the Board's approval of social work degree programs, specifications of the Examination to be used, and establishment of all other prerequisites that must be met by each applicant to whom it issues a license.

This article, as well as the entire Act, also reflects ASWB's efforts to develop and continue uniform standards for the transfer of licensure. The social work profession has become increasingly mobile, and Boards need to examine the ways in which differing standards between jurisdictions may be affecting the public's access to qualified social workers.

Section 301. Unlawful Practice.

(a) Except as otherwise provided in this Act, it shall be unlawful for any individual to engage in the practice of Baccalaureate Social Work unless duly licensed as a Baccalaureate Social Worker under the applicable provisions of this Act.

Section 301. Unlawful Practice.

Section 301 establishes the basis for this Article by making it unlawful for any unlicensed person to engage in the practice of social work, and by enabling the Board to exact penalties for unlawful practice.

Boards are often confronted with the problem of preventing unlicensed individuals from engaging in one or more facets of social work practice. Most practice acts do not give the Board jurisdiction and authority to take action against individuals other than those who are licensed or seeking licensure. Thus, Boards must rely on the difficult task of persuading local prosecutors to take criminal action against persons not licensed to practice social work. This gap in jurisdictional authority makes it difficult to effectively prevent unlicensed practitioners from engaging in illicit practice.

Language in this section clearly allows Boards the authority to control unlicensed practice. The regulation of the practice of social work, including jurisdiction over unlicensed practice in the profession, has a reasonable and rational relation to public health, safety, and welfare. See, e.g., *State v. Wakeen*, 57N.W.2d 364 (Wis., 1953). cf. *State v. VanKeegan*, 113 A. 2d 141 (Conn., 1955), and *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483 (1955). For this reason, vesting power in the Board to regulate illicit practice would not appear to violate constitutional due process requirements. Because monetary fines are not generally considered criminal sanctions, it can be strongly argued that there are no constitutional barriers that would restrict the impositions of fines by a Board. See, e.g., *Helvering v. Mitchell*, 303 U.S. 376 (1938); *City of Waukegan v. Pollution Control Board*, 311 N.E.2d 146 (Ill., 1974); *County Council for Montgomery*

County v. Investors Funding Corp., 312 A.2d 225 (Md., 1973); and *Roday v. Hollis*, 500 P. 2d 97 (Wash., 1972).

As stated in the comments to Article I, Sections 104, 105, and 106, there are no exemptions to licensure in the Model Act except for students currently participating in an Approved Social Work Program when completing an internship, externship, or other social work experience requirements for such programs.

(b) Except as otherwise provided in this Act, it shall be unlawful for any individual to engage in the practice of Master's Social Work unless duly licensed as a Master's Social Worker under the applicable provisions of this Act.

(c) Except as otherwise provided in this Act, it shall be unlawful for any individual to engage in the practice of Clinical Social Work unless duly licensed as a Clinical Social Worker under the applicable provisions of this Act.

(d) No individual shall offer social work services or use the designation Social Worker, Licensed Baccalaureate Social Worker, Licensed Master's Social Worker, Licensed Clinical Social Worker or the initials LBSW, LMSW, or LCSW or any other designation indicating licensure status or hold themselves out as practicing social work as a Baccalaureate Social Worker, Master's Social Worker, or Clinical Social Worker unless duly licensed as such.

Section 301(d). Unlawful Practice.

This Act is not intended to prevent other licensed professionals from practicing within other "allied scopes." However, it is important to recognize the social work title, and link this name recognition to licensed social workers. This link protects the public through an assurance that there is regulatory consistency associated with the social work identity.

(e) Any individual who, after hearing, shall be found by the Board to have unlawfully engaged in the practice of social work shall be subject to a fine to be imposed by the Board not to exceed $_____ for each offense. Each such violation of this Act or the rules promulgated hereunder pertaining to unlawfully engaging in the practice of social work shall also constitute a _____(misdemeanor) punishable upon conviction as provided in the criminal code of this state.

(f) Nothing in this Act shall be construed to prevent members of other professions from performing functions for which they are duly licensed. However, such other professionals must not hold themselves out or refer to themselves by any title or description stating or implying that they are engaged in the practice of social work or that they are licensed to engage in the practice of social work.

(g) Students currently participating in an Approved Social Work Program are exempt from licensure under this Act when completing internship, externship, or other social work experience requirements for such programs.

(h) (1) An individual currently licensed and in good standing to practice social work in another jurisdiction may, upon prior written application to and approval by the

Section 301(h) Temporary Practice.

It is recommended that legislatures address technology driven and Electronic Social Work

Board, practice social work in this jurisdiction within the scope of practice designated by such license no more than 30 days per year without applying for a license. Practice privileges under this paragraph shall apply only if the requirements for a license in such other jurisdiction are substantially similar to the requirements for licensure in this jurisdiction. The 30-day period shall commence on the date of approval by the Board of the written application. The practitioner who provides services under this paragraph shall be deemed to have submitted to the jurisdiction of the applicable Board and be bound by the laws of this state.

Service issues and emergency and disaster response practice issues through a temporary practice approach. This temporary practice language is intended to address sporadic practice within the jurisdiction irrespective of whether it is electronically rendered or rendered in person. The privilege of practicing temporarily (no more than 30 days per year) is granted only to individuals duly licensed to practice social work in another jurisdiction.

Based upon the uniformity in accredited educational programs and the ASWB social work Examinations, it is perceived that minimum competence in one jurisdiction is reasonably equated to minimum competence in another jurisdiction. Furthermore, practice privileges apply to such individuals only if the requirements for licensure in the jurisdiction of licensure are substantially similar to the requirements for licensure in this jurisdiction.

Because of the different designations of licensure, this language also limits the scope of practice to such practice designated by the jurisdiction of licensure. That is, the temporary practice must be limited to the scope of practice designated by the jurisdiction of licensure.

By design, the language of the temporary practice references a "written application" to be submitted to the Board prior to engaging in practice under this section. It is up to each individual Board to determine the extent of the application and whether the Board will actually "approve" the ability to practice or merely maintain a file on the individual for future reference.

The 30-day period is also, by design, left to the interpretation of a Board whether such period is consecutive or how the 30-day period is to be determined.

Finally, practitioners providing services under this temporary practice privilege are deemed to have submitted to the jurisdiction of the applicable Board and agree to be bound by the laws thereof. It is recommended that the written application as determined by the Board contain language that verifies the submission of the individual to the jurisdiction and the applicability of the laws of the jurisdiction.

(2) (a) In response to a disaster or emergency declared by the appropriate authority or governor of the state, an individual currently licensed and in good standing to practice social work in another jurisdiction who is providing social work services within the scope of practice designated by such license and whose professional licenses in all other disciplines are current and in good standing may, upon prior written notice to the Board and without otherwise applying for a license, provide such services in this jurisdiction for the time said emergency or disaster declaration is in effect. Individuals exercising rights under this Section 301 (h)(2) shall be deemed to have submitted themselves to the jurisdiction of the applicable Board or state agency and to be bound by the laws of this state in addition to other applicable laws by virtue of licensure status in other states.

(b) Individuals who have at any time surrendered any professional license under threat of administrative disciplinary sanction or in response to administrative investigation, or have any professional license currently under suspension, revocation, or agency order restricting or limiting practice privilege, with the exception of expired or lapsed licenses due to voluntary non renewal of such license, are ineligible to practice under this Section 301 (h)(2).

In addition, temporary practice in the case of a declared disaster is not limited to prior written application but upon written notice to the Board. Furthermore, the time period for temporary practice under a declared disaster is limited to the teime that the emergency or disaster declaration is in effect.

This temporary practice approach provides the Board with valuable information as to who is practicing within the jurisdiction in the event of a reported complaint or wrongdoing.

Section 302. Qualifications for Licensure by Examination as a Baccalaureate Social Worker.

(a) To obtain a license to engage in the practice of Baccalaureate Social Work, an applicant for licensure by Examination must provide evidence satisfactory to the Board, subject to Section 311, that the applicant:

(1) Has submitted a written application in the form prescribed by the Board;

(2) Has attained the age of majority;

(3) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *[insert reference to authorizing state statute]* and applicable federal law. The *[state agency responsible for managing fingerprint data e.g. the department of public safety]* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All good moral character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Section 302(a)(3). Qualifications for Licensure by Examination as a Baccalaureate Social Worker.

Legislatures have generally agreed that "good moral character" is a proper requirement for licensure of social workers. Defining precisely what constitutes good or bad character has caused health regulatory Boards and courts considerable difficulty, and a review of applicable case law reveals a considerable variance in the judicial opinions concerning the interpretation of good character requirements. Nevertheless, the courts have uniformly enforced such requirements, reasoning that because health regulatory Boards are

composed primarily of members of the profession being regulated, they are capable of applying character standards to their professions with relevance and specificity.

While specific character requirements may vary from jurisdiction to jurisdiction, and may even appear to vary from case to case, the purpose of these requirements remains constant. The public has the right to expect the highest degree of integrity from members of the social work profession. Boards have a duty to ensure that these expectations are realized. From this perspective, requirements of good moral character for licensure can be expected to be sustained by the courts so long as their enforcement is reasonably related to protection of the public health, safety, and welfare.

As past behavior can provide a means of predicting future behavior, criminal records checks are often required by Boards. Criminal records information is generally relevant to moral character. By requiring submission of this information, the Board will be in a much more informed position to make licensure eligibility determinations.

In order to receive criminal records checks, each jurisdiction should ensure that the regulatory board has the requisite state/provincial statutory authority to allow the Board to directly receive criminal records reports from the state (e.g. DCII) or federal agency (e.g. Federal Bureau of Investigation (FBI) or the Royal Canadian Mounted Police (RCMP)). The statutory language contained in this model is drafted so as to comply with U.S. law which requires that the statutory language specifically reference the use of fingerprinting and provide notice as to the authority by which the Board is entitled to directly receive such information from the FBI. Similar statutory references may be necessary in the Canadian Provinces. Boards are advised to consult with their Board legal counsel to determine the statutory language necessary to provide the Board with authority to require criminal records checks in their respective jurisdictions.

Even when grounded in public protection, issues involving moral character may lead to concerns about the potential for this qualification to be misused by Boards. Although there are many legal ways to ensure that the good moral character issue is not misapplied, including state and federal civil rights legislation, Boards need to be extremely sensitive to character judgments made. Practice act provisions that bear a reasonable relationship to

the purpose of protecting the public welfare will generally be regarded as constitutionally acceptable by most courts, so long as the enforcement by Boards is reasonably related to the protection of the public.

(4) Has graduated and received a baccalaureate degree in social work from an Approved Social Work Program;

Section 302(a)(4). Qualifications for Licensure by Examination as a Baccalaureate Social Worker.

ASWB anticipates that Boards will approve those programs whose standards are at least equivalent to the minimum standards required by the Council on Social Work Education, including field education. See Comment to Section 213(a)(4) for a discussion of the Board's role in the accreditation process.

(5) Has successfully passed an Examination or Examinations prescribed by the Board; and

(6) Has paid all applicable fees specified by the Board relative to the licensure process.

Section 303. Qualifications for Licensure by Examination as a Master's Social Worker.

(a) To obtain a license to engage in the practice of Master's Social Work, an applicant for licensure by Examination must provide evidence satisfactory to the Board, subject to Section 311, that the applicant:

(1) Has submitted a written application in the form prescribed by the Board;

(2) Has attained the age of majority;

(3) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *[insert reference to authorizing state statute]* and applicable federal law. The *[state agency responsible for managing fingerprint data e.g. the department of public safety]* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All good moral character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Section 303(a)(3). Qualifications for Licensure by Examination as a Master's Social Worker.

See comments on Section 302(a)(3) above.

(4) Has graduated and received the Master's degree in social work from an Approved Social Work Program;

Section 303(a)(4). Qualifications for Licensure by Examination as a Master's Social Worker.

ASWB anticipates that Boards will approve those programs whose standards are at least equivalent to the minimum standards required by the Council on Social Work Education, including

field education. See Comment to Section 213(a)(4) for a discussion of the Board's role in the accreditation process.

ASWB also anticipates under comments to Article II, Section 213(a)(4), that Boards will adopt in its rules those programs approved from time to time by CSWE. Because CSWE does not approve Doctorate level programs, Boards are also encouraged to develop a process that will, at the very least, list the Doctorate programs that will be recognized for purposes of licensure qualification.

(5) Has successfully passed an Examination or Examinations prescribed by the Board; and

(6) Has paid all applicable fees specified by the Board relative to the licensure process.

Section 304. Qualifications for Licensure by Examination as a Clinical Social Worker.

(a) To obtain a license to engage in the practice of Clinical Social Work, an applicant for licensure by Examination must provide evidence satisfactory to the Board, subject to Section 311, that the applicant:

(1) Has submitted a written application in the form prescribed by the Board;

(2) Has attained the age of majority;

(3) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *[insert reference to authorizing state statute]* and applicable federal law. The *[state agency responsible for managing fingerprint data e.g. the department of public safety]* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All good moral character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Section 304(a)(3). Qualifications for Licensure by Examination as a Clinical Social Worker.

See comments on Section 302(a)(3) above.

(4) Has graduated and received a Master's degree in social work from an Approved Social Work Program;

Section 304(a)(4). Qualifications for Licensure by Examination as a Clinical Social Worker.

ASWB anticipates that Boards will approve those programs whose standards are at least equivalent to the minimum standards required by the Council on Social Work Education, including field education. See Comment to Section 213(a)(4) for a discussion of the Board's role in the accreditation process.

ASWB also anticipates under comments to Article II, Section 213(a)(4), that Boards will adopt

in its rules those programs approved from time to time by CSWE. Because CSWE does not approve Doctorate level programs, Boards are also encouraged to develop a process that will, at the very least, list the Doctorate programs that will be recognized for purposes of licensure qualification.

(5) Has completed supervised practice approved by the Board, or demonstrated to the Board's satisfaction that experience in the practice of Clinical Social Work meets or exceeds the minimum supervisory requirements of the Board;

304(a)(5). Qualifications for Licensure by Examination as a Clinical Social Worker.

ASWB suggests that Boards recognize the need for flexibility in obtaining the appropriate Supervision requirements, including changing technology, geographic location, and issues associated with applicable laws related to individuals with disabilities.

All applicants for licensure as a Clinical Social Worker by Examination shall obtain supervised experience in the practice of clinical social work after the receipt of a Master's or Doctorate degree in Social Work from an Approved Social Work Program, under such terms and conditions as the Board shall determine;

(6) Has successfully passed an Examination or examinations prescribed by the Board; and

(7) Has paid all applicable fees specified by the Board relative to the licensure process.

Section 305. Clinical Supervision and Other Training Programs.

The Board shall establish such requirements for supervised practice or any other experiential program necessary to qualify an applicant for any licensure Examination under this Act, and shall also determine the qualifications of supervisors used in Supervision programs.

Section 306. Independent Practice.

No Baccalaureate or Master's Social Worker licensed under Section 302 or Section 303 shall engage in Independent Practice until such time that the social worker shall have worked under a plan for supervision for a specified period of time and under terms and conditions set by the Board.

Section 306. Independent Practice.

Independent Practice in the Licensed Baccalaureate Social Worker or Licensed Master's Social Worker categories should not be construed as Private Practice, in which Clinical Social Workers accept fees for service from Clients or third party payers on the Client's behalf. LBSW and LMSW social workers are not qualified to conduct the diagnosis and treatment of mental illness, or provide Psychotherapy services, although LMSW social workers may provide some clinical services under Supervision by a Clinical Social Worker. See the Introduction to the Model Act and comments to Article I, Sections 104, 105, and 106 for additional information on Independent Practice provisions.

Boards are encouraged to develop a method, such as the issuance of a special certificate or decal, that recognizes the Independent status of a particular Licensee. The decal or certificate can be attached to the actual license to identify those practitioners eligible for Independent Practice

Regulations - Independent Practice

Pursuant to Article III, Section 306, all social workers who seek to attain the Independent Practice of Baccalaureate Social Work or Master's Social Work shall have practiced social work in a supervised setting under requirements and parameters set by the Board. The Board declares such parameters to be as follows:

In conjunction with the responsibilities (section 6) and areas of supervisory accountability (section 7), Boards are encouraged to consider the quality of Supervision in relation to the number of supervisees under the responsibility of one supervisor. Although there is no specific recommended ratio of supervisees per supervisor in the ASWB Model Social Work Practice Act or Regulations, ASWB suggests that Boards consider the context where Supervision is taking place, electronically or face to face. Factors should also include whether the supervisor is in the same agency as the supervisee, the geographic distance between the supervisor and supervisee, additional job responsibilities and work load of the supervisor, current personal circumstances of the supervisor, and other concerns that may affect the overall quality of the supervisor/supervisee relationship. The overall goal for Supervision is professional growth and development. Boards should use many factors, including the number of supervisees under the Supervision of one supervisor, as the benchmark for considering whether a plan for Supervision is approved.

(1) To qualify for Independent Practice of Baccalaureate Social Work, an individual, after licensure to practice Baccalaureate Social Work, shall obtain 3000 hours of experience over a minimum two year period, but within a maximum four year period. Under any circumstances, the 3000 hours of experience must be completed within eight (8) years from the date of initial application for Independent Practice recognition.

(2) To qualify for Independent Practice of Master's Social Work, an individual, after licensure to practice Master's Social Work, shall obtain 3000 hours of experience over a minimum two year period, but within a maximum four year period. Under any circumstances, the 3000 hours of experience must be completed within eight (8) years from the date of initial application for Independent Practice recognition.

(3) Paragraphs 4 through 8 shall be applicable to supervisors and the Supervision process of Baccalaureate Social Workers and Master's Social Workers seeking Independent Practice status.

(4) An individual providing Supervision to a Baccalaureate Social Worker shall be a Baccalaureate Social Worker or Master's Social Worker or Clinical Social Worker. An individual providing

Supervision to a Master's Social Worker shall be a Master's Social Worker or a Clinical Social Worker. In addition to the required licensure, the supervisor shall have attained the independent status of such licensure designation.

(5) Supervision can be provided only by supervisors preapproved by the regulatory body. The regulatory body shall maintain a list of approved supervisors in good standing. Requirements for registration on this list include the appropriate degree from an Approved Social Work Program, three years of experience following licensure in the required category and completion of graduate course work in Supervision in an Approved Social Work Program or completion of an Approved Program of Continuing Education in Supervision. Three hours of Continuing Education in Supervision is required per licensure renewal period to maintain registration.

(6) The supervisor is responsible for Supervision within the following content areas:

- *(i) Practice skills*
- *(ii) Practice management skills*
- *(iii) Skills required for continuing competence*
- *(iv) Development of professional identity*
- *(v) Ethical practice*
- *(vi) Cultural competency*

(7) The areas of supervisory accountability shall include:

- *(i) Client care*
- *(ii) Knowledge of relevant agency policy and procedure*
- *(iii) Legal and regulatory requirements*
- *(iv) Ethical standards of the profession*
- *(v) Professional responsibility for social work services provided by the supervisee*
- *(vi) Documented assessment of the supervisee's competence to practice independently.*

(8) Setting of Supervision. If Supervision is not provided within the agency of employment, the supervisee must obtain a written release from the agency administrator to obtain Supervision of agency Clients outside the agency setting.

(9) A plan for Supervision must be established and maintained throughout the supervisory period. Such plan must be submitted to the Board along with the application by the Licensee for independent status. The Board reserves the right to preapprove and audit such plans. Plans must include:

- *(i) The purpose of Supervision*
- *(ii) Process to be used in Supervision, i.e., timing, skills, electronic or in person*
- *(iii) Learning objectives*
- *(iv) Professional growth*
- *(v) Intervention processes*
- *(vi) Plans for documentation*
- *(vii) Ethics and values*
- *(viii) Evaluation*

(10) An evaluation of the supervisee in accordance with the plan shall be submitted to the regulatory body every six months and the records will be retained for three years.

(11) Supervision records must be submitted to centralized social work credential databank.

Regulations - Practice of Clinical Social Work

Pursuant to Article III, Section 304(6)(a), all candidates for licensure as a Clinical Social Worker shall have practiced Clinical Social Work in a supervised setting under requirements and parameters set by the Board. The Board declares such parameters to be as follows:

In conjunction with the responsibilities (section 6) and areas of supervisory accountability (section 7), Boards are encouraged to consider the quality of Supervision in relation to the number of supervisees under the responsibility of one supervisor. Although there is no specific recommended ratio of supervisees per supervisor in the ASWB Model Social Work Practice Act or Regulations, ASWB suggests that Boards consider the context where Supervision is taking place. Factors should include whether the supervisor is in the same agency as the supervisee, the geographic distance between the supervisor and supervisee, additional job responsibilities and work load of the supervisor, current personal circumstances of the supervisor, and other concerns that may affect the overall quality of the supervisor/supervisee relationship. The overall goal for Supervision is professional growth and development. Boards should use many factors, including the number of supervisees under the Supervision of one supervisor, as the benchmark for considering whether a plan for Supervision is approved.

(1) Supervised Practice Required. To be eligible for licensure as a Clinical Social Worker a candidate must possess an LMSW and thereafter obtain 3000 hours of supervised Clinical Social Work practice over a minimum two-year and maximum four-year period. Under any circumstances, the 3000 hours of experience must be completed within eight (8) years from the date of initial application for Clinical Practice recognition. Of these 3000 hours, at least 100 hours of direct Clinical Supervision is required. Such 100 hours must be equitably distributed throughout a minimum of a two-year period, and no more than 50 hours can be provided in Group supervision. Group Supervision may be composed of no more than six supervisees per group. The Board maintains the authority to review extraordinary circumstances relevant to the time parameters of supervised practice.

(2) Documentation of Clinical Supervision. A plan for CLinical Supervision must be filed with the Board at the beginning of a period of supervision. If a supervisory change is made, notice of the end of the Supervision and a termination evaluation, completed by the supervisor, must be submitted to the Board within 30 days.

(3) Setting of Clinical Supervision. If clinical supervision is not provided within the agency of employment, the supervisee must obtain written release from the agency administrator to obtain Clinical Supervision of agency Clients outside the agency setting.

(4) An individual providing Supervision shall be licensed as a Clinical Social Worker.

(5) The Clinical Supervisor is responsible for Supervision within the following content areas:

(i) Clinical skills.
(ii) Practice management skills.
(iii) Skills required for continuing competence.
(iv) Development of professional identity.
(v) Ethical practice.
(vi) Cultural competency

(6) The areas of Clinical Supervisory accountability shall include:

(i) Client care.
(ii) Knowledge of relevant agency policy and procedure.
(iii) Legal and regulatory requirements.
(iv) Ethical standards of the profession.
(v) Professional responsibility for social work services provided by the supervisee.
(vi) Documented assessment of the supervisee's competence to practice independently.

(7) Qualifications to become an Approved Clinical Supervisor. Supervision can be provided only by Clinical Supervisors preapproved by the regulatory body.

(i) The regulatory body shall maintain a list of Approved Clinical supervisors in good standing.
(ii) Requirements for registration on this list include a master's degree from an Approved Social Work Program, a minimum of 4500 hours of clinical practice, earned over a period of three years following clinical licensure, three years of experience following licensure in the required category and completion of graduate course work in Supervision in an Approved Social Work Program or completion of an Approved Program of Continuing Education in Supervision. Three hours of Continuing Education in Supervision is required per licensure renewal period to maintain registration.

(8) A plan for Clinical Supervision must be developed by the supervisor and the applicant with the Board's approval, and submitted to the Board. The Board reserves the right to preapprove and audit such plans. Plans must include:

(i) The purpose of Supervision
(ii) Process to be used in Supervision, i.e., timing, skills, electronic or in person
(iii) Learning objectives
(iv) Professional growth
(v) Intervention processes
(vi) Plans for documentation
(vii) Ethics and values
(viii) Evaluation

(9) An evaluation of the supervisee in accordance with the plan shall be submitted to the regulatory body every six months, and the records will be retained for three years.

(10) Supervision records must be submitted to centralized social work credential databank.

Section 307. Examinations.

(a) Any Examination for licensure required under this Act shall be administered to applicants often enough to meet the reasonable needs of candidates for licensure. The Board shall be ultimately responsible for determining the content and subject matter of each Examination and the time, place, and dates of administration of the Examination. If applicable, the Board may confer with and rely upon the expertise of an Examination entity in making such determinations.

Section 307(a). Examinations.

Consistent with the legal principles pertaining to delegation of authority outlined in Comments to Sections 213(a)(4), the language of Article III Section 307 empowers the Board with the responsibilities for the content and subject matter of each Examination and the time, place and date of administration. As further stated, the statutory authority recognizes that the Board may, through rule-making and/or policy, rely upon the expertise of an Examination entity in making such determinations. Statutorily placing the ultimate authority with the Board addresses the legal mandate that the Board makes such determinations, but also recognizes the authority of the board to rely upon the expertise of ASWB in the exam development and administration processes. For legal reasons, ASWB does not recommend that the statutes specifically reference any outside private organization, but rather authorize the Board to make such determinations while recognizing the potential necessity to consult with the Examination entity. For legal and practical reasons, statutorily empowering the Board with such ultimate authority emphasizes the importance of Board attendance and participation in the ASWB Delegate Assembly and on relevant ASWB committees where association members are exposed to the exam development process and statistical analyses pertaining to content and defensibility of the programs. See Comment to Section 213(a)(4).

(b) The Examination shall document that the applicant meets the standard for minimum competence to engage in the relevant practice of social work. The Board may employ, cooperate with, and contract with any organization or consultant in the preparation, administration, and grading of an Examination but shall retain the sole discretion and responsibility for determining which applicants have successfully passed such an Examination.

(c) The Board shall have the authority to limit the number of attempts on the Examination in order to protect the integrity and security of the Examination and to ensure minimum competence.

Regulations – Examination Re-takes

Pursuant to Article III, Section 307 (c), the Board has the authority to limit Examination re-takes. The Board requires the parameters to be as follows:

(1) Applicants shall be allowed a maximum of three (3) attempts to successfully pass the Examination.

(2) After the third attempt, if the applicant has not achieved a passing score, the applicant must request in writing to the Board to re-take the Examination. The Board may require the applicant to complete a preapproved remediation plan prior to additional Exam administrations.

Section 308. Qualifications for Licensure by Endorsement.

(a) To obtain a license by endorsement at the equivalent designation and subject to Article IV of this Act, an applicant currently licensed as a social worker in another jurisdiction must provide evidence satisfactory to the Board, subject to Article III, Section 311, that the applicant:

(1) Has submitted a written application and paid the fee as specified by the Board; and

(2) Has presented to the Board proof of an active social work license in good standing.

Section 309. Renewal of Licenses.

(a) Licensees shall be required to renew their license at the time and in the manner established by the Board, including the form of application and payment of the applicable renewal fee. Under no circumstances, however, shall the renewal period exceed three years.

(b) As a requirement for licensure renewal, each Licensee shall provide evidence satisfactory to the Board that such Licensee has annually completed at least 15 Continuing Education hours from a Program of Continuing Education.

Section 309(b). Renewal of Licenses.

ASWB has instituted a program whereby the association, on behalf of its member Boards, approves Providers of Continuing Education. As set forth in the Definitions, a "Program of Continuing Education" means an educational program offered by an "Approved Provider of Continuing Education." ASWB has adopted stringent criteria utilized by its ACE Committee in determining Approved Providers. The criteria were developed based upon an analysis of requirements currently used by ASWB member Boards, along with a review of other organizations which also approve CE providers.

At their option, ASWB member Boards may wish to recognize ASWB ACE Approved Providers as "approved" within their jurisdictions for purposes of accepting CE for licensure renewal. Such a process will save the administrative burdens placed upon the Board in assessing CE providers while at the same time promoting the mission of ASWB to bring uniformity to the licensure and renewal process.

To avoid any notions of improperly delegating authority [see Comments, Section 213(a)(4)], Boards are encouraged to adopt such criteria as established from time to time by the ASWB ACE Committee as the criteria of such Board. This "two step" process will ensure that the Board maintains the ultimate decision-making authority and avoids the legal pitfalls of improper delegation.

(c) The Board shall also provide procedures to ensure licensure renewal candidates maintain the qualifications to practice social work as set forth in this Act.

Section 309(c). Renewal of Licenses.

In recognition of the valuable information that criminal records checks may provide to the board as one element of determining good moral character (see comment to Section 302(a)(3)), Boards that utilize criminal records checks in determining eligibility for licensure should adopt procedures that specify how/when criminal records checks will be required as a part of the licensure renewal process. It is recommended that Boards at least periodically require submission of criminal records checks in the licensure renewal process. For example, criminal records checks may be required as part of a random audit of Licensees during the renewal process, required of all Licensees periodically (e.g. every 10 years or every 5 renewal cycles), or required as a part of every renewal cycle.

(d) If a social worker fails to make application to the Board for renewal of a license within a period of two years from the expiration of the license, such person must reapply as an initial applicant for licensure and pass the current licensure Examination; except that a person who has been licensed under the laws of this state and after the expiration of the license, has continually practiced social work in another state under a license issued by the authority of such state, may renew the license upon completion of the Continuing Education requirements set forth by the Board and payment of the designated fee.

Section 310. Continuing Social Work Competence.

The Board shall, by rule, establish requirements for Continuing Education in social work, including the determination of acceptable program content. The Board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this section and the continued competence of practitioners.

Section 310. Continuing Social Work Competence.

The issue of how best to ensure and assess continuing competence is daunting. Numerous options are being considered by a number of national organizations, including self-assessment tools, continuing competence examinations, Continuing Education, and others, but no single model has emerged as the single most effective way to ensure continuing competence.

The Model Law Task Force considered a number of alternatives to mandated Continuing Education, the method currently used by most jurisdictions. These alternatives ranged from simply stating that Licensees will maintain continuing competence as a standard of practice, to requiring retesting at periodic intervals. The task force recognized that while some of these alternatives might better evaluate the continuing competence of a social worker, it may be premature to recommend an alternative to mandated Continuing Education.

Continuing Education has been widely used as an acceptable method for ensuring the continued competence of licensed social workers. Many licensing Boards mandate that Licensees obtain a specified number of hours of Continuing Education within a licensure renewal period. Some licensing Boards specify that social workers must obtain Continuing Education in a certain practice area; most licensing Boards, however, require that continuing education consist of more general content areas in social work.

Some variance exists in the ways Boards currently recognize Continuing Education. Some boards recognize only those programs which have received Board approval, while other Boards approve providers of Continuing Education. Some

Boards do not approve programs or providers, but rely on the expectation that the Continuing Education programs chosen by the Licensee will meet the requirements for content.

Typically, Licensees' compliance with the Continuing Education requirements is checked either by reviewing attendance lists submitted by Continuing Education providers, by auditing a random sample of Licensees as part of the licensure renewal process, or by requiring Licensees to submit Continuing Education certificates, verification of Continuing Education units, or a list of Contact Hours obtained with their license renewal applications.

In order to create uniform standards for providers of Continuing Education for social workers, and as a way to relieve Boards of the administrative burden of assessing each provider and/or continuing education offering, ASWB has implemented an Approved Continuing Education (ACE) program. The ASWB ACE program conducts rigorous and thorough assessments of providers based on clearly defined standards for provider organization, staffing, content development, and adherence to professional ethics. ASWB recommends that boards recognize ASWB ACE approved providers as "approved" providers of continuing education in their jurisdictions.

The ASWB ACE program is intended to advance uniform standards for continuing professional social work education. This program allows for the recognition of Continuing Education Hours between jurisdictions, and relieves Boards of the burdensome task of reviewing each provider and/or offering. The ASWB ACE program is consistent with the association's mission of promoting greater uniformity of social work regulation.

To avoid improperly delegating authority, ASWB member Boards may adopt the ASWB ACE Criteria as the criteria of the Board. Thereafter, CE providers recognized by the ASWB ACE program will meet the Board criteria and thus may be recognized or approved by the Board. ASWB ACE standards limit a provider's use of this approval to only those offerings developed and presented within the context of continuing social work education. Individual offerings are not approved through the ASWB ACE program; however, individual offerings are reviewed and randomly audited as a part of regular provider evaluation procedures.

These recommendations are considered to be the most acceptable way to carry out continuing

competence mandates at present. ASWB and its member Boards must continue to be active participants in the research and consideration of various continuing competency models. The task force recommends that the Association begin by considering the development of a self-assessment tool for social workers to use in conjunction with additional assessment mechanisms. This measure, along with periodic retesting, may represent the next generation of tools to be used in assessing continuing competence. However, at some point in the future, license renewal by Examination may become a necessity in order to verify continued minimal competence.

Regulations – Continuing Social Work Competence

(a) Pursuant to Article III, Section 309, a Licensee must annually complete at least fifteen (15) hours of Approved Programs of Continuing Education.

(b) A Program of Continuing Education must contain at least one of the following content areas related to social work practice:

(1) Theories and concepts of human behavior in the social environment;

(2) Social work practice, knowledge and skills;

(3) Social work research, programs, or practice evaluations;

(4) Social work management, administration or social policy;

(5) Social work ethics;

(6) Other area approved by the Board deemed important and relevant to current social work practice.

(c) Continuing Education Hours must be earned in at least two of the following program areas:

(1) Academic course work:

(i) Courses and seminars given by an Accredited Program of Social Work;

(ii) Postgraduate courses from a university, college, or other institution of higher education, in a field other than social work, upon proof that the course is relevant to social work practice;

(iii) Undergraduate courses from a university, college or other institution of higher education, upon satisfaction of the Board that such course updates or enhances the Licensee's social work competence;

(iv) Correspondence work, courses delivered through electronic media or technology, and other forms of self-study upon approval of the Board, shown to update or enhance social work competence.

(2) Continuing Education presentations of national, international, regional, or subregional conferences or association meetings relevant to social work practice.

(3) Workshops or institutes including Approved workshops at conventions relevant to social work practice from Approved Providers.

(4) Public or private agency staff development programs from approved providers that contribute to the enhancement of social work practice or knowledge that are not primarily procedural or administrative.

(5) Individual activities conducted by the Licensee such as lectures, publication of professional articles, course or conference presentations, or research leading to publication or presentation shown to be relevant to social work practice and approved by the Board in advance. Under no circumstances shall more than ten (10) hours from this category be acceptable as Continuing Education for each renewal cycle.

(6) Continuing Education Hours completed by Licensees to meet the requirements of other jurisdictions or authorities may be approved by the Board as long as the program types and content areas are deemed by the Board to be consistent with those within this section.

(d) Final approval of the content areas for designating a program as a Program of Continuing Education lies with the Board. The Board may determine an Approved Provider of Continuing Education, or confer with and rely upon the expertise of an entity in making such determination, after receipt of an application as set forth by the Board, accompanied by an applicable fee, which demonstrates the following:

(1) Programs to be provided will meet guidelines as determined by the Board, and will be presented by competent individuals as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(2) An identified licensed social worker will be involved in program planning and review.

(3) Appropriate documents will be maintained and provided to the Board upon request, including presenter qualifications, learning objectives, content outlines, attendance records, and completed evaluation forms.

(4) Compliance with all other applicable laws, including the Americans with Disabilities Act.

(5) Attendees will be provided a certificate of completion which includes the provider number.

Provider status shall be reviewed annually. The Board may refuse to renew provider status of any provider that fails to comply with the requirements of these rules.

Section 311. Source of Data.

In making determinations under this Article III and to promote uniformity and administrative efficiencies, the Board shall be empowered to rely upon the expertise of and documentation and verified data gathered and stored by not for profit organizations which share in the public protection mission of this Board.

Section 311. Source of Data.

Understanding the movement toward outsourcing certain Board functions in an effort to satisfy fiscal responsibility of regulatory activities, ASWB promotes the use by Boards of not for profit organizations that share in the public protection mission of the regulatory community. These relationships not only preserve and ensure the promotion of public protection, but protect the integrity of the regulatory process in an era of potential elimination/sunsetting of certain Boards under scrutiny by the legislature. ASWB not only shares in the public protection mission of its membership, but also promotes active participation of its member social work Boards through the ASWB election process, resolutions, budget discussions, financial reports, education programming, Examination data and the like. Social work Board participation ensures ASWB programs and services coincide with regulatory objectives. ASWB programs such as its Examinations, ACE, PPD, the Registry, this Model Act and others are developed, administered and maintained to assist social work Boards in their public protection functions and lessen burdens on state government.

The ASWB Social Work Registry was created to provide a uniform, "one stop" mechanism for applicants and social workers to submit and ASWB to accept, verify, where necessary, and store information necessary for initial licensure and licensure transfer. Furthermore, the Registry relieves Boards of the administrative burden of organizing, compiling, and storing the information received from such applicants/social workers. The Registry acts as a repository for social workers' credential information while serving as a verification source, through primary source documentation, for social work licensing Boards. For ASWB membership, the Registry will verify the following information related to applicants and social workers: identity, education, social work Examination history and results, social work licensing history, documentation of Clinical Supervision and a record of disciplinary actions reported to the ASWB PPD. Member Boards are encouraged to take advantage of the Registry which can simply verify receipt of such documents or, when requested, provide "certified" copies of such documents.

Similar to the Registry, ASWB programs are referenced throughout this Model Act and

comments refer to the exams (comments to Article III Section 307(a)), the ASWB ACE Program (comments to Article III Section 310), and the ASWB PPD databank (comments to Article IV Section 401(c)). ASWB does not recommend that the specific programs be referenced in the statute, see comments to Article II Section 213(a) (4).

The intent of this Section 311 is to legislatively authorize social work Boards to utilize available programs offered by entities that share in the public protection mission of a regulatory agency.

Article IV. Enforcement.

Introductory Comment to Article IV

The enforcement power of the Board is at the very heart of any practice act. In order to fulfill its responsibilities, the Board must have authority to discipline individuals or social workers who violate the act or its rules, including the ability to prohibit these individuals from continuing to threaten the public. The Board must be able to stop wrongdoers, discipline them, and where appropriate, guide and assist them in rehabilitation.

This Act's disciplinary provisions were drafted with the purpose of granting the Board the widest possible scope within which to perform its disciplinary functions. The grounds for disciplinary actions were developed to ensure protection of the public while giving Boards the power to expand or adapt them to changing local conditions. The penalties outlined under the Act give the Board the flexibility to tailor disciplinary actions to individual offenses.

Section 401. Grounds, Penalties, and Reinstatement.

Section 401. Grounds, Penalties, and Reinstatement.

Under this section, Boards are granted authority over both Licensees and applicants. General powers are phrased in such a way as to allow the Board a wide range of actions, including the refusal to issue or renew a license, and the use of license restrictions or limitations. Similarly, the penalties outlined in this section give the Board wide latitude to make the disciplinary action fit the offense. Please refer to the Board powers of Section 213 for additional authority. Any "reasonable intervals," such as in subsection 213(b), would be determined by the Board.

ASWB recommends that Boards develop clear policies regarding the reporting of disciplinary actions taken against social workers, subject to confidentiality and to the applicable laws. It is strongly recommended that Boards make public as much disciplinary action information as law allows, and that all Boards participate in the ASWB Protection Database (PPD), formerly DARS, , a national databank that allows Boards to review licensure candidates for past disciplinary actions from other jurisdictions.

(a) The Board may refuse to issue or renew, or may suspend, revoke, censure, reprimand, restrict or limit the license of, or fine any person pursuant to the Administrative Procedures Act or the procedures set forth in Section 402 herein below, upon one or more of the following grounds as determined by the Board:

Section 401(a). Grounds, Penalties, and Reinstatement.

This section must be examined in light of other jurisdictional laws. Some jurisdictions, for example, restrict the circumstances under which a license may be denied to an individual who has committed a Felony. Additionally, an individual who has been convicted of a Felony or an act of gross immorality and who has paid the debt to society has restored constitutional protections.

These protections may curtail a strict application of Section 401(a)(4) to this individual.

These potential problems make it essential for Boards to issue rules that make the grounds for disciplinary action specific, understandable, and reasonable. Boards must ensure that these rules are published for the benefit of all Licensees. Taking these steps will assure the Board of the authority to make effective and meaningful disciplinary actions that will not be overturned by the courts.

(1) Unprofessional conduct as determined by the Board;

Section 401(a)(1). Grounds, Penalties, and Reinstatement.

Boards must be specific when defining the grounds for revoking or suspending a social worker's license to practice. The term "unprofessional conduct" is particularly susceptible to judicial challenge for being unconstitutionally vague. Each offense included in this term must be capable of being understood with reasonable precision by the persons regulated. If this standard is met, the individuals being regulated will be able to conform their professional conduct accordingly, and Boards will be able to readily enforce this provision, and rely upon it during disciplinary proceedings. Other terms sometimes used in statutes include unethical, immoral, improper or dishonorable conduct. Generally, courts have recognized as appropriate the use of unprofessional conduct when challenged legally. See *Chastev v. Anderson* 416 N.E.2d 247 (Il. 1981); *Stephens v. Penn. State Bd. of Nursing* 657 A.2d 71 (Pa. 1995).

(2) Practicing outside the scope of practice applicable to that individual;

(3) Conduct which violates any of the provisions of this Act or rules adopted pursuant to this Act, including the Standards of Practice;

Section 401(a)(3). Grounds, Penalties, and Reinstatement.

This subsection allows the Board to take disciplinary action against a violation of any portion of this Act. While not specifically enumerated in this subsection, many activities, such as failure to report under the mandatory reporting provisions in Article VI constitutes actionable conduct.

(4) Incapacity or impairment that prevents a Licensee from engaging in the practice of social work with reasonable skill, competence, and safety to the public;

Section 401(a)(4). Grounds, Penalties, and Reinstatement.

This section does not identify specific impairments in order to allow for broad application and the potential for expansion. It is intended to cover incapacity and impairments

due to drug and alcohol abuse, mental health conditions, and others.

It is important to note that the authority of the Board to refuse to issue or renew a Licensee, as well as its ability to discipline a Licensee for various incapacitates or impairments, should not be limited by applicable laws related to individuals with disabilities. Board action must be based on the protection of the public—the ultimate goal of the practice act. The Board must, however, protect any medical records of Licensees from public scrutiny as mandated by applicable privacy laws.

(5) Conviction of a Felony (as defined under state, provincial, or federal law);

Section 401(a)(5). Grounds, Penalties, and Reinstatement.

Boards must also be aware of how the definition of "Felony" may impact its actions. See *Rothstein v. Dept. of Professional and Occupational Regulation,* 397 So.2nd 305 (Fla.), where the Florida Felony definition differed from the Federal definition.

(6) Any act involving moral turpitude or gross immorality;

Section 401(a)(6). Grounds, Penalties, and Reinstatement.

Similar to Section 401(a)(1), Unprofessional Conduct and the comments thereto, "moral turpitude or gross immorality" are terms providing the Board with flexibility in the disciplinary process. That is, to effectively protect the public in regulating a profession, certain catch-all phrases may be needed which encompass situations not contemplated when drafting the statutes and rules. Further, as times change, the statutes should be flexible enough to address situations where disciplinary actions are justified, but not specifically articulated in the delineated grounds for discipline. While unprofessional conduct may be interpreted to refer to actions taken in the context of professional practice, moral turpitude or gross immorality likely encompasses activities outside of the context of professional practice. Of course, the grounds for discipline must comply with constitutional due process principles related to appropriate notice to individuals. Generally, courts have upheld the constitutionality of statutes which use moral turpitude or gross immorality as grounds for discipline. See: Haley v. Medical Disciplinary Board, 818 P. 2d 1062 (WA 1991); Finucan v. Maryland Board of Physician Quality Assurance, 846 A.2d 377 (App. Ct . MD 2004).

(7) Violations of the laws of this jurisdiction, or rules and regulations pertaining thereto, or of laws, rules, and regulations of any other state, or of the federal government;

(8) Misrepresentation of a material fact by an applicant or Licensee;

(i) In securing or attempting to secure the issuance or renewal of a license;

(ii) In statements regarding the social workers skills or efficiency or value of any treatment provided or to be provided or using any false, fraudulent, or deceptive statement connected with the practice of social work including, but not limited to, false or misleading advertising;

(9) Fraud by a Licensee in connection with the practice of social work including engaging in improper or fraudulent billing practices or violating related laws;

(10) Engaging or aiding and abetting an individual to engage in the practice of social work without a license, or falsely using the title of social worker;

(11) Failing to pay the costs assessed in a disciplinary matter pursuant to Section 213(b)(8) or failing to comply with any stipulation or agreement involving probation or settlement of any disciplinary matter with the Board or with any order entered by the Board;

(12) Being found by the Board to be in violation of any of the provisions of this Act or rules adopted pursuant to this Act;

(13) (i) Conduct which violates the security of any licensure Examination materials; removing from the Examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing Examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing Examination; paying or using professional or paid Examination-takers for the purpose of reconstructing any portion of the licensing Examination; obtaining Examination questions or other Examination material, except by specific authorization either before, during or after an Examination; or using or purporting to use any Examination questions or materials which were improperly removed or taken from any Examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing Examination;

Section 401(a)(11) and Section 401(a)(12). Grounds, Penalties, and Reinstatement.

Boards are encouraged to rely upon these sections to enforce Board activities, when necessary. Through this subsection, as well as subsection 401(a)(3), failure to comply with mandatory reporting requirements or other responsibilities placed on a practitioner throughout various portions of this Act constitutes grounds for discipline.

(ii) Communicating with any other examinee during the administration of a licensing Examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing Examination any books, equipment, notes, written or printed materials, or data of any kind, other than the Examination materials distributed, or otherwise authorized to be in one's possession during the Examination; or impersonating any examinee or having an impersonator take the licensing Examination on one's behalf;

(14) Being the subject of the revocation, suspension, surrender or other disciplinary sanction of a social work or related license or of other adverse action related to a social work or related license in another jurisdiction or country including the failure to report such adverse action to the Board;

(15) Being adjudicated by a court of competent jurisdiction, within or without this state, as incapacitated, mentally incompetent or mentally ill, chemically dependent, mentally ill and dangerous to the public;

Section 401(a)(15). Grounds Penalties, and Reinstatement.

As stated in comments to Section 401(a)(4), applicable laws related to individuals with disabilities are not intended to interfere with a court order, nor a Board's authority to protect the public through licensure decisions or criteria contained in the practice act.

Section 401(b). Grounds, Penalties, and Reinstatement.

This section addresses the impaired professional, and outlines the Board's flexibility when dealing with such professional through investigations and disciplinary actions. Section 401(b)(1) specifically is limited to treatment of impaired professionals only.

Section 401(b)(1). Grounds, Penalties, and Reinstatement.

ASWB encourages Boards to explore options for the effective monitoring of impaired practitioners. Once the Board has identified an impaired practitioner, there are many resources available to Boards that can assist in the monitoring and rehabilitation process.

(b) (1) The Board may defer action with regard to an impaired Licensee who voluntarily signs an agreement, in a form satisfactory to the Board, agreeing not to practice social work and to enter an approved treatment and monitoring program in accordance with this section, provided that this section should not apply to a Licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a felonious act or an offense relating to a controlled substance in a court of law of the United States or any other state, territory, or country or a Conviction related to sexual misconduct. A Licensee who is physically or mentally impaired due to mental illness or addiction to drugs or alcohol may qualify as an impaired social worker and have disciplinary action deferred and ultimately waived only if the Board is satisfied that such action will not endanger the public

and the Licensee enters into an agreement with the Board for a treatment and monitoring plan approved by the Board, progresses satisfactorily in such treatment and monitoring program, complies with all terms of the agreement and all other applicable terms of subsection (b)(2). Failure to enter such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the licensee from the provisions of this section and the Board may activate an immediate investigation and disciplinary proceeding. Upon completion of the rehabilitation program in accordance with the agreement signed by the Board, the Licensee may apply for permission to resume the practice of social work upon such conditions as the Board determines necessary.

(2) The Board may require a Licensee to enter into an agreement which includes, but is not limited to, the following provisions:

(i) Licensee agrees that the license shall be suspended or revoked indefinitely under subsection (b)(1).

(ii) Licensee will enroll in a treatment and monitoring program approved by the Board.

(iii) Licensee agrees that failure to satisfactorily progress in such treatment and monitoring program shall be reported to the Board by the treating professional who shall be immune from any liability for such reporting made in good faith.

(iv) Licensee consents to the treating physician or professional of the approved treatment and monitoring program reporting to the Board on the progress of Licensee at such intervals as the Board deems necessary and such person making such report will not be liable when such reports are made in good faith.

(3) The ability of an impaired social worker to practice shall only be restored and charges dismissed when the Board is satisfied by the reports it has received from the approved treatment program that Licensee can resume practice without danger to the public.

(4) Licensee consents, in accordance with applicable law, to the release of any treatment information to the Board from anyone within the approved treatment program.

(5) The impaired Licensee who has enrolled in an approved treatment and monitoring program and entered into an agreement with the Board in accordance with subsection (b)(1) hereof shall have the license suspended or revoked but enforcement of this suspension or revocation shall be stayed by the length of time the Licensee remains in the program

and makes satisfactory progress, and complies with the terms of the agreement and adheres to any limitations on the practice imposed by the Board to protect the public. Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the Licensee from the provisions of this section and the Board shall activate an immediate investigation and disciplinary proceedings.

(6) Any social worker who has substantial evidence that a Licensee has an active addictive disease for which the Licensee is not receiving treatment under a program approved by the Board pursuant to an agreement entered into under this section, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of the license, shall make or cause to be made a report to the Board. Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such reports. Failure to provide such a report within a reasonable time from receipt of knowledge may be considered grounds for disciplinary action against the Licensee so failing to report.

(c) Subject to an order duly entered by the Board, any person whose license to practice social work in this state has been suspended or restricted pursuant to this Act, whether voluntarily or by action of the Board, shall have the right, at reasonable intervals, to petition the Board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the Board. Upon investigation and hearing, the Board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The Board, also at its discretion, may require such person to complete other requirements including but not limited to passing an Examination(s).

Section 401(c). Grounds, Penalties, and Reinstatement.

A social worker who is under investigation, or who has been charged with a violation of the Social Work Practice Act may agree to voluntarily surrender his or her license. When this occurs, the Board should formally enter stipulated findings and an order describing the terms and conditions of the surrender, including any agreed-upon time limits. This important step establishes statutory grounds that will support any disciplinary action, and prevents a social worker who has surrendered a license from applying for (or receiving) reinstatement within a time frame unacceptable to the Board. It also triggers a report to the ASWB Public Protection Database (PPD) service to inform other jurisdictions of the sanction. ASWB encourages Boards to review local law regarding disciplinary sanctions, and distinguish between revocation, suspension, and rights and conditions of reinstatement. See *Flanzer v. Board of Dental Examiners*, 271 Cal.Rptr. 583 (1990) (Board empowered to impose conditions of reinstatement); *Jones v. Alabama State Board of Pharmacy*, 624 So.2nd 613 (Ala. App.Ct. 1993) (revoked license carries no right of reinstatement); and *Roy v. Medical Board of Ohio,*

655 N.E. 2d (Ohio App.Ct. 1995) (authority to revoke a license to practice includes the authority to revoke permanently).

(d) The Board may in its own name issue a cease and desist order to stop an individual from engaging in an unauthorized practice or violating or threatening to violate a statute, rule, or order which the Board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the individual's right to request a hearing under applicable procedures as set forth in the Administrative Procedures Act. Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.

(e) All final decisions by the Board shall be subject to judicial review pursuant to the Administrative Procedures Act.

(f) Any individual whose license to practice social work is revoked, suspended, or not renewed shall return such license to the offices of the Board within 10 days after notice of such action.

Section 402. Procedure.

Section 402. Procedure.

In many jurisdictions, the procedures that must be followed before disciplinary action can be taken are determined by an Administrative Procedures Act. The Model Act was drafted on the assumption that an Administrate Procedures Act is in effect.

Notwithstanding any provisions of the state Administrative Procedures Act, the Board may, without a hearing, temporarily suspend a license for not more than 60 days if the Board finds that a social worker has violated a law or rule that the Board is empowered to enforce, and if continued practice by the social worker would create an imminent risk of harm to the public. The suspension shall take effect upon written notice to the social worker specifying the statute or rule violated. At the time it issues the suspension notice, the Board shall schedule a disciplinary hearing to be held under the Administrative Procedures Act within 20 days thereafter. The social worker shall be provided with at least 20 days notice effective with the date of issuance of any hearing held under this subsection.

Article V. Confidentiality.

Introductory Comment to Article V

This section is intended to establish the confidentiality requirements for social workers, based on the professional relationship between practitioner and Client. Although "confidentiality" and "privileged communication" are related terms, there are important differences between the two concepts. "Confidentiality" is a broad term, and describes the intention that information exchanged between a social worker and a Client is to be maintained in secrecy, and not disclosed to outside parties. "Privileged communication" is a more narrow term that describes the legal relationship between social worker and Client when a law mandates confidentiality.

This article is titled "Confidentiality" rather than "Privileged Communication" or "Confidentiality/Privileged Communication" because confidentiality provisions include privileged communications, and is intended to give Boards the widest possible latitude.

Section 501. Privileged Communications and Exceptions.

(a) No social worker shall disclose any information acquired from or provided by a Client or from persons consulting with the social worker in a professional capacity, except that which may be voluntarily disclosed under the following circumstances:

(1) In the course of formally reporting, conferring or consulting with administrative superiors, colleagues or consultants who share professional responsibility, in which instance all recipients of such information are similarly bound to regard the communication as privileged;

(2) With the written consent of the person who provided the information;

(3) In case of death or disability, with the written consent of a personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition;

(4) When a communication reveals the intended commission of a crime or harmful act and such disclosure is judged necessary by the social worker to protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety; or

(5) When the person waives the privilege by bringing any public charges against the licensee.

(b) When the person is a minor under the laws of the _____ of _____ and the information acquired by the social worker indicates the minor was the victim of or witness to a crime, the social worker may be required to testify in any judicial proceedings in which the commission of that crime is the subject of inquiry and when the court determines that the interests of the minor in having the information held privileged are outweighed

Section 501(a). Privileged Communications and Exceptions.

See *Tarasoff v. Regents of University of California* 17 Cal. 3d.425, 131 Cal. Rptr. 14,551 P.2d 334 (1976).

by the requirements of justice, the need to protect the public safety or the need to protect the minor.

(c) Any person having access to records or anyone who participates in providing social work services or who, in providing any human services, is supervised by a social worker, is similarly bound to regard all information and communications as privileged in accord with the section.

(d) Nothing shall be construed to prohibit a social worker from voluntarily testifying in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to children, elderly, and physically and mentally impaired adults, except as prohibited under the applicable state and federal laws.

(e) The _____, as now or hereafter amended, is incorporated herein as if all of its provisions were included in this Act.

Section 501(d). Privileged Communications and Exceptions.

This section is applicable only if there are other state laws governing privilege.

Regulations — Standards of Practice/Code of Conduct.

Part 1. Standards of Practice.

Subpart 1. Scope & Applicability. *The standards of practice apply to all applicants and Licensees. The use of the term social worker within these standards of practice includes all applicants and Licensees.*

Subpart 2. Purpose. *The standards of practice constitute the standards by which the professional conduct of an applicant or Licensee is measured.*

Subpart 3. Violations. *A violation of the standards of practice constitutes unprofessional or unethical conduct and constitutes grounds for disciplinary action or denial of licensure.*

Part 2. General Practice Parameters.

Subpart 1. Client welfare. *Within the context of the specific standards of practice prescribed herein, a social worker shall make reasonable efforts to advance the welfare and best interests of a Client.*

Subpart 2. Self-determination. *Within the context of the specific standards of practice prescribed herein, a social worker shall respect a Client's right to self-determination.*

Subpart 3. Nondiscrimination. *A social worker shall not discriminate against a Client, student, or supervisee on the basis of age, gender, sexual orientation, race, color, national origin, religion, diagnosis, disability, political affiliation, or social or economic status. If the social worker is unable to offer services because of a concern about potential discrimination against a Client, student, or supervisee, the social worker shall make an appropriate and timely referral. When a referral is not possible, the social worker shall obtain Supervision or Consultation to address the concern.*

Introductory Comment to Standards of Practice

The development of effective regulations is crucial to the implementation of the Act. While the Act provides the framework that establishes the Board's authority, licensure qualifications, and general parameters of practice, the regulations define the standards of professional conduct that constitute safe and legal practice. Regulations provide a mechanism by which the law can be applied.

Subpart 4. Professional Disclosure Statement. *A social worker shall effectively communicate and make easily accessible a statement that the Client has the right to do the following:*

A. To expect that the social worker has met the minimal qualifications of education, training, and experience required by the law in that jurisdiction and in all jurisdictions where licensed;

B. To examine public records maintained by the Board which contain the social worker's qualifications and credentials;

C. To be given a copy of the standards of practice upon request;

D. To report a complaint about the social worker's practice to the Board;

E. To be informed of the cost of professional services before receiving the services;

F. To privacy as allowed by law, and to be informed of the limits of confidentiality;

Standards of Practice. Part 2. General Practice Parameters. Subpart 4. Professional Disclosure. F.

This article is intended to codify the confidentiality requirements surrounding the social worker-Client relationship, to the extent not covered elsewhere in the statutes of the particular jurisdiction. The confidential nature of communications and records between social workers and other healthcare practitioners and their Clients are subject to many different confidentiality requirements. The recent addition of privacy regulations implemented as a result of the Health Insurance Portability and Accountability Act (HIPAA) illustrates the emphasis by the federal government on issues of protecting personally identifiable health information. Because the ASWB Model Act encompasses protecting health information and to provide the Act with as much flexibility as possible, there is no need to specifically identify HIPAA or other applicable legislation within the Act. Article IV section 401(a)(7) also addresses the requirement that individuals comply with applicable federal and state laws.

G. Limited access to Client information. A social worker shall make reasonable efforts to limit access to Client information in a social worker's agency to appropriate agency staff whose duties require access.

H. Supervision or Consultation. A social worker receiving supervision related to practice shall inform the Client that the social worker may be reviewing the Client's case with the social worker's supervisor or consultant. Upon request, the social worker shall provide the name of the supervisor and the supervisor's contact information.

I. To be free from being the object of discrimination while receiving social work services; and

Part 3. Competence.

Subpart 1. Continued competence. *A social worker shall take all necessary and reasonable steps to maintain continued competence in the practice of social work.*

Subpart 2. Limits on practice. *A social worker shall limit practice only to the competency areas for which the social worker is qualified by licensure and training, experience, or supervised practice.*

Subpart 3. Referrals. *A social worker shall make a referral to other professionals when the services required are beyond the social worker's competence.*

Subpart 4. Delegation. *A social worker shall not assign, oversee or supervise the performance of a task by another individual when the social worker knows that the other individual is not licensed to perform the task or has not developed the competence to perform such task.*

Standards of Practice. Part 3. Competence. Subpart 4. Delegation.

ASWB recognizes that student field experiences are an important part of social work education. This section is not intended to prohibit students from practicing under supervision. However, ASWB does recommend that clients be informed whenever they are receiving social work services from a supervised student.

Part 4. Practice Requirements.

Subpart 1. Assessment or diagnosis. *A social worker shall base services on an assessment or diagnosis. A social worker shall evaluate on an ongoing basis whether the assessment or diagnosis needs to be reviewed or revised.*

Standards of Practice. Part 4. Practice Requirements. Subpart 1. Assessment or diagnosis.

Clinical Social Workers are qualified to use recognized diagnosis classification systems such as the *Diagnostic and Statistical Manual of Mental Disorders*, the *International Classification of Diseases,* and other diagnostic classification systems.

Subpart 2. Assessment or diagnosis instruments. *A social worker shall follow standard and accepted procedures for deciding when and how to use an assessment or diagnostic instrument. A social worker shall inform a Client of its purpose before administering the instrument and, when available, of the results derived therefrom.*

Subpart 3. Plan. *A social worker shall develop a plan for services which includes goals based on the assessment or diagnosis. A social worker shall evaluate on an ongoing basis whether the plan needs to be reviewed or revised.*

Subpart 4. Supervision or Consultation. *A social worker shall obtain Supervision or engage in Consultation when necessary to serve the best interests of a Client.*

Subpart 5. Informed consent.

A. Social workers shall provide services to Clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use clear and understandable language to inform Clients of the plan of the services, risks related to the plan, limits to services, relevant costs, reasonable alternatives, Client's right to refuse or withdraw consent, and the time frame covered by the consent. Social workers shall provide Clients with an opportunity to ask questions.

B. If the Client does not have the capacity to provide consent, the social worker shall obtain consent for the services from the Client's legal guardian or other authorized representative.

C. If the Client, the legal guardian, or other authorized representative does not consent, the social worker shall discuss with the Client that a referral to other resources may be in the Client's best interests.

Subpart 6. Records.

A. A social worker shall make and maintain records of services provided to a Client. At a minimum, the records shall contain documentation verifying the identity of the Client; documentation of the assessment or diagnosis; documentation of a plan, documentation of any revision of the assessment or diagnosis or of a plan; any fees charged and other billing information; copies of all Client authorization for release of information and any other legal forms pertaining to the Client. These records shall be maintained by the Licensee or agency employing the Licensee under secure conditions and for time periods in compliance with applicable federal or state law, but in no case for fewer than seven years after the last date of service.

B. Where a social worker or social work practice ceases operations as a result of a suspension, retirement or death of the owner, sale or other cause, including insolvency, the Licensee, or other individual responsible for supervising the disposition of the practice, shall make every effort to notify the Clients of their right to retrieve current records for a period of six (6) months using all of the following methods:

1. *Notification in writing to the Board;*
2. *Publication, at least weekly for one month, in a manner whose circulation encompasses the major area of a practitioner's former practice, advising Clients of the right to retrieve their records for a six (6) month period; and*
3. *If applicable, a sign placed at the practice location informing Clients of the right and procedures to retrieve their records.*

C. Should any Client fail to retrieve the records within the six (6) month period and unless otherwise required by law, the responsible party shall arrange the destruction of such documents in a manner to ensure confidentiality.

Subpart 7. Reports. *A social worker shall complete and submit reports as required by law in a timely manner.*

Subpart 8. Exploitation. *A social worker shall not exploit in any manner the professional relationship with a Client, student, or supervisee for the social worker's emotional, financial, sexual or personal advantage or benefit, nor shall the social worker use the professional relationship with a Client, student, or supervisee to further personal, religious, political or business interests.*

Subpart 9. Termination of services. *A social worker shall terminate a professional relationship with a Client when the Client is not likely to benefit from continued services or the services are no longer needed. The social worker who anticipates the termination of services shall give reasonable notice to the Client. The social worker shall take*

reasonable steps to inform the Client of the termination of professional relationship. The social worker shall provide referrals as needed or upon the request of the Client. A social worker shall not terminate a professional relationship for the purpose of beginning a personal or business relationship with a Client.

Part 5. Relationships with Clients and Former Clients.

Standards of Practice. Part 5. Relationships with Clients and Former Clients.

As technology has made geographic boundaries easier to cross, so has electronic practice increased the permeability of Client-social worker boundaries. Boards will need to be vigilant as they regulate social work practice to ensure that digital and electronic services are used only for professional or treatment-related purposes and only with Client consent.

Subpart 1. Personal relationships with Clients*. A social worker shall not engage in dual relationships with Clients that compromise the well-being of the Client, impair the objectivity and professional judgment of the social worker or increase the risk of Client exploitation. When a social worker may not avoid a personal relationship with a Client, the social worker shall take appropriate precautions, such as informed consent, Consultation, or Supervision to ensure that the social worker's objectivity and professional judgment are not impaired.*

Subpart 2. Personal relationships with former Clients*. A social worker may engage in a personal relationship, except as prohibited by Part 5, Subpart 4, with a former client, if the former Client was notified of the termination of the professional relationship. The social worker shall continue to consider the best interests of the former Client, and shall not engage in a personal relationship with a former Client if a reasonable social worker would conclude that the former Client continues to relate to the social worker in the social worker's professional capacity.*

Subpart 3. Sexual contact with a Client*. A social worker shall not engage in or request sexual contact as defined in Part 5, Subpart 5, with a Client under any circumstances. A social worker shall not engage in any verbal or physical behavior which a reasonable person would find to be sexually seductive or sexually demeaning. A social worker shall not sexually harass a Client.*

Subpart 4. Sexual contact with a former Client*. A social worker who has provided Clinical Social Work services to a Client shall not engage in or request sexual contact as defined in Part 5, Subpart 5, with the former Client under any circumstances. A social worker who has provided other social work services to a Client shall not engage in or request sexual contact as defined in Part 5, Subpart 5, with the former Client at any time if a reasonable social worker would determine that engaging in sexual contact with the Client would be exploitative, abusive, or detrimental to the Client's welfare. It is the responsibility of the social worker to assume the full burden of demonstrating that the former Client has not been exploited or abused either intentionally or unintentionally.*

Standards of Practice. Part 5. Relationships with Clients and Former Clients. Subpart 4. Sexual contact with a former client.

The nature of the therapeutic relationship between a Clinical Social Worker and a Client is such that it is inappropriate to ever engage in sexual contact with a current or former Client.

Subpart 5. Sexual contact defined. *Sexual contact includes but is not limited to electronic exploitation, sexual intercourse, either genital or anal, cunnilingus, fellatio, or the handling of the breasts, genital areas, buttocks, or thighs, whether clothed or unclothed, by either the social worker or the Client.*

Standards of Practice. Part 5. Relationships with Clients and Former Clients. Subpart 5. Sexual contact defined.

Kissing and hugging have not been included in the definitions of sexual contact due to wide variation in context and acceptability. It would be extremely difficult to establish a definitive set of circumstances under which a hug becomes an element of sexual contact. For example, school social workers, hospital social workers, and social workers who work with children often employ supportive hugs in their relationships with Clients. It would be counterproductive to effective practice to place a blanket ban on this kind of benign physical contact.

Subpart 6. Business relationship with a Client. *A social worker shall not engage in any type of a business relationship with a Client. Business relationships do not include purchases made by the social worker from the Client when the Client is providing necessary goods or services to the general public, and the social worker determines that it is not possible or reasonable to obtain the necessary goods or services from another provider.*

Subpart 7. Business relationship with a former Client. *A social worker may engage in a business relationship with a former Client, if the former Client was notified of the termination of the professional relationship. The social worker shall continue to consider the best interests of the former Client, and shall not engage in a business relationship with a former Client if a reasonable social worker would conclude that the former Client continues to relate to the social worker in the social worker's professional capacity.*

Subpart 8. Prior Personal or Business Relationships. *A social worker may engage in a professional relationship with an individual with whom the social worker had a previous personal or business relationship only if a reasonable social worker would conclude that the social worker's objectivity and professional judgment will not be impaired by reason of the previous personal or business relationship.*

Subpart 9. Social worker responsibility. *A social worker shall be solely responsible for acting appropriately in regard to relationships with Clients or former Clients. A Client or a former Client's initiation of a personal, sexual, or business relationship shall not be a defense by the social worker for a violation of Part 5, Subparts 1 through 8.*

Subpart 10. Others. *Part 5, Subparts 1 through 9 also apply to a social worker's relationship with students, supervisees, employees of the social worker, family members or significant others of a client.*

Part 6. Client Confidentiality.

Subpart 1. General. *A social worker shall protect all information provided by or obtained about a Client. "Client information" includes the social worker's personal knowledge of the Client and Client records. Except as provided herein, Client information may be disclosed or released only with the Client's written informed consent. The written informed*

Standards of Practice. Part 6. Client Confidentiality. Subpart 1. General.

Part 6 of the Standards of Practice is intended to work in conjunction with Article V, Confidentiality in the Model Act. Please refer to

consent shall explain to whom the Client information will be disclosed or released and the purpose and time frame for the release of information.

the introductory comments for Article V of the Model Act for a discussion of the relationship between "confidentiality" and "privileged communication."

This section does not prohibit a Client from accessing his or her own records. Statutes regarding access to medical records generally addresses this area.

Subpart 2. Release of Client information without written consent. *A social worker shall disclose Client information without the Client's written consent only under the following circumstances:*

A. Where mandated by federal or state law, including mandatory reporting laws, requiring release of Client information;

B. The social worker determines that there is a clear and imminent risk that the Client will inflict serious harm on either the Client or another identified individual(s), or that there is a serious threat to public harm. The social worker shall release only the information that is necessary to avoid the infliction of serious harm. The social worker may release this information to the appropriate authorities and the potential victim;

C. The Board duly issues a valid subpoena to the social worker, as permitted by law.

Subpart 3. Release of Client records without written consent*. A social worker shall release Client records without the Client's written consent under the following circumstances:*

A. A Client's authorized representative consents in writing to the release;

B. As mandated by federal or jurisdiction law requiring release of the records;

C. The Board duly issues a valid subpoena for the records, as permitted by law.

Standards of Practice. Part 6. Client Confidentiality. Subpart 3. Release of Client records without written consent.

ASWB recognizes that requirements for the release of records without Client consent may represent a tension between the legal regulation of social work and the ethical code developed by NASW. However, the association recommends that Boards consider the potential necessity for such access in relation to public protection. Boards must have the power to subpoena records if those records may have a bearing on whether the public is at risk of receiving unethical, incompetent, illegal or unregulated social work services.

Subpart 4. Limits of confidentiality*. The social worker shall inform the Client of the limits of confidentiality as provided under applicable law.*

Subpart 5. Minor Clients*. In addition to the general directive in Part 6, Subpart 4, a social worker must inform a minor Client, at the beginning of a professional relationship, of any laws which impose a limit on the right of privacy of a minor.*

Subpart 6. Third party billing*. A social worker shall provide Client information to a third party for the purpose of payment for services rendered only with the Client's written informed consent. The social worker shall inform the Client of the nature of the Client information to be disclosed or released to the third party payor.*

Subpart 7. Client information to remain private. *A social worker shall continue to maintain confidentiality of Client information upon termination of the professional relationship including upon the death of the Client, except as provided under applicable law.*

Subpart 8. Recording / Observation. *A social worker shall obtain the Client's written informed consent before the taping or recording of a session or a meeting with the Client, or before a third party is allowed to observe the session or meeting. The written informed consent shall explain to the Client the purpose of the taping or recording and how the taping or recording will be used, how it will be stored and when it will be destroyed.*

Part 7. Conduct.

Subpart 1. Impairment. *A social worker shall not practice while impaired by medication, alcohol, drugs, or other chemicals. A social worker shall not practice under a mental or physical condition that impairs the ability to safely practice.*

Subpart 2. Giving drugs to a Client. *Unless permissible by state law, a social worker shall not offer medication or controlled substances to a Client. The social worker may accept medication or controlled substances from a Client for purposes of disposal or to monitor use. Under no circumstances shall a social worker offer alcoholic beverages to a Client or accept such from a Client.*

Subpart 3. Investigation. *A social worker shall comply with and not interfere with Board investigations.*

Part 8. Representation to the Public. Advertising.

Subpart 1. Required use of license designation. *A social worker shall use the license designation of LBSW, LMSW, LCSW, which corresponds to the social worker's license, after the social worker's name in all written communications related to social work practice, including any advertising, correspondence, and entries to Client records.*

Subpart 2. Information to Clients or potential Clients. *A social worker shall provide accurate and factual information concerning the social worker's credentials, education, training, and experience upon request from a Client or potential Client. A social worker shall not misrepresent directly or by implication the social worker's license level, degree, professional certifications, affiliations, or other professional qualifications in any oral or written communication or permit or continue to permit any misrepresentations by others. A social worker shall not misrepresent, directly or by implication, affiliations, purposes, and characteristics of institutions and organizations with which the social worker is associated.*

Subpart 3. Licensure status. *Licensure status shall not be used as a claim, promise, or guarantee of successful service, nor shall the license be used to imply that the Licensee has competence in another service. Public statements or advertisements may describe fees, professional qualifications, and services provided, but they may not advertise services as to their quality or uniqueness and may not contain testimonials by quotation or implication.*

***Subpart 4. Display of license**. A social worker shall conspicuously display a current license issued by the Board at the social worker's primary place of practice.*

Standards of Practice. Part 8. Representation to the Public. Advertising. Subpart 4. Display of license.

The social worker shall conspicuously display all professional licenses or registrations in all practice settings, including physical and virtual office settings.

Subpart 5. Client bill of rights including:

- *Professional profile and contact information*
- *Terms of use, privacy policy, and informed consent*
- *Guidelines to assist Clients who require crisis services*
- *Risks of interruption in services*
- *Consumer information: license/registration number; governmental regulatory body's name and contact information*
- *Right and contact information to report alleged violations to governmental body*

Part 9. Fees and Billing Practices.

***Subpart 1. Fees and payments**. A social worker who provides a service for a fee shall inform a Client of the fee at the initial session or meeting with the Client. Payment must be arranged at the beginning of the professional relationship, and the payment arrangement must be provided to a Client in writing. A social worker shall provide, upon request from a Client, a Client's legal guardian, or other authorized representative, a written explanation of the charges for any services rendered.*

***Subpart 2. Necessary services**. A social worker shall bill only for services which have been provided. A social worker shall provide only services which are necessary.*

***Subpart 3. Bartering**. A social worker may not accept goods or services from the Client or a third party in exchange for the social worker's services, except when such arrangement is initiated by the Client and is an accepted practice in the social worker's community or within the Client's culture. It is the responsibility of the social worker to assume the full burden of demonstrating that this arrangement will not be detrimental or exploitative to the Client or the professional relationship.*

***Subpart 4. No payment for referrals**. A social worker shall neither accept nor give a commission, rebate, fee split, or other form of remuneration for the referral of a Client.*

Part 10. Research.

***Subpart 1. Informed consent**. When undertaking research activities, the social worker shall abide by accepted protocols for protection of human subjects. A social worker must obtain a Client's or a Client's legal guardian's written informed consent for the Client to participate in a study or research project and explain in writing the purpose of the study or research as well as the activities to be undertaken by the Client should the Client agree to participate in the study or research project. The social worker must inform the Client of the Client's right to withdraw from the project at any time without impact on receipt of social work services.*

Standards of Practice. Part 10. Research. Subpart 1. Informed consent.

The use of information that cannot be identified with a specific Client does not require informed consent.

Article VI. Mandatory Reporting.

Introductory Comment to Article VI

Social workers are in a unique position to know of and evaluate the conduct of other social workers. This section establishes a social worker's legal responsibility to report activities that may be harmful to Clients, including incompetence, malfeasance, and unethical practice.

Recently, consumer groups and others have voiced concerns that health care professionals often protect each other—either through remaining silent when made aware of substandard practice, or through outright denial of this substandard practice—to the detriment of the public. This perception, no matter how inaccurate, undermines the public's confidence in professional regulation. The inclusion of mandatory reporting provisions provides assurance that professional "protection" that puts the public at risk is itself a violation of the practice act.

Section 601. Permission to Report.

A person who has knowledge of any conduct by an applicant or a Licensee which may constitute grounds for disciplinary action under this chapter or the rules of the Board or of any unlicensed practice under this chapter may report the violation to the Board.

Section 602. Professional Societies or Associations.

A national, state or local professional society or association for Licensees shall forward to the Board any complaint received concerning the ethics or conduct of the practice which the Board regulates. The society or association shall forward a complaint to the Board upon receipt of the complaint. The society or association shall also report to the Board any disciplinary action taken against a member.

Section 602. Professional Societies or Associations.

The intent of this section is to address conduct that is grounds for discipline under the Act. This section is not intended to cover other conduct issues that may be addressed in the NASW or CASW Codes of Ethics.

Section 603. Social Workers.

(a) Social workers shall report to the Board information on the following conduct by an applicant or a Licensee:

(1) sexual contact or sexual conduct with a Client or a former Client; the Client shall only be named with the Client's consent;

(2) failure to report as required by law;

(3) impairment in the ability to practice by reason of illness, use of alcohol, drugs, or other chemicals, or as a result of any mental or physical condition;

(4) improper or fraudulent billing practices,

Section 603(a)(4). Social Workers.

References to improper or fraudulent billing practice includes governmental, managed care, and private insurance, as well as all issues relating to billing practice involving the Client.

(5) fraud in the licensure application process or any other false statements made to the Board;

(6) conviction of any Felony or any crime reasonably related to the practice of social work;

(7) a violation of Board order.

(b) Social workers shall also report to the Board information on any other conduct by any individual Licensee that constitutes grounds for disciplinary action under this chapter or the rules of the Board.

Section 604. Reporting Other Licensed Professionals.

An applicant or Licensee shall report to the applicable Board conduct by a licensed health professional which would constitute grounds for disciplinary action under the chapter governing the practice of the other licensed health professional and which is required by law to be reported to the Board.

Section 605. Courts.

The court administrator of district court or any other court of competent jurisdiction shall report to the Board any judgment or other determination of the court that adjudges or includes a finding that an applicant or a Licensee is mentally ill, mentally incompetent, guilty of a Felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of an abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the applicant or Licensee or commits an applicant or Licensee pursuant to applicable law.

Section 606. Self-Reporting.

An applicant or Licensee shall report to the Board any personal action that would require that a report be filed pursuant to this Act.

Section 607. Deadlines, Forms.

Reports required by this Act must be submitted not later than 30 days after learning of the reportable event or transaction. The Board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Section 608. Immunity.

Any person, social worker, business, or organization is immune from civil liability or criminal prosecution for submitting in good faith a report under this Act or for otherwise reporting, providing information, or testifying about violations or alleged violations of this chapter.

Article VII. Other.

Section _____ Severability.

If any provision of this Act is declared unconstitutional or illegal, or the applicability of this Act to any person or circumstance is held invalid by a court of competent jurisdiction, the constitutionality or legality of the remaining provisions of this Act and the application of this Act to other persons and circumstances shall not be affected and shall remain in full force and effect without the invalid provision or application.

Section _____ Effective Date.

This Act shall be in full force and effect on (date).

Appendixes A-D reflect contributions made during the development of the original Model Social Work Practice Act in 1996-1997. Subsequent revisions are the result of contributions from all ASWB members.

Appendix A: Resources

The Model Law Task Force reviewed a great deal of material taken from current laws and regulations. Citations for each of these laws and regulations are not included in this appendix.

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Appendix B: Organizations Submitting Input to the 1996-1997 Model Law Task Force

The following is a list of all social work boards, social work professional organizations, and individuals who submitted comments to the Model Law Task Force, based on their review of the draft of the Social Work Practice Act.

Social Work Organizations
American Board of Examiners in Clinical Social Work
Council on Social Work Education
Clinical Social Work Federation
Florida Society for Clinical Social Work
Idaho Society for Clinical Social Work
National Association of Social Workers
Society for Social Work Administrators in Health Care

State Social Work Boards
Arizona Board of Behavioral Health Examiners
California Board of Behavioral Science Examiners
Delaware Board of Clinical Social Work Examiners
Florida Agency for Health Care Administration
Georgia Composite Board of Professional Counselors, Social Workers, and Marriage & Family Therapists
Idaho Board of Social Work Examiners
Louisiana Board of Board Certified Social Work Examiners
Maine Board of Social Work Examiners
Minnesota Board of Social Work
New Jersey Board of Social Work Examiners
New Mexico Board of Social Work Examiners
New York Board for Social Work
North Carolina Social Work Board
Oklahoma Board of Licensed Social Workers
South Carolina Board of Social Work Examiners
Virgin Islands Board of Social Work Licensure

Individuals
Ann Aukamp
Arthur Flax
Elizabeth Horton
Shelomo Oslman
Jacqueline Urow

Appendix C: Organizations Solicited for Input in 1996-1997

American Board of Examiners in Clinical Social Work

Association of Baccalaureate Program Directors

Council on Social Work Education

National Association of Black Social Workers

National Association of Deans and Directors

National Association of Social Workers

National Federation of Societies for Clinical Social Work

School Social Work Associations of America

Society for Social Work Administrators in Health Care

AASSWB Delegates

AASSWB Alternates

AASSWB Social Work Board Administrators

Appendix D: Acknowledgments

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