So if you had a choice, would you rather be on an independent regulatory board, or one that is departmentalized and probably consists of a group of professions?

Most board members don’t have a choice, but occasionally, very occasionally, the status of a board faces a change one way or the other. For anyone who attended the Federation of Associations of Regulatory Boards (FARB) Forum in Las Vegas, the pros and cons were summed up pretty clearly.

Mary Macomber, the public member on ASWB’s Board of Directors, and vice chair of the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, described the departmental board. In the other corner, so to speak, was Susan Beam, treasurer of the Federation of State Massage Therapy Boards and a member of the Massage Therapy Board in North Carolina, an independent board.

Macomber described her board as very collegial, working together well, and extremely well supported by staff. The down side? “We get swept,” she said; more than $1 million in licensing and other fees was taken from the board this year and put into the state’s general fund. Board members can’t travel, by state edict, and they have no control over that extra money.

FARB Forum 2010

The board in Florida is composed of two clinical social workers, two marriage and family therapists, two mental health counselors and three public members, Macomber said. “There is a lot of disagreement,” but there is also the value of divergent points of view, and members tend to be pretty accepting of differences. For example, criminal background checks and finger-printing for licensees recently stirred up quite a discussion.

And even though the board is part of a department, “Our decisions are made by us and are final.” But the big advantage, according to the speaker, is that “We don’t have to put in as many hours.” While the board shares an executive director with other boards, she is very supportive, and “our staff is dedicated to us.” The full support of the department is behind them, and they have no difficulties in getting close attention by the attorneys who advise them.

There are so many different categories of licensure, and so many continuing education providers, that groundwork by staff is essential, but it’s always provided, Macomber said.
Beam said the North Carolina board is only 10 years old, and is made up of seven professional members, one physician, and one public member. The budget is $500,000 a year, but it is under their direct control. “Our fees are our own, they don’t get swept.” Board members can travel, join organizations, and provide public education if there is money available.

But mostly, Beam said, “Fewer layers of government increases trust, and makes us more responsive.” They have the authority to make decisions, and staff that is directly accountable to the board.

The biggest disadvantage, she said, is that funding start-ups is difficult for an autonomous board. The North Carolina massage therapists asked for bids to handle the start-up, and contracted with a law firm that provides all management services for a percentage of the fees. Legal counsel is of course very available to them. Now, there is the slightly nagging worry that if there should be a management snafu, with a staff hired by the law firm, conflicts of interest are a possibility.

It did take six or seven years to get into the black, Beam said, but their funding base is now secure.

Both types of board have the usual fears of opening up their laws for change, both speakers said. Even if a change is needed somewhere, the excursion into legal waters has risks whether the control is departmental or independent. One thing the Florida board managed to do this year is to reduce fees—there was a huge surplus waiting to be claimed by the state, and the board decided the professionals could keep some of it next time around.
The well-appointed board

Getting tapped for a regulatory board – even one that doesn’t pay its members $90 grand a year – takes some planning and effort.

In Arkansas, the most popular board among potential gubernatorial appointees is the Parole Board. That’s because there is not only a salary for members, but a $90,000 salary, according to Mica Strother, Director of Appointments for Boards and Commissions in the Arkansas Governor’s Office.

Strother unraveled the mysteries of appointments for an audience that was well aware of some of the vagaries of the process, at the Annual Forum of the Federation of Associations of Regulatory Boards (FARB) at the end of January. It’s not that the Parole Board is an easy job or anything—it’s pretty much full time, with stressful decisions to be made—but the compensation may make up for the service burden just a bit. While that is the most popular board job, it is followed by the board of the Game and Fish Commission, and then the Arkansas Highway Commission, neither of which is paid. There are, in fact, only five boards that are paid.

Strother said that on average there are two applicants for every appointed position, and that the governor has to juggle demographics, competing organizations that put forward different candidates, and even some laws that may set or at least encourage parameters. And again, that’s an average—there are 100 applicants for every available appointment to that Parole Board.

But there are ways for someone seeking an appointment, or trying to influence one, to stand out from the crowd, according to the speaker. First is to “establish a relationship with the governor,” or failing that, with the governor’s staff. Obviously, it’s helpful to have assisted in the successful candidate’s campaign, and it’s good for an organization to have issued speaking invitations to an office-holder in his or her perhaps less influential past. Not only is this “establishing a relationship,” but the person making appointments will then know something about a person or organization that would like to have an impact.

Those who would like to catch the eye of a governor in the appointment process will also benefit by being active in the community, or with a professional association. Lobbyists can help.

Applicants are usually asked to do an online application, Strother said. In filling that out, they should include as much information as possible, and frame information in ways that are recognizable to those outside the profession or the organization. References can be extremely helpful, as can recommendations by professional groups in a position...
to know what makes an effective board member. She listed as “optional but not necessarily helpful” recommendations from people unknown to the governor’s office; friends, coworkers or out-of-state supporters.

When is the best time to apply? “Now!” according to Strother. Vacancies occur frequently, and often unexpectedly, and sometimes appointments are made hurriedly from the existing pool of applicants. It is a good thing to ask for a personal visit, even if only for a few minutes, with the person who will make the appointment, or his or her staff. A name that has a face to go with it will indeed stand out from the crowd.

There is a wealth of routine background examination that a staff will do, looking for a known person in a community to vouch for someone, doing voter registration checks, and even getting criminal background checks. Early on in the administration of the current Arkansas governor, Mike Beebe, the appointments director said, unfortunate haste resulted in the appointment of a professional who was “the single most reprimanded person” in the field. That isn’t likely to happen again on her watch.

It is routine to put a question about party affiliation on applications, Strother said, but she credited Beebe with removing that from his own forms at the beginning, as inappropriate. Not that it’s apt to be an unknown, but as a factor it should be far down the line.
Making the connection between a licensee’s criminal convictions and the ability to obtain, keep, or renew a professional license is not always the slamdunk boards may think. According to Kentucky Assistant Attorney General Cheryl Lalonde, tying criminal behavior to licensing decisions demands that regulatory boards have a thorough understanding of their practice acts, a clear idea of what kind of information they are asking for from applicants and licensees, and a solid foundation of evidence to support their decisions.

Lalonde, whose presentation was part of the program at the most recent Federation of Associations of Regulatory Boards (FARB) Forum held in Las Vegas, NV January 29-31, told attendees that boards need to begin their efforts by gathering sufficient information on exactly what happened to an individual who experienced a criminal conviction. From the very beginning, she said, “Know what you’re talking about. Knowledge is power.”

Part of this knowledge turns on sufficient information-gathering, according to Lalonde—things like substantiating the conviction through reliable documentation—but another part of this knowledge turns on the board’s ability to make the case that the individual’s conviction relates in some way to the profession being regulated. She explained that some laws require boards to tie the conviction to elements associated with the profession, but that even if such a link is not required, boards need to make a case for exactly how criminal conduct affects the activities of the profession.

Connecting the crime to practice; however, is only one part of a board’s task, Lalonde said. Boards also need to consider elements such as the length of time since the conviction, the severity of the crime, and indicators that the behavior was repeated—factors that could affect the ways in which the board would respond. These responses, she explained, are in turn tempered by rules about how a board goes about pursuing its case, including how due process may be different for an applicant than a licensee, whether the board must “balance mitigating and aggravating factors,” who has the burden of proof, and what legal standard is to be applied (“preponderance” of evidence, “clear and convincing” evidence, “substantial” evidence, etc.).

Not surprisingly, there are a host of court decisions that shed light on some of these issues, and Lalonde highlighted a few during her presentation. Among the cases shared with attendees was a situation in
which an applicant to be a loan officer failed to disclose misdemeanor convictions for bad checks. The Division of Financial Institutions denied the application for a license when it was uncovered that he had lied about the bad checks; however, an appeals court overturned the denial, and noted several mitigating factors, including the age at which the offenses took place (he was 19), and the degree to which the applicant had rehabilitated himself (he was homeless at the time the offenses took place; the appellate court noted a “remarkable redirection” in his life since then).

Lalonde said that in addition to the issues around the time that had elapsed since the offense and the ways in which the applicant appeared to have rehabilitated himself, the board also came face-to-face with a more pedestrian problem: maybe its licensure application form didn’t ask the right question in the right way in the first place. The convoluted, 59-word question about prior convictions was so full of semantic twists and turns that one judge questioned the question. If the board wanted to know whether an applicant had been convicted of a crime, he wrote, “why didn’t it just say so? If the government asks a question, it should be in plain English.”

Things can get even more complicated when the board uses a conviction to establish “moral turpitude.” Here, Lalonde said, boards need to be mindful of the burden of proving turpitude, and must be clear on how it is defined. She cited one case in which a licensed teacher was dismissed because of an auto accident that resulted in a citation for vehicular homicide—a conviction that the board linked to “moral turpitude.” The teacher appealed the decision, and the appeals court reversed the board’s action, stating that moral turpitude would be evidenced in a crime that reflected “an act of baseness, vileness, or depravity,” none of which the court saw in this case. According to Lalonde, the board’s case against the teacher was further weakened by the fact that he already held a license, which can sometimes raise the bar when courts consider the “liberty interest” at stake. Applicants for licensure, she explained, can often be more easily prevented from being granted a license than licensure holders can be deprived of a license.

While Lalonde readily admitted that there are many pitfalls to pursuing a connection between a criminal conviction and licensure, she emphasized that the process is not an impossible one, and that with care and attention to things like where burden-of-proof rests, what the evidence standards are, and how application and renewal questions are phrased, boards can uphold their public protection responsibilities whenever appropriate. Lalonde recommended that boards act carefully, but not timidly, saying, “if you’re right, pursue it.”
As far as regulatory boards are concerned, practice acts can be like those folded up self-inflating life rafts on airplanes—you don’t want to open them up unless you’re pretty sure you need to. But that doesn’t mean boards should pass up opportunities to fix leaks.

According to Alabama attorney Matthew Beam, who presented an outline for the analysis of practice acts during the Federation of Associations of Regulatory Boards (FARB) Forum held in January, boards should keep a running list of possible areas of improvement to their laws, so that when a law is opened up, needed changes can be made. The key, Beam said, is to be able have this list well-organized in advance because “that window in the legislature can open and close very quickly.”

One of the best ways to keep a running inventory of possible improvements that might be made is to use a widely-accepted model act for comparison purposes, Beam said. He suggested the FARB model practice act (social work boards are encouraged to use the ASWB Model Social Work Practice Act, found at www.aswb.org) as a good template for improvements and way to identify weaknesses.

Among the key elements that should be defined, according to Beam, are such issues as board powers and duties, grounds for discipline, jurisdiction over unlicensed practice, the distinction between unprofessional conduct and immoral/criminal conduct, standard of proof, rules of discovery, and the relationship between the practice act and the administrative procedures act. In almost every case, he explained, a good model law will be able to provide a yardstick against which to measure the language of an individual jurisdiction’s practice act.

Sometimes, Beam explained, the devil truly is in the details, particularly when boards attempt to dump too much defining language into their laws. As an example, he cited one regulatory board’s grounds for disciplinary action that features a list of circumstances under which the board may move against a licensee, with one of the subsections containing a 46-word sentence attempting to describe the notion of “unprofessional conduct.” In contrast, Beam pointed to the FARB model law’s language on unprofessional conduct, which leaves the issue to be “determined by the Board.”

Beam supplied several unsettling stories of what happens when a practice act contains too much or too little specificity, including a case in which a board was unable to discipline a licensee for not cooperating with a board investigation (wasn’t listed in the grounds), and another
in which the practice act did not allow the board to address unlicensed practice or issue fines. For yet another board, thanks to a “poorly worded” practice act, the state Supreme Court declared the entire law unconstitutional.

Boards also need to remain attentive to court decisions that may impact longstanding ways of handling cases. One such decision, which Beam described as a “sea change in administrative law,” centered on a Kentucky licensee’s allegations of fraud by the regulatory board. The practitioner, after having his license suspended by the board, alleged fraud, but with no accompanying particulars. Although the practitioner’s case was turned down by both a circuit and appeals court, the Kentucky Supreme Court ruled in his favor, stating that in a judicial review of an administrative action “the requirement of pleading fraud with particularity does not apply.” The case was remanded to the circuit court, and the practitioner was granted another opportunity to conduct discovery. According to Beam, the Kentucky ruling carves out a significant exemption that could encourage sanctioned licensees to make claims of fraud with no real evidence to back them up—hoping, apparently, to uncover something that would help their case, with no particulars on what that “something” might be (more details about this case can be found in the Counsel’s Column of this issue of association news).

Beam acknowledged that a board’s desire to tweak portions of the practice act is almost never worth the risks involved in opening up the act to the legislative process, but if boards find a growing list of “significant and glaring problems,” they should “feel pressure” to possibly open them up. Usually, he said, “it’s not worth it to open up your practice act” solely for housecleaning reasons—better, Beam advised, to conduct regular thorough reviews of the act, keep a running list of potential improvements, and seize the opportunity that presents itself when the act is opened up for other reasons.
Being a regulator has always been a tough job that requires balancing the interests of legislatures, licensees, department chiefs, professional associations and others against the need for consistent and effective public protection. Being a regulator in the midst of a global recession can make regulators feel like they’re performing this balancing act on a tightwire, 50 stories off the ground. Blindfolded. Without a net. While wearing ice skates.

There are likely no easy answers to the dilemmas faced by boards, but potential ideas will be explored during the 2010 ASWB Spring Education Conference, set for May 13-16 in Charleston, South Carolina at the Francis Marion hotel. Reassuringly titled “Regulating Competent Practice in an Age of Shifting Resources” (as opposed to, say, “Regulating Competent Practice in an Age of Penniless Governments and Unending Departmental Anguish”), the upcoming conference will seek to provide attendees with new ways of looking at how they can get the regulatory job done when life is something other than lush.

The focus of the meeting will be to help attendees see how boards can better use what’s already available to them, either through their own jurisdictions or by way of ASWB. Speakers will address topics that include social work supervision, the role of the board’s public member, continuing education, and the ways in which new technologies can help boards manage shifting resources. The meeting will also include a session on legal issues presented by ASWB legal counsel Dale Atkinson and Tina Hobday, an attorney with Langlois Kronstrom Desjardins in Quebec.

The meeting begins at 5 p.m. Thursday, May 13, with an opening session and welcome dinner. Friday’s sessions run from 8:30 a.m. until 5 p.m., with a half day session on Saturday, and a morning session on Sunday, May 16. Saturday afternoon has been set aside for an optional tour of Middleton Place, an 18th century plantation that has been fully restored.

Registrations, a tentative meeting agenda, and other information are available online at www.aswb.org.
Volunteers serving on Association of Social Work Boards (ASWB) committees for 2010 may not be spending as much time focused on the examination and finances as in previous years, but that doesn’t mean agendas will be thin. According to committee charges recently approved by the board of directors, volunteers this year will be addressing issues that include possible additions to the ASWB Model Social Work Practice Act around clinical supervision, and research on the possibility that ASWB would one day offer an international affiliate membership option for regulatory entities outside the U.S. and Canada.

These special charges are in addition to the regular work of such groups as the ASWB Approved Continuing Education (ACE) Committee and the ASWB Examination Committee, both of which have ongoing responsibilities for the maintenance of the association’s CE provider program and the licensing exams, respectively. All together, this year’s association volunteers will participate in a total of seven committees (not including the ASWB Board of Directors) that will support both the external and internal workings of ASWB. These groups will operate in addition to specially-called meetings to finalize the passing standards for new ASWB examinations and to discuss strategic planning for the association (see related stories in this issue of association news).

Committees for 2010 are listed below. Committee rosters can also be found at www.aswb.org.

**APPROVED CONTINUING EDUCATION**
Elaine Halsall (BC), Chair
Eric Alvin (WI)
Nadine Bean (PA)
Mel Harrington (SD)
Michael Hickerson (LA)
Micki Lilly (NC)
Laura Neal (MO)
Teresa Young (AL)
Donald Gloade (NS), board liaison

**RAS COMMITTEE**
Richard Hazel (SK), Chair
Hal Agler (MO)
Jane Anker (SC)
Lynn Davies (AB)
Melinda Pilkinton (MS)
Arlene Robinson (DC)
Valerie Jones (IN), board liaison

**FINANCE COMMITTEE**
Patricia Heard (NC), Treasurer and Chair
Darrell Allman (AK)
Brenda Holden (AL)
Charlotte McConnell (DC), Past President
Jim Merrow (MD)
Ralph Westwood (AB)

**BYLAWS AND RESOLUTIONS**
Laura Schmid-Pizzato (WY), Chair
Shanna Burke (MA)
Doc Davis (AZ)
Maureen Egan (RI)
Claude Leblond (QC)
Emma Lucas-Darby (PA)
Glenda McDonald (ON)
Amanda Randall (NE)
Mary Macomber (FL), board liaison
PROGRAM AND EDUCATION (BEGIN MAY 2010)
Dorinda Noble (TX), Chair
Jamie Buller (FL)
Susan Irwin (BC)
Lynn Melton (SC)
Joyce Westphal (IA)
Wade Tyler (LA)
Donald Montoya (NM), board liaison

EXAMINATION COMMITTEE
Shannon Bender Bell (BC), Co-chair
Carol Boyd (MS) Co-chair
Janice James (KY) Co-chair
Bynia Reed (MD) Co-chair
Pamela Abrams (AR)
Leslie Bonney (ME)
Matilda Casler (NY)
Trevor Gates (IL)
Keeva Hartley (MN)
Carl Hokanson (MN)
Nora Jessome (NS)
Debby Jones (BC)
Barbara Kaufman (MN)
Jane Matheson (AB)
Leslie McCarl (PA)
Melanie McCoy (MD)
Jay Memmott (KS)
Julie Niven (TX)
Kristi O’Dell (MS)
Linda Openshaw (TX)
Monica Roth Day (MN)
Virginia Spielman (NY)
Leana Torres (NC)
Saundra Starks (KY), board liaison

NOMINATING COMMITTEE
Jann Fitts (NE)
Michael Hickerson (LA)
Richard Silver (QC)
Charlotte McConnell (DC), Past President

NEW BOARD MEMBER TRAINING
Robin Jenkins (DC)
Amanda Randall (NE)
Social work boards have plenty of challenges when it comes to making decisions about who should and should not be granted a license, but the educational background of an applicant seems like it should be pretty straightforward. After all, providing it’s appropriately accredited, a social work degree is a social work degree is a social work degree, right?

Well, yes and no. Increasingly, boards are receiving applications from social workers who may have spent only a fraction of their educational time actually on campus in a classroom. The bulk of their education took place via a computer screen, possibly hundreds of miles from the program that issued their degree.

According to a January 26 article in U.S. News & World Report, 25 percent of college students took classes online toward their degrees in the 2008-2009 academic year. That’s a 17 percent increase from 2007, and most of the growth in online education is being driven by traditional institutions. The article reported findings from a recent study (http://www.sloanconsortium.org/publications/survey/pdf/learningondemand.pdf).

Social work education is not immune to this trend, according to Judith Bremner, Director of the Office of Social Work Accreditation and Educational Excellence (OSWAEE) at the Council on Social Work Education (CSWE). Currently, there are 10 MSW degree programs that are available online (either predominantly or completely) and one online BSW program. All of the accredited programs are offshoots of traditional social work education programs—none are online exclusively. “If a traditional program opts to offer a year or more of its coursework using distance education,” Bremner says, “it must submit a formal proposal to the Commission on Accreditation for approval. The proposal is reviewed to ensure that the program has created and plans to implement distance education components comparable in quality to their main campus offerings.”

Online social work education, like the social work profession, has its roots in reaching underserved populations. Most of the online degree programs specifically cite serving rural or remote populations as part of their mission. In fact, programs at the University of Denver, Michigan State University and the University of Tennessee at Knoxville have residency requirements that prohibit students from joining the online degree program if they live within a certain distance of a campus. A generation ago, such students might enroll in classes on satellite
campuses taught by adjunct faculty; now, they can study with the same faculty as their on-campus counterparts.

At Texas State University-San Marcos, the online MSW program was developed initially to serve rural child welfare workers. Their first online cohort consisted of 20 child welfare workers in remote areas of Texas, along with two students serving overseas with the U.S. military. “All these students were thrilled with the opportunity to pursue the MSW from their home communities” says Dorinda Noble, who directs the School of Social Work at San Marcos. “Often, at least in rural Texas, the professionals working for the state and for nonprofits are tied to the community, to their families, to their jobs,” Noble says. “They can’t leave for two years of education at a campus 300 miles away. This program gives us a way to extend opportunity to them, and thereby improve client services” in their communities. In fact, the first cohort of online graduates from San Marcos doubled the MSW population in a single Texas community.

For regulatory boards, the issue centers on whether a primarily online degree program offers the same sorts of gatekeeping opportunities present in a more traditional program. With instructors no longer able to interact with students in the same physical space, are programs missing out on gaining insights into the overall competency of a student? And what kinds of checks can be put in place to ensure that the student who receives a degree is the person who actually took the classes and did the work? Because social work regulatory boards do not generally differentiate among acceptable or unacceptable accredited social work degree programs—if accreditation is in place, an MSW from University X is as “good” as a degree from University Y, at least for purposes of licensure—the rise of programs with the majority of content delivered remotely has caused many boards to consider just what, if anything, may be lost when a program moves from its “traditional” delivery system.

The uncertainty is understandable. Not long ago, “online degree” usually signaled “diploma mill”. But those who favor online education argue that new standards and technologies will open up access to social work education without sacrificing program quality. The requirements for field placements and practica mean social work students in online programs are still meeting face-to-face with and being evaluated by people in the profession, and many of the accredited programs require at least some on-campus time with faculty. On paper, these accredited online degree programs are indistinguishable from in-person programs, and CSWE’s requirements for sound distance learning methods are designed to help ensure that remote social work students clear the same hurdles as their on-campus counterparts.

The program at San Marcos is a good example of how online programs can parallel traditional ones, with the online teachers drawn from the core faculty. In keeping with CSWE standards for online programs, the courses, syllabi and texts for the online program mirror those of the traditional, on-campus program as well. The online class size parallels the in-person classroom and online and in-person classes carry the same teaching workload, Noble says. “Typically, a faculty person teaches the
same course both on-campus and online in a single semester,” she adds, “So we may have online and on-campus students participate together in a forum discussion of a certain topic. In that way, they form alliances and learn about social work practice in diverse areas and locations.”

Furthermore, Noble says, offering the online program has encouraged the social work faculty to incorporate technology in their on-campus courses as well. “On-campus students find the classes more interesting, more fast-paced, more relevant. We accept papers online, grade them online, return them online for all our students” and not just the ones in remote locations. “Becoming really skilled at online teaching has been nothing but good for our on campus program,” she adds.

The technology required for an online degree is startlingly simple—students have to have a relatively current computer, a webcam and a microphone in order to participate in online discussions, watch streaming lectures, interact with their teachers and each other. Using internet-based tools that do not require special software installation, San Marcos faculty can conduct class discussions in real time, see their students, and lead the conversation as necessary. The department has also developed professionally-filmed role playing videos to illustrate key concepts, and guest speakers on campus are filmed and streamed for remote students. “In general,” says Noble, “we mix up the teaching methods and keep it moving. It’s not text-heavy; it involves a lot of student-faculty interaction.”

The online MSW at San Marcos is in demand, with 300 applicants for 20 online slots, but there’s still growth in the traditional MSW as well, with “many more applicants than we can accommodate” says Noble. “And we have learned so much about how to be better educators through this program” she adds.

The issue may seem like a new wrinkle to regulators, but the challenge for boards may be less about whether to accept online degrees as much as how best to adjust the reality of them. Alberta College of Social Work Associate Registrar Alison MacDonald responded to a 2009 ASWB administrator email group posting on online degree programs with just that kind of reality check. “On-line programs are becoming much more accessible and I’m aware of a couple of them that are quite rigorous,” she wrote. “The reality is, however, that when the degree is issued it does not state that it was earned on-line so chances are that you have already licensed people who completed their programs on-line. I think that it’s a reality we are going to have to accept.”
Links to online social work education programs accredited by the Council on Social Work Education:

**Baccalaureate:**
Metropolitan State College of Denver

**Masters:**
Adelphi University
Florida State University
Michigan State University
Texas State University-San Marcos
University of Denver
University of Hawaii at Manoa
University of New England
University of North Dakota
University of Tennessee, Knoxville
Valdosta State University
Here is a brief synopsis of some of the current happenings in social work regulation. If you would like an item added to a future newsletter please contact Dwight Hymans, Director of Board Services at dhymans@aswb.org.

**Kentucky.** The Bluegrass State recently enacted several changes in their continuing education requirements. The changes include; modifying the regulations requiring approval of courses to only those courses in ethics, adding requirements for preapproval and approval of specific continuing education programs and establishing a process for individual licensees to request approval of a continuing education program that was otherwise not approved. To review the new rules go to http://finance.ky.gov/ourcabinet/caboff/OAS/op/socwkbd/.

**Maryland.** The Free State is proposing changes to their continuing education requirements, which are in the review process at this time. The requirements are being rewritten with new language. Significant changes include adding requirements specific to the bachelor level license (Social Work Associate), clarifying the types of activities that are acceptable for their two types of CE categories (Type I, Type II), creating a process for licensees to request exceptions to the approved provider requirements, outlining additional procedures for conducting CE audits and identifying consequences for failing to comply with the CE requirements. For additional information go to their website at http://www.dhmh.state.md.us/bswe/newslettersAndbulletin.htm.

**Iowa.** The Hawkeye State has given notice of its intent to modify the current administrative code (Chapter 280) to clarify the requirements for supervised professional practice prior to becoming a LISW (Licensed Independent Social Worker). The new requirements assure that candidates for this license have performed diagnosis and treatment of mental and emotional disorders or conditions by including as at least one component use of the DSM IV (current edition). A second addition requires that licensed candidates must have provided psychosocial therapy as part of their supervised professional practice.

**Montana.** The Treasure State made several recent changes to their laws and regulations. The scope of practice for LCSWs was expanded in their statute to include administering psychological tests. The rules were changed limiting to three the number of times a candidate for clinical license is allowed to take the exam. After the third attempt the candidate must submit and have approved by the board a plan that addresses areas of deficiency. In addition rule changes were made that
required licensure applicants to submit detailed supervision logs that demonstrate their knowledge of conducting intakes, writing treatment plans, making differential diagnoses, and assessing risk factors. The log must also reflect the clinical modalities they are utilizing.

Changes in reporting requirements put into place by federal legislation approved in 2006 are finally ready to take effect, now that federal reporting systems have been updated to handle them. This will affect both the Association of Social Work Boards (ASWB) and its member boards.

The legislation, Section 1921, requires that all actions taken against any licensees be reported to the National Practitioner Data Bank (NPDB). For boards, this means that data that were previously only reported to the Healthcare Integrity and Protection Databank (HIPDB) must now also be reported to NPDB. The reporting requirement extends to data from as far back as 1992.

All states have received or will soon receive letters asking if they would like the databanks to copy old data from HIPDB to NPDB for them. The Association of Social Work Boards (ASWB) recommends that state boards authorize this databank transfer to take place on the state’s behalf—otherwise boards may be setting themselves up for future work to move old reports in HIPDB over to NPDB to ensure the state is in compliance.

The National Practitioner Databank has been the databank for mandatory reporting of medical malpractice or for other actions taken against physicians or dentists. With the implementation of Section 1921, the NPDB will include the wide array of healthcare professional disciplinary actions, including those actions taken against social workers—information now contained in the Healthcare Integrity and Protection Databank (HIPDB), and ASWB’s databank of social work discipline, the Disciplinary Action Reporting System (DARS).

The DARS is the repository for social work disciplinary actions taken by any jurisdiction in the United States and Canada. For nearly 20 years, ASWB has offered DARS as a free service to provide a source for information on social work licensure applicants. Reports include actions taken by both ASWB member and nonmember boards. The association strongly encourages reporting so that DARS can serve as the best possible flagging system for licensure boards when checking a practitioner’s disciplinary history. Reporting to DARS is not mandatory, so the system is only as strong as the reporting boards make it.
In an effort to make posting and gathering the information as simple as possible, ASWB has set up a website for boards to report to DARS. However, because jurisdictions may have an easier time making reports by other methods, ASWB is open to accepting them in other ways. Jurisdictions that are members of ASWB are offered full access to search the databases, mainly for the purpose of screening potential licensees.

The Healthcare Integrity and Protection Databank (HIPDB) is the federal database for disciplinary actions taken by a state agency against a practitioner with a state license or applying for a state license. Reporting to HIPDB is mandated by the federal government. The databank still suffers from two major drawbacks: first, the HIPDB has strict data and format guidelines about what information can be reported (in contrast, the DARS system is more open and will accept a wide range of data formats and information); second there is also a cost for querying HIPDB (DARS information is free to ASWB member boards). These issues are two important reasons why ASWB continues to maintain DARS as a way for boards to effectively uphold their public protection missions. As an additional service at ASWB, we also act as the “reporting agent” for state boards, and report actions to HIPDB on behalf of these boards, free of charge. Currently ASWB acts as the reporting agent to HIPDB for 19 states. In the future, reports sent by these states to DARS (and, via ASWB, on to HIPDB) will also be reported to the National Practitioner Databank.

Here at ASWB, we are available to help answer questions about how these databanks work, and what your board can do to authorize ASWB as a reporting agent. More information is available on DARS by contacting Dan Sheehan at 1-800-225-6880 x3022, dsheehan@aswb.org. More information is available on the databanks’ combined website or by contacting them at 1-800-767-6732.

Links:
Databanks
HIPDB
NPDB
Section 1921
Like judges in the judiciary, regulatory board members involved in making difficult determinations about the licensure status of an individual are cloaked with certain forms of immunity. The sanctity of these protections are essential to allow board members to carry out their public protection mission. This immunity allows regulatory board members to enforce the practice act free from outside influences and political pressures. Consider the following.

In preparation for filing civil litigation against a dentist, an attorney requested that a licensed psychologist perform a psychological evaluation on a three year old girl. The girl was allegedly traumatized by the dentist when she was 17 months old. The psychologist (licensee) provided the attorney with a written summary of his clinical assessment, finding that the girl had “suffered permanent psychological injury as a result of the treatment by the dentist.”

The dentist filed an administrative complaint against the licensee with the Kentucky Board of Examiners in Psychology (board). In addition, the dentist filed a civil action against the licensee, alleging violations of certain statutes pertaining to the practice of psychology.

Based upon the administrative complaint, the board undertook an investigation resulting in a formal charge against the licensee. After a hearing, the board adopted the findings of the administrative hearing panel which held that the licensee rendered a formal, professional opinion about a minor child without direct and substantial professional contact with or formal assessment of that child. The board found such actions to be “unfair, false, and misleading act[s] or practice[s]” and that these actions constituted “practicing psychology in a negligent manner.” The board imposed a one year suspension on the licensee (with such suspension stayed, and the licensee required to work under board supervision).

The licensee appealed the decision to the circuit court. In his appeal, the licensee alleged that the board lacked subject matter jurisdiction because the conduct at issue was undertaken in the context of a judicial proceeding and thus did not constitute the practice of psychology as defined under Kentucky law. The licensee also argued he was entitled
to absolute immunity, again arguing that his actions fell within the
purview of a judicial proceeding. Finally, the licensee argued that there
was fraud and misconduct in the administrative prosecution and he was
therefore entitled to conduct discovery (fact-finding) on that particular
issue. The circuit court rejected these arguments and upheld the board
action. The court of appeals affirmed the lower court and the licensee
appealed the matter to the Kentucky Supreme Court which granted
discretionary review.

On review, the Supreme Court first addressed the issue of whether the
board had subject matter jurisdiction over the actions of the licensee. As
mentioned, the licensee argued that because the psychological evaluation
was conducted in the context of a judicial proceeding, his actions did not
constitute the practice of psychology as defined, resulting in his actions
falling outside the purview of the regulatory board. After reviewing the
definition of the practice of psychology set forth in statute, the court
rejected this argument, finding that the licensee was indeed engaged in
the practice when conducting the psychological evaluation and clinical
assessment of the child. It further found that the licensee did not fall
under the exception to the practice afforded to expert testimony from
individuals in academia, in part, because he was not in the employ of an
accredited school and, further, admittedly provided “direct psychological
services” to the child. Thus, the court found that the board did have the
authority under these facts to exercise subject matter jurisdiction over
the licensee.

The court next addressed the licensee’s argument that he was
entitled to absolute immunity because he was involved in a civil judicial
proceeding. In rejecting this argument, the court held that the licensee
was not court appointed nor was he an integral part of the judicial process-
potential prerequisites to an assertion of judicial immunity. Notably,
the court further held that judicial immunity insulates witnesses from
liability for civil damages, not from administrative prosecution against
a licensee. Accordingly, the court held that the licensee was not entitled
to judicial immunity.

Finally, the court addressed the merits of the allegations of fraud and
misconduct by the board in the administrative prosecution of the matter--
particularly whether the licensee was entitled to engage in discovery
on those allegations, and whether the nature of the fraud allegations
entitled the licensee to a jury trial on appeal.

The licensee based his argument for a jury trial on a section of
Kentucky law which states that an appeal of an administrative ruling
into the courts shall be conducted “without a jury and confined to the
record, unless there is fraud or misconduct involving a party engaged
in the administration of this chapter.” On the issue of entitlement to a
jury trial, the Supreme Court agreed with the lower court interpretation
that the phrase “unless there is fraud or misconduct involving a party
engaged in the administration of this chapter” modifies only that portion
of the law which may limit the record on appeal, not the right to a jury
trial. Thus, the court held that appeals of administrative rulings that are
subject to judicial review shall be heard by the court, not a jury.
Turning to the allegations of fraud and misconduct, the Supreme Court noted that the lower courts upheld the sanction and dismissed the fraud allegations because they were not alleged with enough specificity to warrant discovery. In short, the board argued--and the lower courts agreed--that the licensee should not be allowed to engage in a discovery “fishing expedition” in pursuit of very general allegations of fraud and misconduct.

The Supreme Court disagreed. Citing previous judicial decisions which held that where fraud is alleged on judicial review of an administrative action, the court held that the requirement of pleading with specificity or particularity does not apply. The Supreme Court’s ruling reversed that portion of the lower court ruling that denied the licensee’s right to discovery on the issue of alleged fraud and misconduct. The matter was remanded back to the circuit court.

The essential question that remains is this: are general allegations of fraud sufficient to allow sanctioned licensees to unmask the deliberative process? If so, the licensee will be allowed to ask questions of the board members about their deliberations, opinions, and other thoughts related to this licensee, based entirely on an open-ended, broad allegation of fraud or misconduct with no specificity.

There is the potential for this type of indulgence to deter not only future difficult-yet-essential public protection decisions by board members, but also deter persons from serving on regulatory boards in the first place. This case has yet to be resolved. Stay tuned.

_Maggard v. Commonwealth of Kentucky, Board of Examiners in Psychology, 282 S.W. 2d 301 (KY 2008)_

_Dale Atkinson is a partner with the Illinois law firm that is counsel to ASWB. He is also executive director of the Federation of Associations of Regulatory Boards (FARB)._
Are new exams on the horizon?

With surveys completed, knowledge areas reclassified, and test blueprints reformatted, there is only one task left in the long march toward releasing new social work licensing examinations in 2011.

But what a task it is.

In mid-April, the Association of Social Work Boards (ASWB) will hold something called a “passing score study,” a two-day event that will bring together approximately 60 licensed social workers from across the U.S. and Canada to make recommendations about what the passing standards should be for each of the association’s four major examinations: Bachelors, Masters, Advanced Generalist, and Clinical. By the end of the process, the association will have developed four “anchor” tests that it can use to calibrate all other versions of the exams administered over 30,000 times a year.

Volunteers chosen for this study are being selected from a pool of social workers who responded to general calls for participation sent out through the association’s own email groups, as well as to large samples of licensees in the ASWB examination registration database. The association office received an overwhelming response to the call for participants, and is developing lists of participants balanced for diversity in gender, race, ethnicity, geographic setting, and area of practice. Applications for participation were accepted through February 15.

The passing score study will, among other things, require that all participants actually take an ASWB examination, and rate each test item as to the percentage of minimally competent social workers they believe would answer each question correctly. Their own performance and ratings are combined with other participants’ data and item statistics to arrive at a consensus recommendation for what level of performance should be considered “passing” an ASWB examination. This recommendation is forwarded to the ASWB Board of Directors, which has the ultimate authority in setting standards on the tests.

The study is part of a process that began about two years ago with the formation of a Practice Analysis Task Force. That group was primarily responsible for the development, dissemination, and initial analysis of a North American survey of social work practice. The results of that survey—which required respondents to rate various professional tasks in terms of how often they are performed, the importance of the correct performance of these tasks, and whether knowledge of how to perform these tasks needs to be in place at entry to practice—shaped the content
of the new examinations. In the months since the completion and analysis of the survey, ASWB staff and volunteers along the way have been working to reclassify test questions according to the new content requirements. The new tests are anticipated to be released in early 2011.

A copy of the powerpoint presentation made by the ASWB Practice Analysis Task Force at the 2009 ASWB Annual Meeting of the Delegate Assembly is available at www.aswb.org.
Thinking about scopes of practice

A resource document on overlapping scopes of practice is now officially endorsed by the Association of Social Work Boards (ASWB). Titled “Changes in Healthcare Professions’ Scopes of Practice: Legislative Considerations,” the 16-page booklet is designed to help legislators and others involved in healthcare regulation develop better approaches to “turf” battles and other issues that arise when areas of professional practice intersect.

While careful to avoid recommending a single-best approach to resolving questions about changing or expanding a professional scope of practice, the document does encourage legislators and others to think through a few critical factors before making a decision, including the historical basis for the profession, the relationship of education and training of practitioners to the scope, the amount and kind of evidence supplied to support how a revised scope would better serve the public, and the capacity of the regulatory board to handle a change in scope. In the end, according to the document, decisions must be anchored to public protection, and must be built on “the premise that the only factors relevant to scope of practice decision-making are those designed to ensure that all licensed practitioners be capable of providing competent care.”

The document itself was developed in 2006 under the auspices of the National Council of State Boards of Nursing (NCSBN), and was co-authored by that group, the Federation of State Boards of Physical Therapy (FSBPT), the Federation of State Medical Boards (FSMB), the National Association of Boards of Pharmacy (NABP), the National Board for Certification in Occupational Therapy (NBCOT) and ASWB. When initially released, the ASWB Board of Directors took no action on official adoption until the association gained a better understanding of how issues of overlapping practice scopes may or may not affect positions reflected in the ASWB Model Social Work Practice Act. At its most recent meeting in January, 2010, the Board of Directors agreed that the document was not in conflict with the model law, and that the association should offer the resource to its members.

Currently, ASWB has a few hundred printed copies of the document available for distribution (email info@aswb.org for details). The guide is also available in pdf form online through the NCSBN website (www.ncsbn.org). Details about whether and how the document could be made available directly on ASWB’s website are still being worked out.
Responses to ASWB’s strategic planning survey have been strong – but they can be even stronger with your help.

The early response to ASWB’s recently-posted Internet survey, asking “What’s next?” for the association, has been both impressive and encouraging. There is apparently strong interest in where the association is going from here.

The Board of Directors has scheduled an extended meeting in August to consider the direction of the organization for the next few years. Strategic planning was last done in 2003, and it’s now time to re-evaluate.

There were two surveys done before the 2003 planning—one an administrator census, and the other a board member survey. Both of these questionnaires afforded the opportunity for association members to say what they liked and didn’t like about ASWB’s operations, what should be done to a greater extent, and what might be cut down on or eliminated altogether. This year, the focus is on ideas, with only a small amount of demographic information being collected.

Ideas, opinions and thoughts gathered in the earlier surveys were invaluable for planning purposes; in fact, almost all of the goals formulated seven years ago have been met. Board members, staff, and others interested in ASWB are being asked to help again by going to http://www.surveymonkey.com/s/6756TVX and answering the questions. It will only take a few minutes, and space is provided for comments and ideas.

Results will be compiled and shared with all member boards.
In the December issue of association news, there were reports from all over about the rough winter. BRUCE BUCHANAN was winning then, with a measurement of 17 inches of snow in Iowa. But the week before Christmas, the theoretically semi-southern state of Virginia topped that with a two-foot snowfall. And that was all in one storm. The storm was fairly widespread, but its worst effects seemed pretty much centered on the area of the association office in Culpeper.

Another storm came while staff and the Board of Directors were in Las Vegas for the Federation of Associations of Regulatory Boards (FARB) meeting. It delayed some trips home to Virginia, but wasn’t as major. But before it had thought much about melting, there was more. And then more, and it was major, including the dread loss of power for many ASWB employees. Fortunately, the worst of the weather occurred over a weekend, so the ASWB offices only opened late one day.

Remarked DAVID HAMILTON, New York executive secretary, “It’s an amazing winter that you got 24 inches of snow and we had blue skies and sunshine this weekend!”

Another news bulletin on a Macy’s Parade participant—JOSEPH WHITING, the grandson of long-time item development consultant (now retired) LEILA WHITING of Maryland, was in the most recent parade, marching with his high school band.

Director at large DON GLOADE of Nova Scotia had an exciting Christmas. He and his wife PATRICIA visited their daughter, who lives with her husband in northern Alberta, as well as their newborn grandson.

Former president ROGER KRYZANEK is a grandfather for the second time. His son CHRIS and wife SARA produced a 10-pound baby boy, born Dec. 19. The child will have an impressive name that reflects his Teutonic and Norwegian heritage, MAGNUS OEIN KRYZANEK. ROGER says he plans to call him MO.

ASWB staff member DWIGHT HYMANS joins ROGER in the “Grandparent times two” category: his son and daughter-in-law are the proud parents of AMELIE ROSE, born February 12 in Arizona.
MILA TECALA of Virginia and Washington, D.C., a former member of ASWB’s Examination Committee as well as a member of an earlier Practice Analysis Task Force, has coauthored a new book, *Grief and Loss: Identifying and Proving Damages in Wrongful Death Cases*. Published by Trial Guides, the book was written with ROBERT HALL, a leading wrongful death attorney. Readers can use the volume to become more understanding of their clients’ pain, and better able to effectively communicate that pain to a jury, mediator or judge. Said one reviewer, “This is must reading for mental health professionals seeking to apply their skill set in a forensic setting.”

ASWB is a silver sponsor of the Social Work Congress that will be held April 22 – 23 in Washington, DC. The silver sponsorship entitles ASWB to three participants, who will be President AMANDA RANDALL, Director of Board Services DWIGHT HYMANS and Executive Director DONNA DEANGELIS. A fourth attendee on behalf of ASWB, eligible by virtue of age demographics, will be JASON FLOYD of Alaska. JASON added to another demographic, the ASWB baby boomlet, with a fourth child, VANCE RYAN.

JULIA HANKERSON, a former item writer and member of the Exam Committee, has announced that she is running for mayor of the Borough of Woodbine, N.J., in the November election. Woodbine is her hometown; in fact, she can go back to her great-grandmother, who founded a ministry there. JULIA owns the Woodbine Wellness Center LLC.

The list of FARB attendees representing social work, aside from the ASWB Board of Directors and staff, included REGINA BREAUX, administrative assistant for the Louisiana State Board of Social Work Examiners; DEBRA BRIDGES, executive director of the Wyoming Mental Health Professions Licensing Board; EVELYN JENKINS, a member of the Louisiana social work board; ROBIN JENKINS, a former Washington, D.C. board member and now coordinator of ASWB’s Board Member Training; STELLA JOHNSON, chair of the Social work Discipline Specific Committee for the Mississippi Board of Examiners for Social Work, Marriage and Family therapy; JOHN MCBRIDE, member of the Louisiana social work board; GLENDA MCDONALD, registrar of the Ontario College; KRISTI PLOTNER, chair of the Mississippi Board of Examiners for Social Work, Marriage and Family Therapy; TAMMIE RUEBKE, member of the Minnesota board; and KATHERINE SELBY, board member, Wyoming Mental Health Professions Licensing Boards.

Presenting at FARB was DWIGHT HYMANS, Director of Board Services, and Communications Director TROY ELLIOTT led one of four small groups that had the assignments of answering questions or producing documents.
DALE ATKINSON, executive director of FARB and legal counsel for a number of regulatory associations including ASWB, received a surprise award at the meeting from his board, praising him for his “tireless and persistent service” in the interest of public protection. Hear, hear.

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The social work board in Québec now has a longer name, the Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec. According to registrar and counsel RICHARD SILVER, they have been regulating marriage and family therapists since 2001 but the legislation changing the name of the Order was adopted only in June 2009.

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The association office received an email note from TOM TUPA, long-time administrator for the North Dakota board, and a memorable host from the spring meeting there (pitchfork fondue, anyone?) He got the strategic planning survey, and said he was happy to answer, but he is retired. “I still hang around the office (their coffee is free) from time to time and have done a few small projects during the year,” he wrote. And yes, the survey viewpoints of “old duffers” are more than welcome. TOM said he keeps busy with hobbies, serving on committees and board for various organizations and the state, and creatively doing “nothing.”