They’re off! And tweeting!

From the gate to the home stretch, the Spring Meeting is all about ethics in the e-world (with a slight detour to an actual racetrack).

Though the 2012 Association of Social Work Boards (ASWB) Spring Education Meeting set for April 26-29 in Lexington, KY will be one in which horses figure prominently, the undeniable high point of the conference won’t have thundering hooves. Instead, featured speaker Dr. Frederic Reamer, perhaps the single most prominent expert on social work ethics, will lead the field in a conference devoted to the impact of technology on social work regulation.

Reamer is a professor in the graduate program of the School of Social Work at Rhode Island College in Providence, R.I. He also chaired the national task force that developed the National Association of Social Workers (NASW) Code of Ethics, lectures nationally and internationally on varied topics, including the Code of Ethics, and is a frequent commentator on National Public Radio’s All Things Considered.

He’s also the author of a number of books and articles, including Social Work Values and Ethics, Ethical Standards in Social Work and Ethical Dilemmas in Social Service. Like most in the profession recently, he has had to begin to factor in electronic communication because of its increasing inroads on education, practice, and communication in general.

Reamer will talk on “Emerging Issues in Ethics—Overview” in the opening session of the meeting on Thursday, April 26, at the Hilton Lexington/Downtown. He will return on Friday to present a morning-long “Continuation of Ethical Issues in the Electronic World.” Consideration of this hot-button topic was begun at the 2011 spring meeting, with speakers including expert Gary Schoener of Minneapolis and panelists from ASWB.
Another panel will talk on Saturday, on “Where in the E-World are Boards?” A survey sent out by the Program and Education Committee asked individuals how they are currently handling the electronic revolution. An excellent response from boards will give both panelists and audience a good idea of achievements and barriers at this point. That presentation will begin on Saturday at 9 a.m., and will be followed by a legal response to electronic practice from ASWB legal counsel Dale Atkinson and Richard Silver, legal counsel for the Ordre des travailleurs sociaux and des thrapéutés conjugaux et familiaux du Quebec and chair of the association’s Board Member Training.

The subject of a Saturday panel will continue the theme with “Use of Websites and Social Media by Regulatory Boards” from 1 – 3:30 p.m. Following that will be a new kind of networking opportunity, with some established talking stations set up during a wine and cheese reception for an informal sharing of reactions to the E-questions that have been under scrutiny.

Sunday’s session, “Online Disciplinary Reporting” will have one segment on research funded by the American Foundation for Research and Consumer Education in Social Work Regulation (ASWB’s research funding arm), and the other on the importance of reporting to the Public Protection Database (PPD).

As always, there will be an opportunity for some organized “down time” for attendees, though this year’s plan—a tour of the famous Keeneland racetrack—could inspire participants to maybe step it up a little in the fashion department.

The tour, which will leave at 12:30 from the hotel, will take attendees to the racetrack that is considered second only to Churchill Downs for the elegantly dressed, mint julep-sipping bluegrass country set. Meeting participants will have the opportunity to watch beautiful Thoroughbreds do what they were born to do (cue the song “Run for the Roses”) and dress nicely.

Seriously, folks, the Phoenix Dining room, where lunch will be served, has standards—collared shirts and dress slacks for gentlemen, dresses or pantsuits for women. And no jeans or athletic shoes.

The Kentucky board also hopes people will rise to the occasion with perhaps a long skirt or two and maybe some really great hats, another racetrack tradition. In fact, the board plans on holding an actual “best hat” competition, complete with an appropriate prize for the winner. Sipping juleps is presumably optional.

This kind of thing isn’t without precedent. Many years ago, ASWB had a meeting tour an “F. Scott Fitzgerald” boat trip, going out from a pier in Key West, FL. Everyone was cajoled to go with the theme and wear white, and most did. So get thee to a milliner.
The agenda in brief:

**Thursday, April 26**
8:30 a.m. – 3 p.m. – Board of Directors Meeting
9 – 3:30 p.m. – Administrators Forum
2 – 4 p.m. – Registration and hospitality
4:30 – 6 p.m. – Emerging Issues in Ethics, Reamer
6 – 8 p.m. – welcome dinner sponsored by ASWB

**Friday, April 27**
7 – 8:30 a.m. – breakfast
8:30 a.m. to noon – Continuation of Ethical Issues in an Electronic World
Noon – recess
12:30 p.m. – leave for Keeneland Races

**Saturday, April 28**
7 – 8:30 a.m. – breakfast
8:30 – 9 a.m. – News from the Association Office, Executive Director Donna DeAngelis
9 – 10:15 a.m. – Where in the E-World are Boards? – panel
Noon – 1 p.m. – lunch
1 – 3:30 p.m. – Websites and Social Media
3:30 – 4:45 – Talking stations and wine and cheese reception
4:45 – recess

**Sunday, April 29**
7 – 8:30 a.m. – breakfast
8:30 – 9:30 – Online Disciplinary Reporting – panel
9:45 – 10:30 – Legal Response to Disciplinary Reporting – Dale Atkinson and Richard Silver
10:30 a.m. – Invitation to the Fall 2012 Annual Meeting and Drawings
11 a.m. - Adjournment
Taking the teeth out of regulation

Think it’s advisable for a regulatory agency to issue a press release about a complaint before issuing the actual formal complaint? How about an investigator encouraging violations of confidentiality? Forcing a defendant to travel over 300 miles to a hearing? Shifting burden of proof to the defendant? Is it a good policy to ignore past practices as well as rulings of the U.S. Supreme Court? Attorney Noel Allen believes that these are not the sorts of things that would fall into anyone’s top ten list of regulatory best practices.

This isn’t just a collection of generic regulatory “don’ts.” Allen claims that these actions were actually taken by the U.S. Federal Trade Commission (FTC) in its pursuit of an antitrust complaint against the North Carolina State Board of Dental Examiners. The FTC investigation has not only reversed the state board’s actions regarding teeth-whitening kiosks, Allen says, but the success of the FTC upends some fundamental principles of professional regulation and a board’s ability to carry out its legislated mandate.

Allen, attorney for the NC dental board, spoke at the most recent Federation of Regulatory Boards (FARB) Forum, where he recounted the three-year ordeal that began when the dental board responded to claims that certain teeth-whitening businesses had harmed customers. The ordeal ended—at least for now—when the FTC ruled that the board had violated federal antitrust laws by pursuing these businesses for the unlicensed practice of dentistry. The ruling strips the board of its ability to issue cease-and-desist letters to the teeth-whitening businesses, and prohibits the board from making any claims that the businesses are engaged in the unlicensed practice of dentistry. An appeal of the decision is in the works, with several regulatory board associations including the Association of Social Work Boards joining FARB to file an amicus brief in support of the appeal (see related story in this issue of association news).

Although not common in all jurisdictions, teeth-whitening kiosks are popping up in shopping malls and other places in several parts of the country, particularly the south. For a fee, customers’ teeth are treated with chemicals that may or may not “remove” stains from teeth (that word, “remove,” it turns out, is an important one). Allen says that in North Carolina at least, these kiosks feature employees in lab coats,
with official-looking documents tacked to the walls of the booth, and an equally official-looking examination chair featured prominently. The problem is that the kiosk employees are not regulated at the professional level, and conduct work in which they place their hands in the mouths of customers—sometimes, allegedly, doing this work without wearing gloves.

In North Carolina, informal complaints began to grow, until in 2008 a local television station got hold of the story and brought the situation to the attention of a much wider audience. These stories—one of which involved a customer who alleged bleeding gums and tissue damage resulting from the treatment—caught the attention of the dentist board, which sent out over 40 “cease and desist” letters to the whitening businesses.

That’s when the FTC stepped in. According to Allen, the FTC began a two year investigation of the dental board’s actions, including reviews of email correspondence between various board members and staff. What were they looking for? Allen says that the FTC was convinced that the board’s actions constituted an organized attempt to restrain trade and establish a dentist monopoly on teeth whitening. And in the end, that is exactly what the FTC found—despite what Allen describes as no evidence of any board member characterizing the board’s actions as an effort to “stop competition. It was always just public protection,” he said.

Besides the ruling being a determination that the board had committed a felony under the Sherman Antitrust Act, Allen says that the FTC action also eradicates the premise that the so-called “state action doctrine” applies to regulatory boards. Without the state action doctrine, almost any board action could be interpreted as a violation of antitrust law.

As Allen sees it, any board action can be construed as a restraint of trade on some level—that is, the board is taking an action that prevents an individual or group from conducting the business it would like to conduct. But, he added, “courts have held for over 70 years…that nothing in antitrust laws is intended to apply to state actions.” This state action doctrine is the bulwark against claims that a licensing board is conspiring to ensure a monopoly on services when, for instance, it prevents someone from practicing a profession without the required educational degree.

But Allen asserts that the FTC’s ruling threatens to tear down that barrier. He said that the case against the NC dentist board “tried to make out a disturbing framework” by asserting that “the mere fact that a board is made up of practitioners ipso facto attests to conspiracy,” a key element in antitrust violation claims. “Anything [regulatory boards] do could violate antitrust—even though there are checks on rulemaking, oversight, and hearings.”

Allen said that the state action doctrine was argued by the board, but that the FTC “wouldn’t back down,” and required the board to attend a hearing in Washington, D.C., a hearing “being tried by the agency that
had approved the complaint”—an approach he adds to the string of other seemingly risky actions he listed near the beginning of his presentation.

The five-week hearing involved claims that there was “collusion” among board members, that dental board members had a “personal financial interest” in protecting turf (even though stain removal amounted to only about 1 percent of any member’s practice), and that the practice of “teeth whitening” done in the kiosks was not the same as “the removal of stains from teeth.” As it turns out, the scope of practice for dentists in North Carolina includes “stain removal” but does not mention “teeth whitening” per se. Allen said that a significant part of the hearing turned on an FTC expert witness’s testimony that “teeth whitening” is not the same as stain removal. “In case you’re a little confused about that,” Allen said to the audience, “welcome to my world.”

Obviously, the FTC sees things differently. Commissioner J. Thomas Rosch authored the opinion against the board, stating that, among other things, the board’s own expert witness at one point admitted that the board had a financial interest in shutting down the teeth-whitening businesses. This, in addition to the commission’s assertion that teeth “whitening” doesn’t actually “remove” stains, and its decision that the board failed to demonstrate a true risk to public safety, made the case a clear cut example of restraint of trade. The full text of the commissioner’s opinion can be found online at http://www.ftc.gov/os/adjpro/d9343/111207ncdentalopinion.pdf

Allen believes that the North Carolina board stands a good chance on appeal, and describes the FTC as “scrambling for some authority” to back up their antitrust violation claims. If the ruling should stand, however, Allen sees more trouble ahead for regulatory boards across all disciplines. “They’re saying that the state can’t protect their own citizens,” he said.
A threat to board immunity?

The Association of Social Work Boards (ASWB) will be joining the Federation of State Boards of Physical Therapy (FSBPT), the Federation of Associations of Regulatory Boards (FARB), and six other regulatory board organizations to file an amicus brief in support of an appeal of a U.S. Federal Trade Commission decision that, some argue, threatens a board’s ability to properly regulate practice, and could even frighten people away from serving on regulatory boards in the first place. The decision to join in the brief was made by the ASWB Board of Directors at its January, 2012 meeting.

The amicus (“friend of the court”) brief to be filed with the 4th US Circuit Court of Appeals by early April addresses the potential fallout of a decision by the FTC against the North Carolina Board of Dental Examiners (see related story in this issue of association news) for violations of federal antitrust laws. Although the FTC decision touched on many factors around the dental board’s pursuit of teeth-whitening business, the focus of the brief being supported by ASWB is limited to a discussion of the effects of applying federal antitrust actions to the workings of a regulatory board.

In its decision that the board broke the law, the FTC asserted that individual board members were part of a conspiracy to unfairly restrict trade that would gain these individuals an economic advantage—a necessary component of an antitrust violation. The problem, as ASWB, FARB, and other groups see it, is that the FTC decision strips board members of immunity normally granted to regulators. In the FTC’s view, board members were individual actors, and cannot seek immunity protections, nor can a board claim that the so-called “state action doctrine” exempts its members from allegations of illegal restraint of trade.

The organizations filing the amicus brief see the FTC decision as having a chilling effect not only on an individual’s willingness to serve on a regulatory board, but on the ability of the board to fulfill its public protection mandate. Opponents of the FTC decision assert that boards often take actions that impact the ability of individuals or groups to practice a profession, and that the FTC action has the potential to cast nearly any board decision as a potential trade restraint conspiracy among individual board members.
Looking up down under


Australia is making the move from state-based to national regulation. And guess what? It’s working.

To the ears of a regulator from the U.S., it can sound downright... fictional: a country where licensing laws are identical from state to state, where professionals operate under the same titles, where the public has access to a single register that contains all the country’s licensees, where discipline procedures are consistent. Dude, crazy! Add a fantastical animal or two, surround the whole shebang with some stunning landscape, and you’ve got The Hobbit meets Public Administration Quarterly, right? A long time ago in a regulatory paradigm far, far away?

Not exactly. In fact, such a place actually exists. On Earth. As it turns out, Australia is now implementing exactly such a national professional regulatory system for 10 professions, with more to come. The national—not “federal”—framework establishes a council that manages the regulatory processes in all 10 Australian states, while the states themselves maintain separate (albeit identical) laws. Also, they’ve had the fantastical animals and stunning landscape end of things covered down there for a while so, yes, Virginia (and other states), there really is a working national regulatory system.

Attendees to the most recent Federation of Associations of Regulatory Boards (FARB) Forum, held in Sarasota, FL in January, heard more about the system from Glenn Ruscoe, current chair of the Physiotherapy Board of Australia, and the inaugural chair of the country’s Health Professions Chairs Forum. The Australian system, he said, is one in which “states have not given up regulation—they have just said ‘we’re going to do it in a common way.’”

The framework now in place in Australia currently covers chiropractic, dentistry, medicine, nursing & midwifery, optometry, osteopathy, pharmacy, physiotherapy, podiatry, and psychology. Under the system, called the National Registration and Accreditation Scheme (NRAS), a single national council oversees regulation among all 10 professions, with each profession having its own national and state board. Although the scope of the NRAS is at the national level, it is not a federal program in which the Australian government assumes all control of legal regulation. Instead, the six Australian states and two mainland territories individually adopted the “Health Practitioner Regulation National Law,” which established near-complete uniformity

From the FARB Forum
among state licensing laws and regulations. This uniformity allowed greater control at a national level without ceding states’ rights.

According to Ruscoe, the move toward national regulation began in 2006, when the federal Productivity Commission issued a report asserting that the patchwork of state and territorial registration systems stood as a barrier to workforce mobility and availability. “It seems our legislators were reading that document,” Ruscoe said, because two years later, in 2008, the Council of Australian Governments (COAG) agreed to develop a national system, and targeted an implementation date of July 1, 2010.

Not surprisingly, getting states and professions to agree to uniform language was no easy task. Ruscoe said that that the COAG was fortunate to have a visionary and tenacious leader in Louise Morauta, who headed the efforts to bring all on board (Morauta’s account of the the national system can be found at http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8500.2011.00713.x/full ). “There were a lot of people who had empires to protect that did not want to see this change,” Ruscoe said. Morauta was up to the task, and met the challenge head-on. “She picked the most vocal objector to the scheme, and put him in charge,” according to Ruscoe.

The new system operates under more or less the same set of goals as any state professional regulatory body, with public protection being the first priority, and other goals such as fair assessment of professionals and public access to services high on the list. The national system, however, is also able to focus on enhancing elements that can be difficult for a single state board to address, such as increasing workforce mobility, strengthening a national workforce, and standardizing assessment of overseas-trained practitioners. “We have to balance the protection of the public with how it’s going to affect the workforce,” Ruscoe said.

The NRAS is operated via a Ministerial Council at the national level. Under that council are the individual national boards for the professions included in the NRAS. This national operation also includes a general Advisory Commission as well as an Agency Management Committee.

The national boards delegate many functions to the Australian Health Practitioner Regulatory Agency—which performs many of the necessary administrative duties—as well as to various regional and state board committees. State boards still exist to oversee regulation within their borders, but most functions such as initial registration, complaint investigation, rulemaking, and fee-setting are handled at the national level, Ruscoe said.

Because the national laws were often built on the most “robust” existing state legislation, the reach of the NRAS is considerable. In addition to standard registrations, renewals, and complaint investigations, the new system also includes provisions for student registration, criminal background and identity checks, specialist registration, assessment of overseas credentials, and mandatory English language skills. Although currently handled by external authorities, the
NRAS will also be assuming responsibility for educational program accreditation standards in the near future.

For practitioners, the change from 65 separate acts to one law, and from 36 professional organizations to one national agency, has been a welcome one. Under NRAS, practitioners only need register once to practice anywhere in the country, and know that they will be held to the same practice standards no matter where they are, and where their patients reside. Efficiencies have been greatly increased, Ruscoe said, though the initial move of data and other information from disparate systems to a single national operation was at times a bit harrowing.

For regulators, the national system has yielded benefits beyond sheer efficiency. Because there is now a single national regulatory agency, professions have a single register—no more checking individual states to verify the status of a practitioner. In addition, workforce data is compiled at a national level, which allows the professions new insights into issues ranging from practitioner availability to a very big picture of disciplinary actions (called “notifications” in this system).

The NRAS did not come cheap. According to Ruscoe, state governments provided $19.8 million for the system, while the state and territorial registration boards supplied the equivalent of one year’s operating budget. He said that future funding is expected to come from registration fees. Most of the money was used for the necessary information technology needs, which required 1.5 million pieces of data in 36 different formats to be cleaned up and placed in a single system.

Ruscoe said that the future looks bright for the NRAS. With the system in place, other professions are hoping to join the system, with four professions set to be included this year—a good sign. And as the NRAS continues to build on its success and demonstrates its effectiveness, Ruscoe said that one of the organization’s biggest concerns—meddling by legislators—may be put to rest.

“It’s a bit like a new toy to the politicians,” Ruscoe said. “They can’t help but to micromanage. But I think that once there’s an element of trust, there will be a lot less micromanagement.”
During his career as a social worker for the Veterans Administration, Louisiana board chair John McBride has met some interesting people—men who fought in World War II and met Generals Patton and Eisenhower, a soldier who once guarded the West Wing entrance at the White House, another military man who had been a hat maker and made one for Humphrey Bogart.

McBride loves his work, and has found every day interesting and busy. He’s now director of the Home-Based Primary Care program in the Alexandria, LA, VA Health Care System hospital, working with a team that includes physicians, social workers, chaplains, pharmacists and more. Many of the patients the team is caring for are confined to bed where they live, and the director has a juggling act getting all the needs met.

Oh, and in his spare time, McBride and his wife Stephanie became the adoptive parents of four children, all in special needs categories. Another extra activity has been fostering 17 children, three of whom they adopted. “If we had our way, we would have kept every one of them,” he says.

The Louisiana board chair resisted the idea of an interview, saying he didn’t have much to talk about except his kids, and “I could talk about them all day.” But once he starts on little anecdotes of his life, quietly and a bit pensively, there is enough material for a TV miniseries. A really good one.

The miniseries could detail some of those interesting people. The soldier who guarded the residence entrance to the White House was a Purple Heart recipient in the Korean Conflict, and reached the rank of Master Sergeant. He served on special duty in the late 1940s in Germany and later in the Presidential Guard in Washington, DC. His posts included the Tomb of the Unknown Soldier and the White House when Harry S Truman lived there.

But there really is no need to go beyond McBride himself. He grew up in a close-knit family, one of four children of a divorced mother and absent father. His father figure was a loving but strict, and very religious, grandfather. The family didn’t have much, but it did have the church.
“When the door opened, we were there,” he recalls. The strength of that church grew as he did, and his faith still makes sense of the world for him, a world in which children are abandoned and young people are badly injured physically and mentally.

He feels everything has fallen into place in his life as it should, and he’s grateful. One anecdote: He had no intention of going to college. But while he was sitting among his high school classmates on graduation day, someone elbowed him; his name had been called for a scholarship. By the time the shock wore off, he was in the local community college, learning about vocational trades. But after the first semester, he felt out of place among his often rough-spoken classmates, so he switched to academics. Things went well, and he headed out to Louisiana College with his two-year degree, planning to work in juvenile probation.

There he took a class taught by Ann McAllister, an ASWB stalwart of many years standing who is now an item development consultant for the association. “I learned so much from her,” he says now. “She was my mentor; her influence on me was profound.” He was going to be a social worker.

Another story: when McAllister retired a few years ago, McBride helped with the arrangements for a party for her at Louisiana College. She wrote him a thank-you note. “She said she was proud of me; that note meant more to me than my diploma. I just wouldn’t be here today if it weren’t for her. She impressed on me to do what I do best.”

His life plan was to graduate, get a good job, buy a house, and then marry and have a family. All proceeded according to plan; he went to work for Renaissance Home, a juvenile rehabilitation center. When he was almost 40, he and Stephanie married.

Awful story: a month later, she was diagnosed with cancer and told she couldn’t have children. Since both really did want a family, they immediately thought adoption. But U.S. adoption agencies required that there had to be five cancer-free years after a diagnosis before a couple could adopt. They wanted to be parents, so they went to the Ukraine.

Harrowing but inspiring story: The McBrides were not allowed to preselect age or gender, and hoped for two children. They were notified, they went to the Ukraine, but thought for a while they would come home without a child. But then after a 10-hour train trip to an orphanage, they were introduced briefly to a four-year-old boy whose name translated to Nicholas, the name they had chosen for their future child. After a half-hour with the Ukrainian boy, the child was sent out of the room and they were told to decide then and there. No contest, since the little boy had come in calling them “Mama” and “Papa.” Nicholas went home with them.

He’s now 13, and has been a complete delight. Although he was considered special needs, better medicine in the U.S. indicated that a problem suspected in his country of origin was not in fact a problem at all. He is at the top of many of his classes, interested in music, history, and science, and most importantly he is their son.

One of their other three children is eight and the younger ones are both five, all with some form of special needs, and “They are my
life.” The McBrides both work (Stephanie teaches autistic youngsters), but they spend every minute they can with the kids. “We divide and conquer,” John explains, working to give each child some time of his or her own with a parent, giving them chores within their limits, cooking and cleaning together on the fly, and loading the washer just before bedtime. And another bad piece of the story, Stephanie’s cancer came back in 2007 and she has been through the whole treatment spectrum including radiation and chemotherapy. She’s doing well now, though.

McBride says he and his wife do their best to have an occasional evening to themselves, although it’s hard to find a sitter for their large family. They spend time visiting by cell phone, since both have commutes. “Our kids are our life, they’re what life is about, but she’s the most wonderful wife – I’ve told her if she ever decides to leave me, to pack my bags too, because I’m coming with her.”

Fostering children is something they have loved doing, and they are expecting to have the 18th join them before much longer. John has done home visits to help in the fostering and adoption processes, and obviously works from a place of expertise.

About the rest of that professional career – McBride went to Our Lady of the Lake in San Antonio and got his MSW in 1991. He began work at the VA center the next day. Every day is different, he says. He worked for 20 years with a mentally ill population, cases who were mostly people suffering from schizophrenia. Now with the home-based primary care program, he has less time to see people individually, but occasionally does. The program includes clients from injured 18-year-olds to the increasingly rare World War II veterans with sometimes astounding pasts. Some of his past work was as coordinator of a prisoner of war group.

A last story is about his service on the regulatory board. He had always had an interest in “giving back” by being on the board, particularly since his mentor, Ann McAllister, had been a member. There were some openings, and he applied, but heard nothing. One day he was driving with all four kids in his pickup, the cell phone rang, and when he answered he thought it was a coworker playing a practical joke. After a few minutes of “Who is this, really?” the caller offered to send him an email, and he rushed home to find that the query was the real thing.

He was appointed to fill out an uncompleted term, and has been reappointed once. “I’ve learned a lot,” he says, and the experience has been worth a bit of money out-of-pocket and the time lost from work and family. It’s been a professional benefit to him, and to his employer, with his expanded understanding of ethical decisions. He knows so many social workers that occasionally he has had to recuse himself, but the care taken by his fellow board members has made him even more certain that he made the right decision – under the influence of Ann McAllister.
When New York’s legislature changed its social work licensing law from title protection to a practice protection act effective 2004, another long-standing law went into effect that has raised objections because of the nature of services offered by social workers. The law prohibits a business—whether it is for-profit or not-for-profit—from employing licensed professionals unless there is such a professional involved in the ownership and management. The law is intended to place the licensed professional in charge of practicing the profession—and to protect the public.

“Like individuals, most corporations are going to be good, responsible ones that don’t abuse patients,” according to David Hamilton, executive secretary of the New York State Board for Social Work in the Office of the Professions. But he said that the issue is that licensed professionals, who have codes of ethics and are under laws that define allowable activities, can come under the influence of corporate management by someone who is not a professional.

Business decisions can be made within one of those groups—a group that is not good or responsible—while looking first at the bottom line; such decisions may not take into account the best interests of a client or the ethical constraints of a professional employee, Hamilton added. The law has been “effective in other professions,” he said, such as pharmacy and accountancy, where the entity is registered as required and services are provided by licensed professionals.

What is no doubt bringing more attention is the fact that nonprofit, religious, and educational corporations—groups that tend to offer more social work services than, say, accounting firms—are included in the prohibition. Such an agency that wants to employ licensed social workers must apply to the New York State Education Department for a waiver. The waiver application, easy to access from the Office of the Professions Web site, is not long or difficult. But it does require something called a Moral Character Attestation for officers and directors of the corporation, much as is required for an individual seeking licensure as an LMSW or LCSW in New York.

Out front among the objectors has been David Nocenti, executive director of Union Settlement Association, which provides services in East Harlem. In an OpEd piece for the New York Daily News headlined “When social work is a felony,” Nocenti wrote that it is illegal for corporations, including nonprofits, “to hire anyone who has a license for the social work services they provide.
to practice any of over 40 professions—from physicians to engineers to social workers to family therapists.”

Such professionals can practice in their own group practices, he said in an online interview, but if an organization such as his, without a waiver, hires a licensed social worker to provide counseling it is breaking the law. He thinks this is wrong.

Hamilton said the individual licenses granted in New York are for private practice or for professional corporations or in authorized settings, such as hospitals, clinics and schools, not for corporate practice. He said “we’ve had several” cases in which corporate decisions led to Medicare or other types of fraud, such as billing for more services than were necessary or delivered. Licensed professionals may face pressures to sign off on inaccurate records. These activities not only risk harming the client or patient, but also the insurer, who may be a small business or Medicaid. There are even instances of forgery in the records.

He pointed out that this has been the way business has been done in New York for a long while. A CVS or Walgreen’s is a business corporation, and can sell magazines, cosmetics, soft drinks and other sundries. Elsewhere, the two “drug stores” also offer prescription drugs as a part of their business. In New York, however, the pharmacy within a CVS or Walgreen’s is separate. It is registered by the Education Department, and the law requires the presence of a supervising, licensed pharmacist, restricts the delivery of professional services to those licensed or authorized, and holds the pharmacy accountable for compliance with professional law.

If the pharmacy is found guilty of misconduct, it can be disciplined by the Board of Regents, just as an individual licensee or a professional corporation can. The pharmacy registration law was the model for legislation that was enacted to require waivers for agencies that employ licensed social workers, according to Hamilton.

Nocenti, who has a long political involvement in New York, argued that “This rule apparently is based on the belief that licensed professionals can be unduly influenced by unlicensed supervisors, and will somehow be convinced to abandon their professional ethics in support of some separate corporate goal.”

A coalition of nonprofits that have historically employed social workers, along with the National Association of Social Workers (NASW), and other professional associations backed the bill to authorize the waivers, Hamilton said, adding that the bill was in the legislature for several months, with extended opportunity to comment.

The goal of the waiver process as to allow not-for-profits and educational and religious corporations to complete a simple application, including the attestations of good moral character, so they can fill their employment needs while under the regulation of the state. The social work board office does the work of making sure the moral character declarations are in order, along with the rest of document, and it looks closely at corporate structures or individuals that seem doubtful. With the assistance of graduate interns from the MSW program at the University at Albany, it is on-target to issue waivers before the July
1, 2012 deadline. There is no cost to apply for the waiver or for the triennial registration.

While the board does the review, any disciplinary matters would come before the board of Regents, under a section of the Education Law.

An agency can continue to provide services through a licensed employee while a waiver application is being considered. A deadline for existing businesses to apply had been set but later extended until Feb. 1, 2012. But a waiver can still be obtained after the deadline, as long as the corporation can demonstrate need, such as serving an at-risk neighborhood.

“It is important to remember that we are not saying these entities have done anything wrong or questioning whether they are appropriate settings for New York’s LMSWs and LCSWs to practice. All we’re doing is giving a ticket to a qualified non-profit,” according to Hamilton.

“Few licensees engage in misconduct and the same is true of the not-for-profit entities that employ licensees.” If a corporation does something wrong, it is subject to the Board of Regents just as an individual would be. If there is an allegation of wrongdoing, the Office of Professional Discipline will investigate.

“The waiver, then, ensures that entities are accountable and protects the public from harm,” the executive secretary said.

There are a number of exemptions to the law, including state, federal or local government agencies, public hospitals or mental health institutions, various university-related programs, and professional corporations.
Charge!

ASWB’s volunteers will have plenty to do in 2012.

With all appointments in place, volunteers to the Association of Social Work Boards’ (ASWB) committees are beginning to focus on the work ahead, with one committee—ASWB’s Approved Continuing Education (ACE) committee—already having its first in-person meeting. By summertime, committee work will be in full swing, with several major projects being taken on by the various groups.

Including ASWB’s 11 elected positions (Board of Directors and Nominating Committee), this year’s committee rosters include 64 volunteers from 34 jurisdictions, with 13 being new to any kind of committee service with the association. A complete list of committee members can be found on the ASWB website at www.aswb.org.

The committees’ work is pretty much cut out for them, mostly in the form of charges approved each year by the ASWB Board of Directors. Plates remain full for all of the groups. Here’s a quick overview of the issues and activities each committee will be taking on:

Approved Continuing Education (ACE) Committee. The committee, which held its first in-person meeting in early March, reviews social work continuing education providers who apply for inclusion in the ACE program. Members will also continue to evaluate ways to strengthen accountability and quality of online CE programs, and will be having ongoing discussions on how conference poster sessions may or may not be suitable for social work CE.

Bylaws and Resolutions Committee. In addition to its ongoing responsibilities for processing all bylaws amendment and association resolution proposals from the ASWB membership, the Bylaws Committee will be reviewing the entire ASWB Policy Manual for currency and consistency with the association bylaws, as well as discussing ways in which member input can be incorporated into a proposal to shift examination fee decisions to the ASWB Board of Directors.

Examination Committee. This 24-member group of former test item writers will be meeting in various combinations four times this year, with each meeting lasting two and a half days. The committee is responsible for reviewing and approving test questions for inclusion in the ASWB item banks, a responsibility that it accomplishes to the tune of well over 1000 new items a year.

Finance Committee. The association’s committee focused on financial operations consists of the ASWB treasurer, the ASWB immediate past president, and three appointed members. The group reviews financial and audit reports, and makes recommendations to the
ASWB Board of Directors on issues that include investment policies and reserve funding goals.

**Nominating Committee.** This four member committee (three elected members, plus the immediate past president) is responsible for creating the slate of candidates for the ASWB Board of Directors and Nominating Committee. This year, the committee will be creating this slate in light of bylaws changes that will increase Nominating Committee terms, and launch a staggered election sequence for the committee.

**Program Planning and Education Committee.** The “new” Program Committee doesn’t officially begin until the conclusion of the ASWB Spring Meeting. This year’s incarnation will be creating the program for the spring meeting of 2013, tentatively set for Texas.

**Regulation and Standards (RAS) Committee.** The RAS Committee has primary responsibility for upkeep of the ASWB Model Social Work Practice Act, which includes scanning the world of social work for issues that may be relevant to regulation. This year, the committee’s work will include a look at models for the regulation of social work supervision—including establishing a recommendation around how many supervisees a supervisor should have at any given time.

Generally, committees provide written reports to the ASWB Delegate Assembly at the Annual Meeting (this year, November 1-3, in Springfield, IL), however, there are exceptions for committees like the exam committee, which includes its information in a general report on the ASWB examination program.
ASWB member boards, in their own words

In ASWB profiles we highlight a few ASWB member jurisdictions and get them to answer some basic questions about how things are going and what’s in store, as well as some basic facts about social work regulation in their neck of the woods. Get to know your fellow boards—chances are, you have more in common than you think!

This issue: Indiana

INDIANA

Name of jurisdiction: Indiana

Name of board: Behavioral Health and Human Services Licensing Board

Number of board members: 11 by statute, 5 members currently appointed (2 Clinical Social Workers, 2 Marriage and Family Therapists, 2 Mental Health Counselors, 2 Clinical Addiction Counselors, 2 Consumer Members, and 1 Physician with training in Psychiatry)

Licensure levels offered: LSW – For both Bachelors and Masters level graduates;

LCSW – For Masters level graduates

Number of licensees: LSW – 2,427; LCSW – 4,352

Total Number of licenses administered by the board: 11,489

(Includes Social Workers, Clinical Social Workers, Addiction Counselors, Clinical Addiction Counselors, Marriage and Family Therapists, Marriage and Family Therapy Associates, and Mental Health Counselors)

Biggest achievement in the past 12 months: The Indiana General Assembly is poised to pass Senate Bill 24 into law which will require all new applicants to submit to both a state and federal background check as a part of the application process. The Board feels this is an important step in the licensure process to make certain the citizens of the state of Indiana are receiving appropriate services from qualified providers.
**Biggest lesson learned in the past 12 months:** As a new Board Director, I cannot even begin to count the number of lessons I have learned personally. I think the most pleasant lesson was learning how much support there is for the work that we do, whether it comes from our own board members, our local associations, or our national associations. I have yet to come across a question that I haven’t been able to find someone to help my figure out an answer.

**Biggest challenge facing the board:** The largest concern for our Board at this time is our lack of appointed members. Currently, only 6 of our 11 positions are filled which requires all members to be present at all meetings in order to have a quorum to conduct business. This has resulted in increased workloads for both our board members and board staff and several meetings where we have been unable to establish a quorum.

*(complete the sentence)* “I would really love to hear about how other jurisdictions…

I would really love to hear how other jurisdictions differ in their handling of disciplinary actions from the initial complaint, the investigation, and the hearing itself. I would also love to hear how other jurisdictions handle applications from foreign applicants.

Thomas McGee, Director of the Behavioral Health and Human Services Licensing Board

**Useless tidbit from the association news editors:** Tomato juice was served for the first time in a French Lick, Indiana hotel in 1925. French Lick is also the site of the world’s first tomato juice factory.

See something you’d like to help with or comment on? You can keep the conversation going through ASWB email groups. Administrators can post to aswb-admin@aswb.org; board members have aswb-members@yahoogroups.com. Not a member? Let us know, and we’ll get you connected! Email us at info@aswb.org and we’ll plug you in.
A summary of the work of the ASWB Board of Directors at its January 26, 2012 meeting

The Association of Social Work Boards (ASWB) Board of Directors met in-person on Thursday, January 26 at the Hyatt Regency Sarasota in Sarasota, FL, preceding the 2012 Federation of Associations of Regulatory Boards (FARB) Forum. Following is a recap of the activities of the board at those meetings.

**Financial report:** Board members reviewed financial statements through November 30, 2011.

**2012 budget amendment:** Board members approved an amendment to the 2012 ASWB budget to reflect costs involved with two in-person meetings of the ASWB Approved Continuing Education (ACE) Committee.

**Committee appointments:** Board members reviewed the current status of committee appointments.

**Committee charges:** Board members reviewed and approved charges for all association committees.

**2011 annual meeting evaluations:** Board members reviewed evaluations of the 2011 annual meeting and discussed ways in which the voting process could be conducted more efficiently.

**Administrators Forum:** Board members reviewed a report on the Administrators Forum program held at the ASWB Annual Meeting, and approved the tentative agenda for the spring 2012 Forum.

**Examination program reports:** Board members received reports on test administration, testing program transition to Pearson VUE, score reporting, study guides/practice examinations, and activities related to individual jurisdictions.

**Association office report:** Board members received reports on personnel, equipment, ACE, the Social Work Registry, Massachusetts applications, CE audits, the Public Protection Database, and other products, as well as reports on visits to individual jurisdictions and involvement with and activities of other groups.

**Amicus brief:** Board members voted in favor of ASWB’s participation in the filing of an amicus brief in support of an appeal of the Federal Trade Commission decision regarding the North Carolina
Board of Dental Examiners.

**Changes to ASWB personnel policies:** The Board approved amendments to personnel policies approved in November 2011 related to the conduct of credit checks on employees.

**Upcoming meetings:** Board members discussed outreach, attendance, and participation in other social work, regulatory, and testing groups. Board members also approved tentative future sites for ASWB meetings (Springfield, IL – Fall 2012; Texas – Spring 2013; Tennessee—Fall 2013).
What in the world are social workers doing?

As we all know, the world continues to get smaller. Nearly every day, we are reminded of the ways in which we are all connected, and the ways in which we can learn from one another. The strategic plan adopted by the Association of Social Work Boards in 2010 recognizes this fact, and challenges the association to begin thinking about the role we can play beyond North America. It is a role that involves collaboration, listening, and sharing—not dictating how things “should” be done. As the importance of social work, and social work regulation, continues to be recognized all over the world, ASWB is provided with opportunities to engage in cooperative experiences that benefit regulators here as well as in other countries.

Recently, I spent a week with members of the Korean Association of Social Workers (KASW). I am impressed by their commitment and hard work, and I am especially appreciative of their generous and gracious hospitality. My thanks to Dr. Sung-Chul Cho, President of KASW and Ms. Soojung Kim, Manager, Department of International Relations for their warm welcome and attention to our comfort.

Our colleagues in South Korea are leading the way in global outreach and cooperation in the social work profession. For 11 years the KASW has

From the staff

By Donna DeAngelis, LICSW, ACSW
ASWB Executive Director

Donna DeAngelis, second row, fifth from the left, was one of the featured speakers at a meeting of the Korean Association of Social Workers held recently in Seoul. She was joined by speakers from Australia and Thailand.
conducted a Social Work Overseas Training Program through which hundreds of Korean social workers have exchanged knowledge and experiences with social workers in Australia, Canada, France, Germany, Japan, Sweden, Thailand, Taiwan, the United Kingdom, and the United States of America. One of the exchange teams under this program visited the Association of Social Work Boards (ASWB) office in Culpeper, Virginia in 2008. We had an excellent discussion of how social work is regulated in each country and we provided information about the ASWB examination program. Further contact was established during an eight-month stay in the U.S. of Ms. Soojung Kim, Manager, Department of International Relations, at KASW, who spent an afternoon at the ASWB office and where the social work licensing systems in Canada and the U.S. were discussed and resource materials were provided. She also joined us for an ASWB New Board Member Training session, and sat in on portions of our Item Writer Training program.

As a result of this collaboration I had the pleasure of attending the Conference for Learning and Sharing that commemorated the 2011 Overseas Training for Social Workers Project in Seoul, and the privilege of being invited to speak on “Enhancing the Global Competency of Social Workers,” my remarks on which are included with this column. Joining me as guest speakers were Dr. Bob Lonne, Professor from Queensland University of Technology whose topic was “Building Social Workers’ Cultural Competency: The Australian Experience,” and Dr. Decha Sungkawan, from Thammasat University in Bangkok, who spoke on “International Activities and Cooperations of Social Workers with the United Nations and Other Countries.”

We spent another day in a seminar with KASW leadership and staff discussing the ways the social work profession is regulated in each of the four countries. The three of us who gave presentations at the conference were joined by Dr. Myung Hun (Mathew) Kim who provided a presentation on “Social Work Education and License System in Korea.” Dr. Lonne presented “State Regulation of Social Work: A Cautionary Tale?” about the new national system of licensure in Australia (this issue of association news includes a story on this system), and “Development of the Framework for Social Work Education and Practice in Thailand” was presented by Dr. Sungkawan. I gave a presentation on “Licensing for Public Protection.” It was a very productive day to increase understanding of the similarities and differences of the regulatory systems as well as to think about the pros and cons of each.

This type of information exchange enhances cultural understanding and enriches our work at home. Following is a transcript of my presentation in Seoul.

**Enhancing the Global Competency of Social Workers**

I am honored to be among my Korean colleagues. It is a privilege to be invited to speak to you. I bring greetings from social workers in the United States and from the people with whom I work.

I congratulate the Korean Association of Social Workers on
its social work overseas training project. For over ten years you have been reaching out around the world. Your success has resulted in shared social work knowledge. Your success has fostered cross-cultural understanding and lasting relationships. I am here now because of the relationships that I made with some of you when you visited my country.

Social work is a relatively young profession – only a little over 100 years old. During those years social work has developed an extensive body of knowledge and a code of ethics and values to guide our work. Over the years social work has grown. You have over 400,000 members in your association. There are over 411,000 licensed social workers and over 500,000 practicing social workers in Canada and the U.S. The number of social workers is growing in countries around the world. In the U.S. social work is ranked as one of the top 10 growing professions.

There are 727 accredited social work education programs in the U.S.: 427 BSW and 213 MSW. The International Association of Schools of Social Work had 51 members in 1928 when it was founded. Today it has over 230 members from 43 countries. The International Federation of Social Workers (IFSW) has 80 national social work organization members and over 1,000 “Friends.” Over 2,000 social workers attended its 2009 biennial conference in Hong Kong. IFSW has a representative with an office at the United Nations.

We have the numbers. We have the power. But keep in mind that when we use that power individually and on behalf of individuals one at a time, it is only potential power. That is where we as social workers need to concentrate our thinking and our efforts. Together, we can make that potential power into huge change in a world that is badly in need of it. When united and organized our professional members can be a powerful force for change. We need to be mindful of this and build on it.

Social work is a noble and honorable profession. To most of us it is not just a job, it is a passion. Social workers are dedicated to improving the circumstances of vulnerable people and to improving society as a whole. There are many practice areas within social work – administration, advocacy, child welfare, community organization, health care, mental health, education/teaching, school social work policy, and research – to name a few. This is our strength, but it is also our weakness as a profession. The variety of practice areas often makes it difficult for the public and other policymakers to understand what it is we do and therefore the value of what we do.

The data that my association has collected over several decades consistently show that most social workers in Canada
and the U.S. work directly with individuals and families. In the U.S. social workers comprise the largest number of professionals who provide mental health services. Social workers work with families, people who are disabled, people who are dying, people with chronic illness. Social workers work to prevent domestic abuse and child abuse and help the families where these things are occurring.

I started my social work career in direct practice. I first worked to provide financial assistance to people who were in need. I then worked in child welfare services, residential treatment for adolescents with emotional and behavioral challenges, and family services. Even after I began to work in policy and administration I maintained a private mental health practice. I think that even though social work has many facets in which we may specialize, it is one profession. While we are working in direct practice with individuals and families we can also advocate for our clients’ needs. We can work for policy changes we see are needed, and do research. While we are working in policy, administration, community organization and research, we can keep in mind the needs of the individuals and families that are ultimately affected and served by our efforts. What we focus our work on within the profession need not be an “either or” choice.

In my experience I have found more similarities than differences among social work in different countries. It seems that in most countries -- it is certainly my observation in the U.S. -- many of the people who have power and money get more power and money while the people who do not have any money or power get exploited to benefit the rich and powerful. For example, in the U.S. the share of wealth held by the richest fifth (top 20 percent) of American households is 87.2 percent, while the remaining four-fifths held onto just 12.8 percent of all wealth. And, to illustrate this even more, 20 percent of U.S. households have zero or negative net worth (Source: Wolff (2010)). Social workers are among the few who work with vulnerable populations. Social workers see the strengths and contributions of people from a different perspective. Social workers help people use their strengths to meet the challenges in their lives. And social workers fight to change the systems that oppress people.

Social workers also use their skills to address the causes of social injustice and inequity. We have the power and we have the numbers to make that power heard. In the U.S. six social workers are elected members of the Federal congress and 69 social workers are elected to state legislatures. Social workers are politically active. We vote and we organize others to vote, and we demonstrate in marches and rallies. I have participated in many marches over the years, starting with the fight for civil rights in the U.S. Now it has become even easier for social workers to organize and to bring the effects of injustice to the
media. We have cell phone cameras, the Internet, YouTube, and social networking sites.

Because social workers have power and work with vulnerable people, we also have the responsibility to practice with a firm foundation of knowledge, practice within our areas of competency, and hold ourselves to the highest professional ethical standards. With power comes the power to harm as well as to help. We must hold ourselves and our colleagues to high standards.

I have found that there is an assumption among many in our profession that all social workers are competent, adhere to social work values, and uphold social work ethics. I have talked with many social workers who are shocked that other social workers would ever do anything harmful to their clients. Well, it really shouldn’t be surprising. Social workers are human beings first, and as human beings we have the same proportion of challenges as other people. Among our colleagues are people who have physical and mental problems. There are social workers who are dishonest and who put their own needs above the needs of their clients. It happens. When it does there must be a method for investigation and adjudicating complaints against social workers.

The Association of Social Work Boards maintains a database of disciplinary actions taken by regulatory boards in the U.S. and Canada. Currently there are 6,271 disciplinary actions taken against 4,537 social workers. One year ago I visited a social work board and observed the board deliberate a very difficult case. The complaint proved that the professional involved misrepresented himself as a psychologist. It was also shown that he used treatment methods that were not based in professional knowledge. He was found guilty of violating his client’s confidentiality. Upon further investigation, it was found that he had lied on his licensing application. He denied that he previously held a license in another profession. He was a lawyer who lost his license when he was convicted of fraud. He went on to find another profession to misuse. The board suspended his license and ordered him to enter an intensive treatment program. The regulatory system worked, but not before he harmed clients.

In another example the social work board found a social work educator guilty of serious ethical violations involving confusion of roles and boundaries. The board suspended her license, ordered her to receive mental health services, and fined her several thousand dollars. Instead of complying, she left the state and got a faculty position in a state that didn’t require social work educators to be licensed. After a few years the state changed its licensing law. Social work educators were now required to be licensed. Rather than apply for a license in that state, the person who was originally disciplined moved again. She is now in a third where she is teaching in a social work education program.
and presenting at educational conferences.

Malpractice and unethical practice do occur. We must be accountable for our practice and we must hold our colleagues accountable for their practice. In some places this is done through our professional associations. In other places, it is done through government agencies. Whatever system is used, it is imperative that there be a method for our clients to report harm by a social worker. At the IFSW conference in 2006 and 2010, there were meetings of social workers from different countries involved in the regulation of the profession. There were sessions about social work regulation at the meetings. It is a growing trend to regulate the profession and regulation adds to social work’s legitimacy as an important profession.

Whatever our practice areas I think that we have a responsibility to our profession and to the general society as well as to our clients. We have power and responsibility to work for social justice and peace. We have power and responsibility to provide leadership to our profession and to our society. We can start with ourselves and the values we hold. We can perform our social work practice according to the knowledge, values and ethics of the profession. We can actively participate in society and make our voices heard for social justice. We can vote, and we can run for elected office to provide leadership to society in general. We have the power and the responsibility to use it.

I am thankful to be a social worker. When I read about social workers in the news or see them on television or the Internet, I am grateful to have you among my colleagues who make a difference. And I am very grateful to have the opportunity to visit your country, meet more of my Korean colleagues and speak at your conference. Thank you for inviting me. Thank you for what you do to make this world a better place. Remember that you hold great power and responsibility. In unity, social workers can make a difference in a world that needs us.
Often, issues of good moral character are discussed in relation to denial of an initial license application or application for renewal. The laws on these issues vary from jurisdiction to jurisdiction and boards are cautioned to seek legal advice before making ultimate determinations.

Adding complexity to these licensure decisions is the possibility that an applicant may have been (or is currently) licensed in another profession. The loss of licensure or other disciplinary action in the other profession is likely relevant in the assessment of licensure eligibility as a social worker. Indeed, a properly worded application and renewal application for licensure should seek information about the applicant’s status in any other licensed profession in any jurisdiction, and the social work board should be considered to have the legal authority to ask these questions. These questions should of course address criminal convictions, which brings up the issue of expungement of past convictions. All of these interesting and complex issues have been addressed in this recent case from Kansas.

An individual was licensed as an attorney in Kansas in 1973. In 2003, the attorney was criminally convicted of stealing money and committing perjury when dealing with investigators. He served a prison sentence, was released, and eventually had his criminal conviction expunged in 2009. In 2003, the Kansas Supreme Court disbarred the attorney based upon the criminal convictions. In Kansas, disbarment proceedings cannot be expunged.

After release from prison, the now former attorney (referred to as “Applicant”) took education classes with an eye toward a career in public education. In 2009, the Applicant applied to the State Board of Education (State Board) for an emergency substitute and conditional teacher’s license. Based upon the felony convictions, his application was denied by the State Board. This decision was appealed and the circuit court remanded the matter to the State Board for additional review, taking into consideration any evidence of rehabilitation by the
Applicant. After further review, the application was again denied.

The Applicant again appealed the denial. The State Board’s denial was affirmed by the circuit court, which ruled that the record supported the decision and that nothing in the record indicated that the State Board acted in an arbitrary or capricious manner.

The Applicant then appealed the matter to an appellate court, arguing that the State Board misapplied the relevant statute by reviewing background information (including the criminal conviction) older than the five year period set forth in the law. The Applicant also argued that the State Board violated his rights by taking into consideration the criminal conviction that had been expunged. Finally, the Applicant also argued that the decision was arbitrary and capricious and not supported by substantial evidence.

Before addressing the merits of the arguments of the Applicant, the court noted that the State Board treated the application as a petition for reinstatement, rather than as an application for a new license. In spite of the fact that the Applicant had never been licensed as a teacher, the State Board reasoned that “teachers and school administrators are professions afforded similar rights, responsibilities, and privileges accorded other legally recognized professions, and since [Applicant] had been disbarred from another profession, i.e. the practice of law, than this case is equivalent to having had a teaching license revoked and the applicant is now seeking reinstatement.” Both the circuit and appellate courts found no legal fault in such reasoning.

Addressing the State Board review of his criminal history, the court cited the statute which states that the board has the authority to determine rehabilitation for a period “at least five years from the date of the conviction or commission of the act” when considering whether a license will be reinstated. Rejecting the argument of the Applicant, the court held that the statute allows for review of one’s history beyond a five year window.

More importantly, the court agreed with the State Board that the regulations, rather than the statute, contain the language that truly decides the issue. The regulations state that the State Board may deny a teaching license for misconduct or other just cause, including conviction of any crime punishable as a felony, and allow the State Board to engage in an analysis of the rehabilitation efforts of persons seeking reinstatement of a license. The court held that a five year rehabilitation effort does not automatically signify that an applicant is fit to teach, and found no evidence that the State Board had misinterpreted the statute or misapplied the regulations. Accordingly, the court held that the State Board appropriately applied the statute and regulations in its denial.

The Applicant next argued that, under Kansas law, the expungement of his criminal convictions requires that he be treated as if he had not been arrested or convicted. He also argued that the expungement relieves him of the need to disclose the convictions on his application for a teaching license.

The court first noted that the expungement took place after his application was placed on file. It also emphasized that the State Board
made it clear that the application for licensure was being denied not because the Applicant was a convicted felon, but because of the nature and seriousness of the underlying conduct and that such conduct resulted in his disbarment. Finally, the court noted that disbarment proceedings are not subject to being expunged and that the details of the Applicant’s activities could be read in the Supreme Court’s disbarment proceedings. Thus, the court found no violation of the expungement laws.

The court also provided a detailed analysis of the evidence used to support the application denial and the fact that the State Board decision was neither arbitrary nor capricious, and upheld the licensure denial of the Applicant. While sympathetic to the Applicant who has served his prison time, paid his restitution, taken and performed well in education classes which otherwise qualify him to teach, and produced multiple recommendations from reputable people, the court found that the State Board nonetheless has the responsibility to assess applicants for licensure and ultimately determine eligibility. In the words of the court, “it is the judgment of the State Board of Education that matters when determining who is fit to teach in Kansas, not the courts. That is the public trust placed on the Board.”

Boards of Social Work must be aware of and request relevant information from applicants seeking licensure. Applicants for licensure may not only have been previously licensed as a social worker in another jurisdiction, but may also have been licensed in another profession, and may have received convictions or other actions that are subject to expungement. Boards are encouraged to ask the status of all other licenses held by its applicants for licensure and renewal.


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).
Association Asides

There are even more new administrators than the last issue of association news listed. Two others are PETER COMART of Vermont (happily, DIANNE LEFAILLE is still on board as a Licensing Board Specialist), and THOMAS HAWK in Kansas. TOM replaced PHYLLIS GILMORE, who moved to a new position.

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EVELYN BROWN, longtime administrator in Virginia and recent recipient of the ASWB Outstanding Administrator award, received a great sendoff down in Richmond recently. ASWB staff members DWIGHT HYMANS and DONNA DEANGELIS made the trip down for the festivities. And there were even party favors: every attendee received a cd containing a collection of songs that are favorites of EVELYN. Turns out EVELYN has some pretty wide ranging tastes, from Johnny Cash to Gnarls Barkley to Nancy Sinatra (the unquestionably awesome “These Boots Are Made for Walkin’”). Plus, the cd included the Official Board Administrator Theme Song: “I Will Survive.”

*****

BYNIA REED-CLARK of Maryland, former Exam Committee co-chair, came to help out at an exam form approval/practice test meeting in January. BYNIA was as bright and helpful as ever, but she was anxious to finish up – her new baby is obviously a top priority, and motherhood agrees with her.

*****

YouTube has a very nice video about DOUG MITCHELL of Arizona, who was the state NASW’s Social Worker of the Year in 2009. DOUG, who is on the Board of Behavioral Health Examiners and who has been to past ASWB meetings, says during the video that he developed an interest in the profession in the military – observing treatment by various professionals, he found that the social workers were “most successful” with patient outcomes.
The adventures of BLUE BEAR from Elkhorn, NE, have included quite a few ASWB people. BLUE BEAR is a stuffed teddy bear, brought by past president and Nebraskan AMANDA RANDALL to the fall meeting in Oklahoma and handed off to Director at Large ALISON MACDONALD to take to Edmonton. The bear is a geography project of Elkhorn Ridge Middle School in Nebraska, and the plan was for him to travel with various people here and there (no mailing allowed, returning post cards and locations to the school. With him (okay, could be her, but looks like a him) went a little map to fill in, and a diary to record destinations. What group better to get in some far-flung locations than ASWB?

ALISON took BLUE BEAR to Calgary just for the trip, and then sent him with a friend to England; the friend, CAROL HUGHES, took him along to Cyprus. He returned to Edmonton, and then ALISON took him to Reston, VA, for the ACE Committee meeting. There he and his souvenirs set out traveling by canvas bag to Culpeper with Meeting Planner JENNIFER HOFFMAN. He’s making himself at home until AMANDA comes for the exam committee meeting, when he can go back to Nebraska, pretty much in keeping with the April 1 date the class had set for him.

*****

At that same meeting, JULIE NIVEN mentioned how nice it is to be included in some of these gatherings of social workers who have the unique experiences that exam participation brings. JULIE, who has gone from Alaska to Texas to Virginia as an item writer and exam committee member, says she loves her job with the Veterans Administration in spite of (or maybe because of) the many moves.

*****

The annual King Cake came to the association office early this year from ANN MCALLISTER of Louisiana. Well, ANN is sort of from Louisiana, but also sort of from North Carolina. But as long as the King Cakes keep coming, the staff thinks Louisiana can claim her. And should want to.

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The chair of the Approved Continuing Education (ACE) Committee for the past couple of years, ELAINE HALSALL of British Columbia, had found herself a bit too busy to continue as chair, but willingly returned as a member when she was appealed to because her experience was needed. RICHARD HAZEL, of Saskatchewan, found himself in the same situation when he agreed to continue serving on the Regulation and Standards (RAS) Committee after doing a two year stint as chair of that group.
Attendees at the Federation of Associations of Regulatory Boards (FARB) in Florida at the end of the year included LISA LIPSEY, treasurer of the Louisiana State Board of Social Work Examiners. ASWB Board of Directors member ALISON MACDONALD of Alberta made it there, but with a heavily bandaged wrist. Combining dog-walking with icy Alberta weather can do that to a person. ALISON has three pooches, all rescues.

Also stopping by the FARB meeting—the person who put the “Atkinson” in “Atkinson and Atkinson”, JACK. For those who may not remember, JACK was the longstanding legal counsel for ASWB, and father of DALE—but we won’t hold that against him.

Item writing consultant DAN WHEELAN and his wife GRACE have been vacationing in the Virgin Islands. He sent greetings to the office from Anegada – oddly, he said, everyone they’ve met there seems to be from either Virginia or Norway. And talk about traveling. There’s barely any keeping up with former ASWB President ROGER KRYZANEK and wife PAM. Within the last six months there have been two trips to Hawaii, another to Vegas, then down to Arizona. Poor guy.

Executive Director DONNA DEANGELIS just paid a visit to Wayne State University in Detroit, at the invitation of ANWAR NAJOR-DURACK, a Michigan board member who is now chair of the ACE Committee.

Good news from DALE SMITH, former Kentucky board member and ASWB committee chair. DALE emailed that “SAUNDRA (STARKS, long-time secretary of ASWB and former Kentucky board member) and I are smiling today” because the Kentucky house passed a first-ever mandatory licensing bill” that will do away with many exemptions. DALE said he had been pushing the idea for 15 years, and SAUNDRA even longer. When the news came to the association office, the bill still had to pass the senate.

And speaking of Kentucky, lots of excitement there about the spring ASWB visit. There is a rumor JANICE JAMES (board member and chair of the Program and Education Committee) still hasn’t taken off the blue horse hat.

ASWB exam question writers have always the most unique people in the world, and long-time writer GREG WINKLER has extra talents to bring as he joins the Examination Committee this year. GREG sings contemporary folk and pop, accompanying himself on guitar, and is really easy to listen to. You can give him a try at www.gregwinkler.com.

Alaska board member JEN SYZDEK came to the recent Board Member Training in Reston, bringing her infant son, KOLBE. But they flew only to Pittsburgh, where JEN joined forces with her mom to drive
the rest of the way, bringing a happy grandmother to babysit during the meeting. From there, it was on to Virginia Beach for a visit with KOLBE’s great grandmother.