



## To discipline or not?

*You are entitled to your opinion. But you are not entitled to your own facts.*

— Daniel Patrick Moynihan

Regulatory boards have a vital mission of ensuring that the public is protected from unsafe or incompetent practitioners. Those appointed to serve and those engaged as staff uphold the mission of the boards, sometimes with unpleasant consequences as two of the following cases demonstrate. In counterpoint, the last case, presented by Idaho Board of Social Work Examiners member Robert Payne, provides an example of a board discerning that the complaint does not merit board action.

Other presenters for this session of ASWB's 2014 Spring Education Meeting were Margaret Hazlette, executive director, Kentucky Board of Social Work, and Richard Ferriss, ethics director, North

Carolina Social Work Certification and Licensure Board. The panel was moderated by Richard Silver, legal counsel, Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec, board staff member of the ASWB Board of Directors, and board liaison to the Program and Education Committee. Below, the facts of the cases are outlined as well as disposition and lessons learned. A link to the presentation follows each case synopsis.

**Case 1 Synopsis:** The Commonwealth of Kentucky protects both social work title and practice. Applicants for licensure are permitted to apply for a temporary permit if all qualifications are met except



Margaret Hazlette, executive director, Kentucky Board of Social Work; Richard Ferriss, ethics director, North Carolina Social Work Certification & Licensure Board; and Robert Payne, Idaho Board of Social Work Examiners, presented complex disciplinary cases.

passing the exam. In this case, the applicant received a temporary permit, which expired, and the applicant continued to provide services. The Kentucky board denied license application of applicant, based on finding that applicant was practicing social work without a license. Applicant appealed board decision, filing against board and board staff.

*Outcome:* The court upheld the applicant's appeal, finding that the board acted capriciously and outside its authority. In the court's opinion, the applicant was not at fault because she did not represent herself as a social worker during the time she was working but not licensed. The court finds also that board staff made the decision, not the Kentucky board, potentially making board staff personally liable. (Board attorney later got court to clarify opinion that Kentucky board, and not board staff, made the decision, thus protecting the board staff member from liability.)

*Lessons learned:* The Kentucky board holds face-to-face meetings with licensure applicants in all cases where questions arise about the application or temporary permit; the board notifies applicant and supervisor when a temporary permit expires; applicant packets prepared for board review are checked for work product, since staff do not have immunity.

<http://www.aswb.org/wp-content/uploads/2014/05/ASWB-Eversman-v-Kentucky-Board-of-Social-Work-final.pdf>

**Case 2 Synopsis:** Over a period of five years, the North Carolina board received multiple complaints about a social worker. Investigation of the first complaint (received in

2006) found that the social worker was operating a clinic where billing was incorrect, supervision was lacking, and boundary violations occurred. A consent order is agreed to, with a stayed suspension of two years, clinical and administrative supervision, and continuing education in boundaries.

Four additional complaints are filed during social worker's suspension, one of which is signed. Investigation of the signed complaint finds evidence of violations. Social worker fails to respond timely to the board's request for a response to the complaint. Board issues a Show Cause Notice of Hearing and proposed consent order. Over the next three years, the board grants multiple continuances and responds to interrogatories. The board's investigator is deposed for six hours in a contentious manner. During the hearing (2011), investigator's record deficits were reviewed in an acrimonious exchange with the social worker's counsel, the social worker's supervisor testified to social worker's compliance with first consent order, no evidence was found to substantiate other complaints (except for delay in response to request for documents following signed complaint).

*Outcome:* The board issued a nondisciplinary letter of concern and reinstated the social worker's license.

*Observations:* The passage of time and the supervisor's positive report of social worker's compliance determined the outcome of the case rather than the accumulation of complaints. Board turnover meant a loss of continuity and unfamiliarity with the collective interpretive

history of the case. Training of investigators and board members is necessary to equip them with skills to deal with aggressive counsel.

<http://www.aswb.org/wp-content/uploads/2014/05/Ethics-Case.pdf>

**Case 3 Synopsis:** The Idaho board received a complaint that a social worker was accessing pornographic websites during work hours.

Investigation found evidence to support allegations but found no clients were involved or affected by the activity. Social worker admitted the allegations. Social worker was fired for cause by employer.

*Outcome:* Case dismissed; no statutes were violated.

*Board considerations:* Was disciplinary action warranted based on moral turpitude or unprofessional conduct? Was the employer the client and thus defrauded? (Did employee "steal" time and resources from employer for non-work-related activity?) Was the social worker's behavior evaluated as an employee or a professional? (An employee conduct issue would not be board business.)

<http://www.aswb.org/wp-content/uploads/2014/05/Case-SWO-000.pdf>

These cases formed the second half of the session "Disaster Preparedness: Weathering the Disciplinary Storm." Each presentation shows that even when "doing good," members and staff of regulatory boards can be challenged by the work of public protection. In addition to the presentations referenced above, DVDs of the Spring Education Meeting can be ordered at no cost. Send your request to [info@aswb.org](mailto:info@aswb.org).