



“The Good, the Bad, and the Ugly” of North American disciplinary cases

How to process complaints to avoid disaster

What can go wrong? If you need to ask, you're not prepared. In the Spring Education Meeting session titled “Disaster Preparedness: Weathering the Disciplinary Storm,” copresenters Dale Atkinson, ASWB legal counsel, and Richard Steinecke, senior partner, Steinecke Maciura LeBlanc of Toronto, provided complementary perspectives of North American regulatory practice to help attendees be better

prepared to process complaints.

Disciplinary procedures in the United States and Canada have many similarities as well as a number of differences. Atkinson and Steinecke shared the stage to thoroughly review:

- The complaint process and various approaches to investigating and prosecuting administrative matters
- The various approaches to administrative/disciplinary prosecutions and dispositions of complaints

Each agenda topic was illustrated with a scenario to provide a basis for legal and practical issue recognition, a legal analysis, relevant cases, and audience participation. In essence, the session walked through the various stages and considerations of the complaint process.

Terminology and language differences from jurisdiction to jurisdiction was the first topic of discussion. Covered were the terms that define the structure of the regulatory bodies, the committees who serve them, and the types of licenses issued.

The subject of how to submit **complaints** raises many



Dale Atkinson, ASWB legal counsel, and attorney Richard Steinecke of Toronto, Ontario, shared the stage to present examples of disciplinary cases across North America. On screen, Richard Silver, legal counsel for the Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec, served as moderator.

provocative questions that boards must answer according to their jurisdiction's regulations. The one that must be addressed from the start: Who can be regulated? Also: What are the issues raised in a complaint? What are the next steps and who makes initial decisions? What are the roles and responsibilities of staff, the agency, and the social worker against whom the complaint is lodged?

Regulators must next determine if a complaint meets the criteria for further investigation, so **probable cause** becomes a springboard in the complaint process. Before probable cause can be considered, however, the board must decide whether a given complaint is subject to the board's authority and, if so, how to proceed with initiating an investigation. Other questions include: Is alternative dispute resolution available? What information is public?

Who handles an **investigation** is vital. Investigators must follow guidelines or they will be held responsible. They are not qualified for immunity if they do not work

within the scope. Among the questions that must be addressed are: Is the investigator experienced in social work practice? What evidence is needed? What variables can affect an investigation? What if a licensee refuses to cooperate?

When does a complaint grow to become a **formal charge**? Obviously, this is a major decision in the process, and all the pieces must have been gathered appropriately. Are there alternatives to a formal charge? How are formal charges written? What constitutes grounds for discipline? This is one of the most serious and intensive actions of a jurisdictional body.

Following the formal charge is the **hearing**, where the licensee stands before the board. A career and professional future are on the line, and boards should be well versed in how to orchestrate a hearing, including knowing the parties of a hearing, what kind of process is used to adjudicate a matter not previously settled, who makes the final determinations as to administrative guilt or exoneration, what procedural rules

apply, who presides, and what reasons for a decision are required.

The board or a panel writes the **final orders**, with explanations. Crucial to know are: What sanction options are available? What are mitigating circumstances? What are the elements of a final order/decision and the reason? What information is public? Can costs be imposed on the board/regulator?

Appeals of a final order can take many twists and turns, and boards need to be aware of the common themes on appeal, who has the right to appeal, what are some of the judicial reversals/remands based on, what are the possible financial implications to the board, and what information is public?

By session's end, many jurisdictional differences were noted, but the general, essential principles that apply to social work regulation were consistent throughout. The PowerPoint presentation can be accessed [here](#). DVDs of the Spring Education Meeting can be ordered at no cost. Send your request to info@aswb.org.