The great basketball coach John Wooden once said it all: “Discipline yourself, and others won’t need to.” Eager faces and bright regulatory minds filled the room as ASWB studied the complex subject of Discipline at its Spring Education Meeting in St. Louis on May 8-11—and it was a great time together! It struck me that regulators face discipline on two dimensions: external discipline and internal discipline.

- **External Discipline.** Regulators impose discipline on licensees by crafting rules and policies that help guide professional behavior. Regulators, furthermore, must know and honor the law and rules as they consider cases of alleged misconduct by licensees. It is the regulators’ role to make what are often tough calls about the appropriate discipline to mete out to licensees who violate the law and the rules.
  - Discipline may be corrective in nature, to help return the licensee to fitness for practice.
  - It may be protective in nature, to spare the public further exposure to licensees who behave badly.

- **Internal Discipline.** Regulators must discipline themselves—never an easy task—to keep current on the law, control their responses, and focus on their mission of public protection.
  - They must set aside their assumptions and personal preferences, delaying judgment until they know and consider the facts.
  - Regulators must be fair, even-handed, and objective. They must know the dividing line between discipline and meanness, or even cruelty.
  - They must be both cautious and courageous. Above all, regulators must be wise.

Viewing these dimensions together, we see that discipline is the Gift That Keeps on Giving. It builds mental toughness and discernment; it makes us more civil and fair toward each other; it shapes high standards; it protects us from the debilitating fear that keeps us from acting courageously. Discussing discipline—knowing what you need to do and doing it the best you can—inspired me to continue...
striving for discipline in both my professional and my personal life.

Congratulations to all the planners, presenters, and participants for creating a thought-provoking, engaging program on discipline—even though we usually kiss discipline good-bye during our food breaks! Next spring we will also be in for a treat, as the ASWB 2015 Education Meeting unfolds in beautiful Seattle! It will be guided by the Regulatory Education and Leadership (REAL) Committee.

So, you may ask, what’s up with this REAL Committee? The REAL Committee is the new incarnation of the traditional Program and Education Committee. In keeping with its new name, this group takes another step toward ensuring that ASWB will achieve its 2014-2018 Strategic Plan to educate the profession and the public about the mission and work of ASWB—starting with our own members. The REAL Committee will consider how best to use our meetings and training efforts to reveal what I think is the best-kept secret in the social work profession: ASWB! Many social workers are unaware of what ASWB does and the world of information and insight ASWB has to offer—and REAL wants to help broadcast our wonderful little secret! So, as we did in St. Louis, we will invite Seattle area educators to a session, because we really want to reach out to educators and inform them about licensure.

The REAL Committee will ensure that participants have several opportunities to break out of larger sessions to participate in conversations and respond to the presentation topics. An exciting addition to the Spring Education Meeting is the formation of a Regulatory Board Member Forum. This forum will be a companion to the ASWB Administrators Forum. The 2015 Spring Education Meeting will end on Saturday evening, so that folks can return home and begin work on Monday in a more relaxed frame of mind.

Eventually, REAL will likely become more involved with all of ASWB’s educational efforts, such as New Board Member Training. The Board of Directors is discussing how ASWB can create a terrific ASWB Leadership Academy that will do regulatory training on a number of topics, such as Advanced Regulatory Board Member Training. Our Spring Education Meeting is the cornerstone of that larger effort.

These are exciting opportunities for our regulatory community! Please welcome the members of the 2014-15 Regulatory Education and Leadership Committee, led by Fran Franklin of Delaware, and including Nick Smiar, Wisconsin; Glenda McDonald, Ontario; Deanna Morrow, North Carolina; and Anna Lynn Whitt, Mississippi. They are already “pumped” about developing a thought-provoking, fun meeting in Seattle. You don’t have to wait until next spring, however, to benefit from the camaraderie of ASWB—we will be rockin’ out next to the Rocky Mountains in Boise, Idaho, when we celebrate our 35th Anniversary!

I hope to see all of you, along with your horses, elk, boats, covered wagons, and keys to the Old Idaho Penitentiary in November. Yee-haw!
If a group of social work regulators got together to talk about their profession and how serving as regulators has flamed the passion innate in their desire to be social workers, it would probably look like the opening session of ASWB’s Spring Education Meeting, held in St. Louis in May. Four social workers representing differing lengths of service and different disciplines within the social work profession sat down for a “fireside chat” to explore the topic “The Passion of the Profession Meets the Paradigm of Regulation.” The panel’s years of experience ranged from 10 for Merri-Lee Hanson of New Brunswick to 40 years for M. Jenise Comer of Missouri. Other panelists were Lynnet Kase of Idaho (13 years) and Sandra Barlow of Florida (30 years).

The panel was moderated by Program and Education Committee member Anna Lyn Whitt of Mississippi, who has worked for 15 years as a social worker and since 2008 as a regulator. During the discussion that followed, Whitt’s questions gave panelists a platform for sharing what they were most passionate about both in their professional roles as social workers and in their roles as regulators. At the same time, Whitt underscored the inherent frustration social workers who become regulators experience when faced with the “rigid, legalistic” parameters that statutes and rules—the “paradigm” of regulation—force them to work within. Nevertheless, everyone on the panel valued their experience as regulators, because it allowed them to reconnect with their profession and ultimately, they all agreed, be better social workers.

Sandra Barlow, an independent clinical social worker who works primarily with children and chair of the Florida regulatory board, has come to understand that the work social workers do is more than one lifespan; it’s intergenerational. “If we can effect a positive difference for one family or one person, then...
that positive difference carries into the future indefinitely,” she said. “I want to be sure that I do it in an ethical, moral, and good way, a helpful way.” Her work as a social work supervisor has been strengthened by her service as a regulator. “Regulation has clarified how to define and do this work in the way it needs to be done to protect the public and the way that provides good services,” she said. Barlow’s best piece of advice: “We are social workers and regulators at the same time, and I think my advice would be to be mindful ... and thoughtful about the passion and the protection and the profession.”

**M. Jenise Comer**, ASWB secretary and chair of the Missouri board, works at the University of Central Missouri, where she says she “trains baby social workers.” Comer found her passion in studying human behavior, or as her years of self-awareness finally allowed her to admit, “I was just nosy.” What Comer says drives her as a social work educator is helping students grow professionally, “into someone who understands how to implement the knowledge, values, and skills in their work with others.” The most challenging aspect of serving as a regulator is “separating the personal, from the professional, from the regulator,” she said. “You are there to apply the ethics and the law and make tough decisions. I am excited when we can at least stop somebody from doing harm.” Regulation has served two purposes in her professional life: It fueled her desire for lifelong learning and it made her a disciple, dedicated to helping her students become prudent and ethical practitioners. Her advice: “Continue to learn. Every situation is different. There are boundary violations and boundary bendings. Those are those ‘shades of gray’ that are difficult to manage. We just have to continue to do the best that we possibly can.”

As a Canadian regulator from New Brunswick, **Merri-Lee Hanson** has a dual responsibility to promote and regulate the profession. She currently works for the Ministry of Health as a wait-time coordinator. Before that she worked in community mental health in a small town, where she discovered her passion was finding ways to “normalize the human experience,” to reduce the stigma associated with diagnoses of depression and anxiety in a small community. Within her job in government, she said, regulation can be challenging. “It’s tricky when you’re trying to regulate the profession and also promote it.” At the same time, Hanson said, “when you’re so actively involved in pushing forward an item like a scope of practice document and encouraging people to recognize that social work has a broad stroke in what people can do; to me that’s been really exciting to be involved with and has certainly encouraged me as a social worker personally.” Her advice for other regulators: “Remember to be a champion for the profession. Remember that by regulating the profession, we are promoting the profession.”

Like Hanson, **Lynnet Kase**, who works at the Idaho Department of Juvenile Corrections and has served for four years on her board, also believes that regulation has a role in protecting the social work profession in addition to providing public protection. “Regulation helps social workers to be better and stronger, and it increases the reputation of the profession,” she said. Nevertheless, one of the challenges Kase experiences as a regulator is recognizing that the decisions she makes affect her colleagues. But regulation also helps reinvigorate her. “I pay more attention to decisions I make and decisions being made around me,” Kase said. “It reminds me on a daily basis what my role is.” Her passion in her work with adolescents who have gotten in trouble with the law is found in “helping them to establish good value systems so they can grow into happy and healthy adults.” Her advice: “Maintain a passion for the profession. Stay true to the rules, laws, and ethics of the profession. Stay true to the passion of what social work is about.”

This opening session of ASWB’s Spring Education Meeting helped participants connect with each other through shared experiences. The session laid important groundwork in identifying the themes that would repeat throughout the rest of the sessions: the role of regulation as a source of public protection and as a means of strengthening the profession.
Regulation’s secret weapon: passion

What it takes to be an engaged, informed, active, meaningful regulator

This session was a mini-version of a New Board Member Training session hosted by ASWB and facilitated by Dale Atkinson, ASWB legal counsel. At ASWB’s Spring Education Meeting, this presentation was a wake-up call to many of the regulators who had not attended the full training session.

Knowledge, said Atkinson, is what sparks passion. And “it is your passion that fuels regulation and exemplifies the essential public protection mission.” Essential to that idea is for social work board members to take off their social work hat, leave personal agendas at the door, and put on the public protection hat of the regulator.

During the session, Atkinson posed the following key questions:

Why must we become passionate about regulation? Because passion, Atkinson explained, drives action. The public doesn’t step up and ask for more regulation, so it is up to regulators and others to take action, to become better informed to make better decisions so the public can be properly protected.

Is regulation needed? Said Atkinson, “We don’t see an outcry for regulation. We see, instead, push back. ‘Why do we regulate cable TV installers? What the heck is that all about?’ People can make fun of that and attract a little bit of attention. Yet as soon as we have somebody going into your home—you’re in there alone, the person has not been vetted and they’ve been convicted of felonies or what-have-you—well, now we have a whole different perspective, a whole different outlook. That’s why we have regulation. Of course it’s needed.”

What can be done? Regulation is not understood by consumers, licensees, and politicians, he said. Being passionate about regulation is the start of a solution. Using and sharing knowledge about emerging programs can help spread the word. “The ASWB Path to Licensure program is awesome. We need to get the word out to people who are coming into the profession, why there’s a board and how important it can be. And get them to passionately embrace regulation and licensure and why it exists. We cannot lose sight of the public protection mission,” he said.

Throughout the presentation, Atkinson thanked the participants for doing a difficult and often thankless job serving as board regulators, urging them to also passionately embrace roles as leaders in regulation awareness.

To illustrate how varied the world of regulation can be, he asked board members from the United States and Canada to
share information about their particular board and their role in the organization. Topics included board structure, hours spent on board business, policies, how boards conduct business, their constituents, application processing, and qualifications to serve on the boards. Also discussed was the role of the government in the board’s day-to-day business.

Atkinson dove deep into the emotions and commitment behind today’s regulatory needs and initiatives. His 90-minute presentation helped to build the knowledge of the attendees and inspire a heightened passion about regulation and the important role each board member plays.

DVDs of the Spring Education Meeting can be ordered at no cost. Send your request to info@aswb.org. For more information about New Board Member Training, visit http://www.aswb.org/members/board-member-training/.
Respecting diversity

Respecting humanity of all cultures and supporting lasting positive change in our society are the ongoing activities of cultural competency—Janice Sandefur, executive director, NASW-Mississippi chapter, from “Social Work Voices: What Cultural Competency Means to Me”

The personification of Justice as a blindfolded figure has long stood as a symbol of the objectivity of the law and the impartiality of those who administer it. In dispensing discipline, regulatory boards are to apply the law without regard or providing accommodations for cultural differences. Yet respecting diversity and being sensitive to these differences form the heart of social work ideology. “Cultural Competence in Regulation” was the topic of a panel discussion about this issue at ASWB’s 2014 Spring Education Meeting.

Included in the conversation were the voices of social work educators, represented by Darla Spence Coffey, president and CEO of the Council on Social Work Education (CSWE); U.S. practitioners, represented by Angelo McClain, CEO of the National Association of Social Workers (NASW); and Canadian practitioners, represented by Alison MacDonald, executive director and registrar of the Saskatchewan Association of Social Workers. Mary Jo Monahan, ASWB CEO, represented the voices of social work regulators and also served as moderator. During the second half of the two-hour session, attendees added their voices, asking questions and offering comments.

Of particular interest during the discussion was Coffey’s introduction of the phrase “cultural humility,” which in the educational environment is becoming the terminology of choice. The term, Coffey explained, “drives home the point that cultural competency is not an event or a task but a lifelong process. It speaks to the standard where one is an engaged learner of the other.”

Coffey gave an overview of the draft 2015 Educational Policy and Accreditation Standards (EPAS), which include nine competencies and 24 practice behaviors. The two
standards that relate to continuing competency are “engage diversity and differences in practice” and “advance human rights and social and economic justice.” Added to the list of diversity factors in the new EPAS for the first time, Coffey noted, is “tribal sovereign status.” While managing the list of diversity factors defined in the EPAS continues to be a challenge, there is “power and meaning in having it articulated, in having it named,” Coffey said. What is key for students to understand, she continued, is not being expert in any one of the differences but being able to put themselves in a position of learning from others at all times.

Respect for diversity is also expected at the program level, she said, and schools use faculty and student surveys to assess climate issues of inclusiveness, openness, and fair and equitable treatment. Programs develop their own curricula and demonstrate to CSWE how their students achieve the competencies. Coffey concluded by saying that CSWE-accredited programs take very seriously their role as gatekeepers to the profession.

In the practice field, McClain stated, the NASW Code of Ethics and Cultural Competency Standards are broadly embraced, grounded in the values of service, social justice, dignity and worth of the person, the importance of human relationships, integrity, and competence. Additionally, practitioners are enjoined to recognize incompetence of colleagues or practice, be supportive, and take action as needed.

McClain spoke about the need of practitioners to be able to adopt a world view that is accepting of different perspectives. He cited working with African American clients as an example, noting that behaviors described as adaptive when viewed through the Afrocentric perspective could be misunderstood as dysfunctional if interpreted through a Eurocentric lens. Some of the differences include the Afrocentric values of the extended family and flexible family roles, creative problem-solving, exercising economic independence in the face of having nothing, cultural continuity as expressed in storytelling and oral histories, and the importance of spirituality as a source of support, hope, and strength. In concluding his remarks, McClain said: “NASW wants to be a part of the leadership that helps the country achieve racial equity. We know to do that we have to be authentic in our discussion and persistent.”

As the Canadian voice, MacDonald discussed how multiculturalism gained stature in the 1970s, becoming a specific requirement in the standards of practice. She noted that accreditation standards issued by the Canadian Association of Social Work Education include Francophone history and indigenous peoples history. Also unique to Canada are Québec nationalism and the recognition of its “country within country” status. Canadians, she said, celebrate their multiculturalism during heritage days festivities every year.

She shared the regulatory challenges of serving the indigenous peoples in the province of Alberta, where she was associate registrar for 15 years, and the steps taken to address the problem. “Indigenous rights are not as well recognized in Canada,” she
noted in comparison to the U.S., where reservations are sovereign territory, exempt from regulation. In Canada, reservations are under federal jurisdiction but governed by provincial law. In Alberta, indigenous peoples represented five percent of the population but 50% of the children in the child welfare system were from this population. There were not enough social workers with the skills and knowledge to work in the indigenous communities, and social work programs contributed to the problem by passing students who were indigenous but who were not competent to practice.

In 1999, the Social Work Aboriginal Committee was formed to advise the Alberta college on these issues. Working their way across the province, the members sought to understand what was required for providing services to indigenous communities. It took 14 years, MacDonald said, but the committee developed indigenous social work practice standards that included requirements such as being able to work in the language and being educated at the feet of elders.

Complaints regarding the lack of cultural competency still surface, MacDonald said, and regulators must consider culture in the disciplinary process. In Alberta, for example, a complaint against an indigenous social worker was assigned an indigenous investigator. “It is not about having different laws based on culture,” she said, “but on allowing for things like sentencing circles.”

Providing a North American perspective, Monahan discussed the role of cultural competency in the ASWB social work licensing exams. “For the ASWB exam program, cultural competency means more than including questions about diversity on the exam,” she said. “We believe the association itself must demonstrate cultural competency. Cultural competency is not restricted to one section or a few questions on the exam.”

In exam administration, ASWB has taken steps “to ensure that everyone who is taking our exams has the same opportunities to demonstrate their competence and has an equal chance,” said Monahan. Accommodations for disabilities and arrangements for candidates whose first language is not English are available if approved by the jurisdiction where the candidate is applying for licensure and if other qualifications are met. “Our pledge,” said Monahan, “is that exam candidates will have access to a respectful and equitable exam experience.”

The takeaway: Cultural competency has a place in the education and practice of social work. Its position in the world of regulation is gaining ground. And while Justice must be allowed to maintain her objective neutrality, cultural competency can be embraced, Monahan summarized, “by taking into account our own contextual factors” so that as regulators “we acknowledge and monitor our own personal biases, especially in discipline.”
Discipline: don’t do this

How the discipline process can turn terribly wrong—and how to prevent disaster at your board

In part two of the Spring Education Meeting session titled “Disaster Preparedness: Weathering the Disciplinary Storm,” attendees learned what can go wrong in a worst-case scenario when the regulatory board fails to follow its own rules. The facts of the case against the licensee are unarguable. It’s not the case that’s the problem, it’s what the board did—or didn’t do—in its pursuit of public protection that cost it millions.

Tom Reichard, executive director of the Missouri State Committee for Social Workers opened by introducing someone he called “the poster child for discipline gone wrong.” He was referring to Joel A. Poole, chief counsel of the Missouri Attorney General office, who litigated a case against a chiropractor who was disciplined for wrongdoing but whose appeal prevailed in the courts with disastrous results for the board.

Poole recounted the events and decisions that led to a civil judgment in excess of $6 million (nearly $10 million as of 2014) for the plaintiff/chiropractor in the matter of Edwards v. Gerstein, et al. (members of the Missouri Board of Chiropractic Examiners).

Events leading to court action, as summarized by Joel A. Poole

The Board of Chiropractic Examiners learned about this case in 1996 from newspaper reports. A patient seeking treatment from the licensee whom the board later investigated and charged was a member of the Missouri Mennonite community, which had been experiencing an epidemic of hemophilia. The afflicted young man had earlier contracted the HIV virus from a tainted transfusion. Despite counsel from his community against marriage because of his condition, the young man decided to marry his sweetheart.

The couple faced a dilemma: They were warned of the consequences of unprotected sex; however, contraceptives of any kind were against the beliefs of the Mennonites. They chose to break from their belief system and took the advice to practice safe sex.

One day they heard about a chiropractor in Independence, Mo., who had a machine that could cure anything. The machine would reveal the underlying problem, and the chiropractor would sell the appropriate supplements for the cure.

The couple went to see this chiropractor, who took a blood test and began treating the husband with this machine while selling him the supplements. After several months of treatment, they received a call from the chiropractor, who said the husband’s HIV was cured.
The couple decided to then have unprotected sex and start their family. Fourteen months later, in May 1992, their daughter was born. She and the mother tested positive for HIV. In September 1992, the father died of AIDS. This was the story published in the 1996 newspaper.

The board hired a retired FBI director to do a preliminary investigation into the story published in the paper. The result was that the wife and her mother were advised to file citizen complaints against the chiropractor. Investigation into the complaints revealed:

- One of the supposedly electrically charged liquid supplements given to the husband was a mixture of water and gin
- The couple were told by the chiropractor’s wife not to tell anyone that the machine cured AIDS
- The chiropractor set aside one day a week to treat the ailing Mennonite community with his machine and sell them supplements

The retired FBI director reported to the board that there was probable cause to discipline the chiropractor’s license. The board filed a charge for discipline for six counts of violating the rules of professional conduct, fraud, practicing medicine without a license, and other counts.

The chiropractor was found guilty on five of six charges.

Q: So how was this case lost to the tune of millions?

A: Upon an aggressive appeal by Edwards, the board lost the case when it was shown that they did not fulfill a number of their duties outlined below before the official complaint was filed, thus resulting in gross negligence on the part of the board.

These are the seven board duties before an official complaint is filed in Missouri against a chiropractor:

- Conduct a thorough and impartial investigation of the accusation
- Contact the accused and get his/her response
- Request and carefully review the chiropractor’s treatment records
- Request and review other relevant medical records
- Interview all important fact witnesses
- Request and review other relevant documents
- Gather and consider information about the accuser and accuser’s motives

Hear all the details of this case from Joel A. Poole on the DVD.

DVDs of the Spring Education Meeting can be ordered at no cost. Send your request to info@aswb.org.
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...
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.

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.

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.)

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.
"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.
Final orders: the final option?

What are the alternatives to a formal hearing, which can run into significant expense, attorney’s costs, and time by the time a formal hearing is held and the final order is drafted? Following a disciplinary decision and sanctions, what does a board need to consider when reviewing requests for expungement and reinstatement? Two sessions of the ASWB Spring Education Meeting, “Storm Clean Up: Immediate Solutions and Outcomes” and “Rebuilding: Post-Disciplinary Consequences,” covered these topics and were presented by Dale Atkinson, ASWB legal counsel, whose sessions helped put the rest of the meeting in context with real cases as examples.

What options are there?

“Most all complaints and proceedings that are initiated are resolved short of a formal hearing,” Atkinson said, as he opened his discussion of options available to boards and colleges during the session “Storm Clean Up.” The challenge, he warned, in finding an alternate solution is not to set aside the public protection standard that boards and colleges carry: there is still a job to do, but there also is “wisdom in informal resolutions.”

Negotiated resolutions, including consent orders, can be effective tools in the disciplinary process. If a negotiated resolution is the option under consideration, boards need to be clear about the decision-making process and the roles of those involved: the attorney, who provides guidance and advice; the investigator, who looks for evidence; the administrator, who provides support; and the board members, who make the decisions.

Also in the equation are the licensee, who is responsible for responding to the board, and often the licensee’s attorney, who is responsible for advising the licensee. An attorney representing the licensee can ultimately make the process run smoother, Atkinson noted. The board knows that the licensee received advice and will be made aware of what Atkinson called “collateral consequences.” An agreement reached in a consent order may have far-reaching ramifications if the licensee holds other professional licenses or accreditations or is licensed in multiple jurisdictions. Many attendees who serve on composite boards had experiences to share related to disciplining a licensee under these circumstances.

Working through the elements of the consent order and settlement agreement, Atkinson explained how these options are contractual obligations between board and licensee/respondent. The option of voluntary surrender also was
discussed, with Atkinson providing clear reasons why it is not a recommended solution unless it is backed by a consent order or other disciplinary record. In a negotiated resolution, there is the expectation that all parties will comply with the terms. In all cases, however, Atkinson reminded attendees, “statute wins over the consent order.”

Should the licensee refuse the terms of the proposed consent order, the board still has the option to carry through to a formal hearing. And when that happens, the final order provides the licensee/respondent no room for negotiation. What happens after the terms of the consent order or the final order is structured was a discussion saved for the final session of the meeting: “Rebuilding: Post-Disciplinary Consequences.”

**What happens after the final disciplinary order?**

Atkinson began his review of the “Rebuilding” process by looking back at where and how a given disciplinary action came to be. As a first step, a review of the following is essential: the complaint, consent order or administrative prosecution with final adverse action, finding(s) of wrongdoing, sanction, and no appeal or affirmation by judiciary. Next in the review would be the elements of a final order, including the all-important sanctions with specificity and reinstatement rights, if any. It is imperative that these elements be specified, he noted. The key to post-discipline success is to appropriately draft the order determining the sanctions in the first place and the consequences of compliance and noncompliance.

The many various terms and conditions of a final order were reviewed by Atkinson in the context of specific cases and answering the question “what do we intend to accomplish?” The discussion included the differences of terms such as reprimand, censure, letter of admonition, probation, restriction, limit, suspension, and revocation. There are many more terms and concepts incumbent upon a board to know so a disciplinary action can be properly assessed.

**How does a board enforce the terms of the final order/consent agreement? What do you do? What are the consequences of noncompliance?**

Four key questions were posed by Atkinson and discussed by attendees, with case examples that highlighted some of the jurisdictional differences and capabilities.

**Question #1**
What does the board do to enforce its final adverse actions/consent orders?

**Question #2**
Do suspended licensees have to come before the board and petition to have practice rights/privileges restored?

**Question #3**
What does your board do when a sanctioned licensee comes up for renewal?

More specific … a suspended licensee comes up for renewal … how is this handled?

**Question #4**
Do revoked licensees have the right to petition for reinstatement? Tell us about the process. Do they have a right to a hearing?

The meeting came to a close following a vigorous discussion of expungement (when a judge orders a record to be wiped clean) and why the record still appears in criminal background checks and why it may be considered in license applications and other situations.

The PowerPoint presentation of the last session is available here. DVDs of the Spring Education Meeting can be ordered at no cost. Send your request to info@aswb.org.

Professionalism starts on the Path to Licensure

Creating synergy between the worlds of social work education and regulation

For social work students, where does becoming a professional begin? With education or licensure…or both?

The question was discussed by regulators and educators from the St. Louis area who were invited to learn more about regulation and licensure at the ASWB 2014 Spring Meeting during a breakout session that included lunch.

The host of the session was the ASWB Board of Directors. The presenters were Dorinda N. Noble, ASWB Board president, and Mary Jo Monahan, ASWB CEO.

“The Path to Licensure campaign is aimed at helping students not only learn the beginning steps in licensure,” said Noble, director of the School of Social Work at Texas State University (TXST). “It is also helping students learn how to have prudent, successful, accountable careers. We use the word ‘prudent’ because it relates to protecting yourself as well as your client. If you do the prudent thing, you take care of yourself and your client.

“The Path to Licensure program is all about public protection,” said Noble. “The great need today is to ensure that educators have the supports they need to communicate to students how to be licensed, how to maintain licenses, and the importance of regulation to the profession and in protecting the public.”

Noble played a video developed by TXST and ASWB as a teaching tool for students. The vignette demonstrates the investigation process once a social worker has been reported to the board. The video is based on a true story of a social worker who called herself a “pastoral counselor” and used faith-based methods with her clients.
An investigator is sent to the social worker’s office to question her concerning a complaint. Noble plays the role of the social worker, and students play the roles of the investigator and others.

Following the video viewing, discussion focused on the investigator and the language used during the fact-finding, specifically whether the investigator’s approach was totally objective. Comments from participants expressed how important it is for investigators to treat situations and social workers with respect, to never make a judgment, and to never offer personal opinion.

Speaking specifically about the content and context of the video, Noble said that the purpose of the video is to stimulate questions, enlighten students, and ultimately prepare them for their real, accountable, professional lives.

The conversation with attendees expanded to the wide world of social work, including:

Where does regulation fit with practice as a social worker?

Do social workers have opportunities for increased learning, particularly learning from their own mistakes, as well as the mistakes of others?

Why is there a general misunderstanding about what boards and colleges do?

How can we correct the perception that regulatory bodies are akin to undercover investigators or the police?

The consensus of the group was that education, forging international partnerships, and sharing information were the keys to overcoming these issues.

Dawn Hobdy, who runs the Office of Ethics and Professional Review at the National Association of Social Workers (NASW), said, “I’m excited that we’re finally doing this. We have more in common than differences … What frightens me is the lack of information … I wish we could work better together to educate each other and to promote ethical practice and knowledge about regulation so we produce stronger social workers.”

Learn more about the Path to Licensure.

DVDs of the Spring Education Meeting can be ordered at no cost. Send your request to info@aswb.org.
ASWB joins the conversation about the future of macro practice

Participants agreed that “protection of the public” is a shared responsibility of social work educators, practitioners, and regulators.

Finding the intersections where social work regulation, education, and practice meet is one of the ways that ASWB can fulfill the strategic initiative to broaden stakeholder relationships for the regulatory community. The voice of ASWB has been absent from these discussions in many cases because the role of the regulator has not been understood or embraced. Collaborating in these important discussions of how to strengthen the profession will increase that understanding.

In April, CEO Mary Jo Monahan represented ASWB at a meeting about the future of macro practice hosted by the Special Commission to Advance Macro Practice, an entity of the Association for Community Organization and Social Administration (ACOSA). The purpose: to talk about the challenges facing macro practice and ways to deal with the perceived marginalization of the practice within the field of social work.

Participants came away from the meeting acknowledging the need to promote macro practice in education and practice and the shared responsibility of all to protect the public. As part of this ongoing outreach, ASWB will continue to provide accurate information about current licensure regulations and the ASWB exams and continue to participate in discussions on issues of social work regulation relevant to the Special Commission.

“Being at the table for these types of conversations is critical to ASWB achieving the initiatives of our strategic plan,” said Monahan. “Our participation builds bridges for greater collaboration. We can use these opportunities to increase knowledge about the value of professional regulation.”
Show and tell!

At its Annual Meeting of the Delegate Assembly in November, ASWB will once again recognize standout contributors in the field of social work regulation.

You know who they are: the colleagues you admire and aspire to emulate because they show leadership, are committed to public protection, and make a difference serving on your board or being indispensable as a staff member. If you know them, now is your opportunity to show and tell ASWB why they should receive ASWB’s highest awards: the Sunny Andrews Award for board members and the Board Administrator Award for board staff. Nominations for the awards come from peers, which makes the accolade an even higher honor. ASWB’s awards recognize board members and staff for service to their individual jurisdictions, rather than to ASWB, another reason those working closely with the nominee are in the best position to give the details about the candidate’s achievements. But time is running out! The nomination window closes on July 31.

At the 2013 Annual Meeting, ASWB recognized Kenneth Middlebrooks of Minnesota with the Sunny Andrews Award for Outstanding Commitment to Social Work Regulatory Board Service. Middlebrooks’ contributions were worthy of the award name, with his tenure of leadership as a public board member, board officer, and member of his board’s Legislative Task Force, Complaint Resolution Compliance Committee, and four other committees.

Also recognized in 2013 for outstanding dedication was Richard Hazel of Saskatchewan, who received the Board Administrator Award. Hazel, then newly retired executive director of the Saskatchewan Association of Social Workers, was praised for ensuring that the association flourished under his leadership from September 2002 to May 2013, as well as for his instrumental role in the creation and development of the Canadian Council of Social Work Regulators, and his greatly valued and appreciated “mediation” skills in dealing with interest groups who took issue with the furthering of regulation.

The ASWB Board is once again looking for nominees with the same level of commitment to the field. Any member or staff member of an ASWB member board, a member of the ASWB Board of Directors, or an ASWB staff member is eligible to nominate either a board member for the Sunny Andrews Award or a board staff member for the Board Administrator Award.

Because the awards are such an esteemed and competitive honor in the social work regulation community, nominating someone requires more than just submitting a name. The ASWB Board of
Directors, which makes the decision on the winners, needs thorough information about why a nominee should be chosen. Those nominating someone should advocate for that nominee and give complete details about their attributes and contributions.

Submission guidelines, nomination criteria, and forms are available [online](http://www.aswb.org) or from the ASWB office. Nominations are due by July 31, and the Board of Directors will make its decisions at its August meeting.

Forms may be sent to ASWB, 400 Southridge Parkway, Suite B, Culpeper, VA 22701; faxed to 540.829.0562, Attn: Melissa Ryder, or emailed to mryder@aswb.org. For questions, contact Melissa Ryder at 800.225.6880, ext. 3060.
The ASWB Board of Directors met in person on Thursday, May 8, at the Westin St. Louis hotel in St. Louis, Mo., before the 2014 Spring Education Meeting. Here is a recap of the activities of the board at that meeting.

**Consent agenda:** Reports approved via consent agenda included: President’s report, Chief Executive Officer’s report, Executive Vice President’s report, Examination Services report, 2013 Delegate Assembly minutes, 2014 First Quarter Business Plan report of results of staff activities in support of the strategic plan, evaluations from New Board Member Training, and updates to the calendar.

**Email motions:** The Board ratified email motions regarding approval of Approved Continuing Education (ACE) providers, committee lists and charges, and ASWB support of an amicus brief being filed by the Federation of Associations of Regulatory Boards (FARB) on behalf of the North Carolina Board of Dental Examiners.

**Financial report:** Board members reviewed first quarter financial statements through March 31, 2014, and draft audited statements for the year ending December 31, 2013. The Board accepted the independent auditor’s report for the year ending December 31, 2013.

**Finance Committee report:** The Finance Committee met with ASWB’s auditor to review the 2013 draft audit. Committee members recommended that the current auditing firm be retained for a three-year term. The committee reviewed and approved financial statements for the year ending December 31, 2013, and for the months of January and February 2014. As part of its charges, the committee also reviewed ASWB’s financial policies and membership and exam fees, recommending no changes be made at this time. Committee members reviewed the status of ASWB investments and reserves and heard a report from ASWB’s investment advisor. The committee also reviewed ASWB staff growth projections based on the strategic plan and recommended that exploration continue into the acquisition of property for a new office building.

**Examination Security Manual/Examination Security Policy:** Board members approved revisions to the Security Measures and Responses section of the Examination Security Manual to include a process for bringing adverse actions regarding the exam to the full Board of Directors for review. The Board also reviewed and approved changes to
ASWB Policy 2.11, Examination Security, to make it consistent with the Examination Security Manual. Both documents are undergoing final review by ASWB's legal counsel.

Funding of Annual Meeting Participants Policy: The Board reviewed and approved changes to ASWB Policy 3.2, Funding of Annual Meeting Participants, to make it consistent with Travel Policy 3.5, Travel Arrangements and Expenses. Changes included increasing the allowances for breakfast and dinner. ASWB's Policy Manual is available on the website.

Materials in languages other than English: The Board reviewed a report prepared by staff regarding the best approach for translating ASWB materials and publications into languages other than English. The Board accepted the report as information provided for future discussion.

Board training: A presentation about conflict of interest in serving on a nonprofit board was given by ASWB legal counsel. ASWB legal counsel also provided an update on FARB’s amicus brief for the North Carolina Board of Dental Examiners.

Strategic discussions: The following is a summary of generative discussions held by the Board of Directors:

- **Governance Task Force:** The Board discussed the activities of the Governance Task Force and its role in supporting the initiatives of the 2014-18 Strategic Plan.

- **Program and Education Committee:** The Board discussed the restructuring of the committee, which is now called the Regulatory Education and Leadership (REAL) Committee, and ideas for broadening the attendance at the Spring Education Meeting by inviting educators and other professionals to learn about regulation and ASWB. (See President's Message.)

- **Exam Committee report:** The Exam Committee and form reviewers met in March. New committee members received orientation training.

- **International Technology Task Force report:** A section addressing cultural competence has been added to the Competence report. There was discussion of adding a person-in-environment perspective to American Medical Association telehealth standards being reviewed for inclusion in the final report.

- **Approved Continuing Education (ACE) report:** At its March meeting, the ACE Committee approved its 2014 conference call schedule, discussed applications of providers, and reviewed the activities of the ACE working groups. Discussion centered on clarification of ACE requirements and communications with jurisdictional boards and providers.

- **NABSW meeting report:** ASWB’s Past President Patricia Heard, Secretary M. Jenise Comer, and Board member Fran Franklin attended the 2014 National Association of Black Social Workers conference in Indianapolis, Ind. Past Board member Saundra Starks, Comer, and Heard presented a workshop, “Supervision: A Blackprint for Transitioning to Licensed Social Worker,” and Comer and Starks participated in a panel discussion presented to social work students.
What do you get when you combine 2,000 social work licensing applications, 500 exam pre-approval applications, and 1,900 continuing education audits? A very busy bunch of ASWB staffers in the Social Work Registry and Contract Services group. A division of Member Services, this group began with the creation of the Social Work Registry in 2003. Two years later, ASWB was awarded a contract for license application processing for the Commonwealth of Massachusetts Board of Registration of Social Workers. While the rest isn’t exactly history, it is a story that illustrates ASWB’s support of the social work regulatory community.

From that first contract, ASWB expanded its contract service offerings to include continuing education audits and, as of March, pre-approval of examination candidates for the Utah Social Work Licensing Board. Nine years later, ASWB was again selected by the Massachusetts Board of Registration of Social Workers to provide application processing services and was awarded a 3-year contract with two 3-year renewal options. “We are delighted to continue working with Massachusetts,” says Jennifer Henkel, LCSW, Member Services senior manager. “We have grown together and we have continued to evolve. We are looking forward to taking their applications online, especially since the Commonwealth of Massachusetts is moving to an e-licensing system for all their professions.”

Based in part on the Contract Services experience with online pre-approval applications for Utah, the new contract with Massachusetts includes plans for an online application, streamlining the process for the applicants and for the board. “It’s time to get paperless, in terms of efficiency,” says Henkel. “People want and expect to be able to apply for things online. It’s good timing for us to create those solutions” for ASWB members.

Henkel points out that ASWB is uniquely equipped to provide these services for social work regulators. “We know what’s important in social work regulation, so we can make sure that our systems flag what needs to be flagged.”

“For Utah, we’re projected to get 500 pre-approval applications per year,” says Registry and Contract Services Supervisor Dave Ryczko. “To date, we have received 195 applications” in less than three months, he says. “The bulk of the
applications are going to be at graduation time,” he points out.

Ryczko—and Utah board staff members—can check that number any time via the Web-based database that ASWB developed. Applicants complete a simple online form detailing their education and experience and attest to a series of statements about their fitness to practice. If their credentials don’t match Utah’s requirements, they are not approved for testing. Any required paper documents are scanned and uploaded to a secure server where they can be reviewed by Utah board staff members. Ryczko says this feature “confirms that boards are able to accept proof of education electronically. Paper is not a necessity.” Additionally, ASWB staff can flag certain applications that are questionable. But for straightforward applicants, the process is fast, and the exam approval is sent directly to the candidate and ASWB’s Candidate Services Center (CSC).

Applicants in Massachusetts are impressed with ASWB’s timely service, Ryczko reports. “The turnaround time is favorable,” he says. Ryczko estimates that 70% of Massachusetts applications arrive complete and are processed in one pass, meaning that Ryczko’s staff can often generate an approval to the candidate the same day that the application is received. Once the approval is sent to the candidate and the CSC, the candidate can register for the exam right away. Applicants with problems—missing data, unclear responses—are contacted as soon as possible, and ASWB follows up with the applicant persistently until the application is complete.

Meanwhile, North Carolina, Louisiana, Maryland, and Massachusetts also use Contract Services to conduct continuing education audits. Audit services, like application and pre-approval processing, have been customized to reflect the needs of the regulatory agencies. ASWB staff contact social workers whose continuing education is being audited and follow up throughout the process, managing the paperwork and administrative details and reporting their findings to the board.

Ryczko also points out the expertise of his team. “Everyone has a strong customer service background,” he says. Chanda Andes, Donna Edwards, and Brandy Gurgevich all moved from the Candidate Services Center to Contract Services, and Virginia Smoot, the most senior member of the team, transferred to Contract Services when the Registry was launched in 2003.

Henkel sees growth ahead for Ryczko’s team. “I want Member Services to embody the mutual respect between what ASWB does and can do, and what the boards do and need to do. … [Services] are going to develop because of our partnership with the boards. We really want to support their needs. We want to create services that help them focus on regulation.”

Public protection from another angle

ASWB’s Social Work Registry makes applying for licensure in multiple states a much simpler process for social workers. With the expansion of technology in general and telehealth in particular, practitioners and their employers are finding that holding multiple licenses makes sense.

Online Care Network-American Well Systems, based in Boston, Mass., sees the value of the Social Work Registry. American Well employs five social workers to serve clients all over the country. The employer chose the Social Work Registry to collect the social workers’ credentials—from educational transcripts to supervision documentation—and assist in preparation of licensing applications for all 50 U.S. states and the District of Columbia.

By relying on the Registry, American Well also knows that the application packets will be complete before they get to the regulatory boards, and that each packet will be customized to meet the board’s criteria.

This process makes a lot of sense for American Well, because it simplifies the paperwork required for so many license applications. The process makes a lot of sense for regulatory boards, because the application packets prepared by the Social Work Registry will be customized to reflect the requirements in each jurisdiction. The process makes even more sense for ASWB, because it aligns with the association’s priorities for technology and practice.

For many years, ASWB has emphasized the need to make sure clients receiving services remotely are protected. In fact, the Model Social Work Practice Act specifies that social workers practicing remotely should be licensed in their own jurisdiction and in the jurisdiction of any of their remote clients. Thanks to the Social Work Registry, the social workers employed by American Well will be meeting that standard.
JOHN MAYR, registrar of British Columbia, and CLAUDE LEBLOND, president of the Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec, participated with ASWB CEO Mary Jo Monahan and Executive Vice President Dwight J. Hymans in a panel discussion, “Getting to Consensus on ‘Competency to Practice,’” at the 2014 National Joint Social Work Conference/Conference nationale conjointe de travail social of the Canadian Association of Social Workers and the Canadian Association for Social Work Education in St. Catharines, Ontario, in May.

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ASWB welcomes the following administrators, who recently became staff to their boards:

• ARLENE HARTWELL, Rhode Island
• SARAH FASZHOLZ, Texas
• AMANDA URIOSTE, New Mexico
• MARIAMA GONDO, Washington
• ROBERT SHEPHERD, Nova Scotia
• ANGIE PARKER, Alaska

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Congratulations to ELEANOR VINSON of Alaska, who announced her retirement at the end of April. She reports: “I am back temporarily teaching the new person in my position, then I am visiting new grandbabies in Texas and California (both due in August!!)”

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JOHN MAYR, registrar of British Columbia, was a featured speaker at the Administrators Forum in May held during ASWB’s Spring Education Meeting. His presentation about the 2014-2015 communications plan of the British Columbia College of Social Workers is available for download here.

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Congratulations to JIM ROUGH, executive director of Ohio, who announced: “I am retiring at the end of August after 15+ years working for the state of Ohio licensing boards, including over nine years with the Counselor, Social Worker & Marriage and Family Therapist Board. I am moving to Manhattan Beach, California, to live with my daughter’s family, including my son-in-law and three little granddaughters (1, 3, & 5 years old).”

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ANNA LYN WHITT of Mississippi (left) and LEISA ASKEW of Alabama (right) have a friendly rivalry going that is centered on Alabama vs. Auburn. Both LEISA and ANNA LYN are vying for MERRI-LEE HANSON of New Brunswick (center) to cheer for their teams. ANNA LYN presented MERRI-LEE with the Alabama jersey to attempt to sway her support. MERRI-LEE says she brought them both maple syrup from Canada instead.

Your name could be featured here! Send all news and pictures to Jayne Wood, newsletter editor, at jwood@aswb.org or call Jayne at 800.225.6880, ext. 3075. We need your input!
Social work boards are created and empowered to regulate the practice of social work in the interest of public protection. One such grant of authority includes the renewal of licensure for practitioners who successfully complete the requirements set forth in law. Most jurisdictions have some level of continuing education as a prerequisite to renewal. Continuing education is designed to ensure that practitioners maintain some level of knowledge of the profession and remain competent to safely and effectively practice. Failure to complete the continuing education requirements generally constitutes grounds for discipline. Equally important is the fact that licensees must be truthful and accurate on their licensure renewal applications. Failure to accurately complete a renewal application may also constitute grounds for discipline. Consider the following.

In August 2012, a licensed occupational therapist (Licensee) renewed her license online through the State of Delaware website. On her online application, the Licensee attested to having completed the required continuing education (CE) necessary for licensure renewal. As a matter of course, the Licensee’s renewal application was selected for a random audit by the Delaware Board of Occupational Therapy (Board). After the audit, it was determined that while the Licensee had completed the required number of CE hours, she had not done so in “more than one” of the seven permitted categories as was required. Consequently, a Rule to Show Cause Hearing was held to determine if discipline was warranted.

At the hearing, the Licensee admitted that the mistakes related to her attestations were “partly” her fault, but also blamed the rules and the website program for her confusion. In part, the Licensee argued that she never worked in Delaware. The hearing officer found that the Licensee failed to satisfy the CE requirements and recommended discipline to the Board. A notice letter was sent to the Licensee informing her of the discipline recommendation and invited exceptions, comments, or arguments within 20 days of March 13, 2013. The notice letter also advised the Licensee that the discipline is a recommendation and “no action is required on your part at this time,” as the Board would review the recommendation and make the final decision. The Licensee did not submit any exceptions, comments, or arguments to the Board.

In May 2013, the Board accepted the recommendations of the hearing...
officer and disciplined the Licensee for failure to complete the required continuing education hours for licensure renewal and for a false attestation of completion. The sanctions included a requirement that the Licensee earn at least one acceptable CE credit in a category other than coursework and submit proof of compliance within 75 days. Failure to complete the CE and submit proof of compliance would result in an automatic licensure suspension without further notice or hearing. The Licensee was also issued a letter of reprimand and flagged for an audit in the following renewal period.

The Licensee filed an appeal and argued that a deficient website and confusing correspondence from the Board were to blame for her noncompliance. She argued that the website did not give her an opportunity to note that her CE was in a single category rather than the two required. She argued that she did not submit false information but was unable to provide accurate data due to the limitations of the online form. She claimed that she contacted the Board office and was told to check “Yes” so that she could continue the renewal application. Only online renewal application is allowed via the website.

The Licensee also argued that the language in the Board’s letter informing her of the hearing officer’s recommendation was confusing and caused her to not submit any more information. As a result, she claimed that the discipline was arbitrary, that she was being punished for a confusing and contradictory order, and that she was not given the opportunity to carry out the recommended disciplinary action before the issuance of the letter of reprimand. The Board countered such arguments, stating that its order was based only on the facts and that the Licensee failed to satisfy the required CE. Indeed, the Board argued that the Licensee admitted to noncompliance; her lack of working in Delaware was irrelevant to the renewal requirements. In short, the board argued that it was incumbent on the Licensee to determine the licensure renewal requirements.

The Superior Court outlined the standard of review and noted its limited role in determining whether substantial evidence supported the findings and whether the Board’s decision was legally correct. The record is reviewed in light most favorable to the prevailing party. According to the judicial opinion, the Licensee acknowledged that she failed to comply with the CE requirements and subsequently falsely attested to having completed them. The Licensee was aware of the availability of the rules online and had the opportunity to continue to contact the Board. The court also held that in order to rely on the “no action required” portion of the letter, she would have had to completely disregard the language in the letter offering her the opportunity to respond and object. Finally, the court found that no clear errors of law occurred that would require a reversal of the Board action. As a result, the order of the Board was upheld and the sanctions affirmed.

Confusion on the part of persons accused of violating the practice act and/or rules are generally subject to opportunities for clarification or legal advice. Attempts by respondents to argue confusion will likely, from a legal perspective, be rejected by the courts. Further, requests for clarification from licensees to board staff must be carefully answered. As a matter of policy and based on legal advice, individual requests for advisory opinions should likely be denied. Of course, individual advisory opinions can be distinguished from blanket policy statements provided by the board to all relevant parties.