

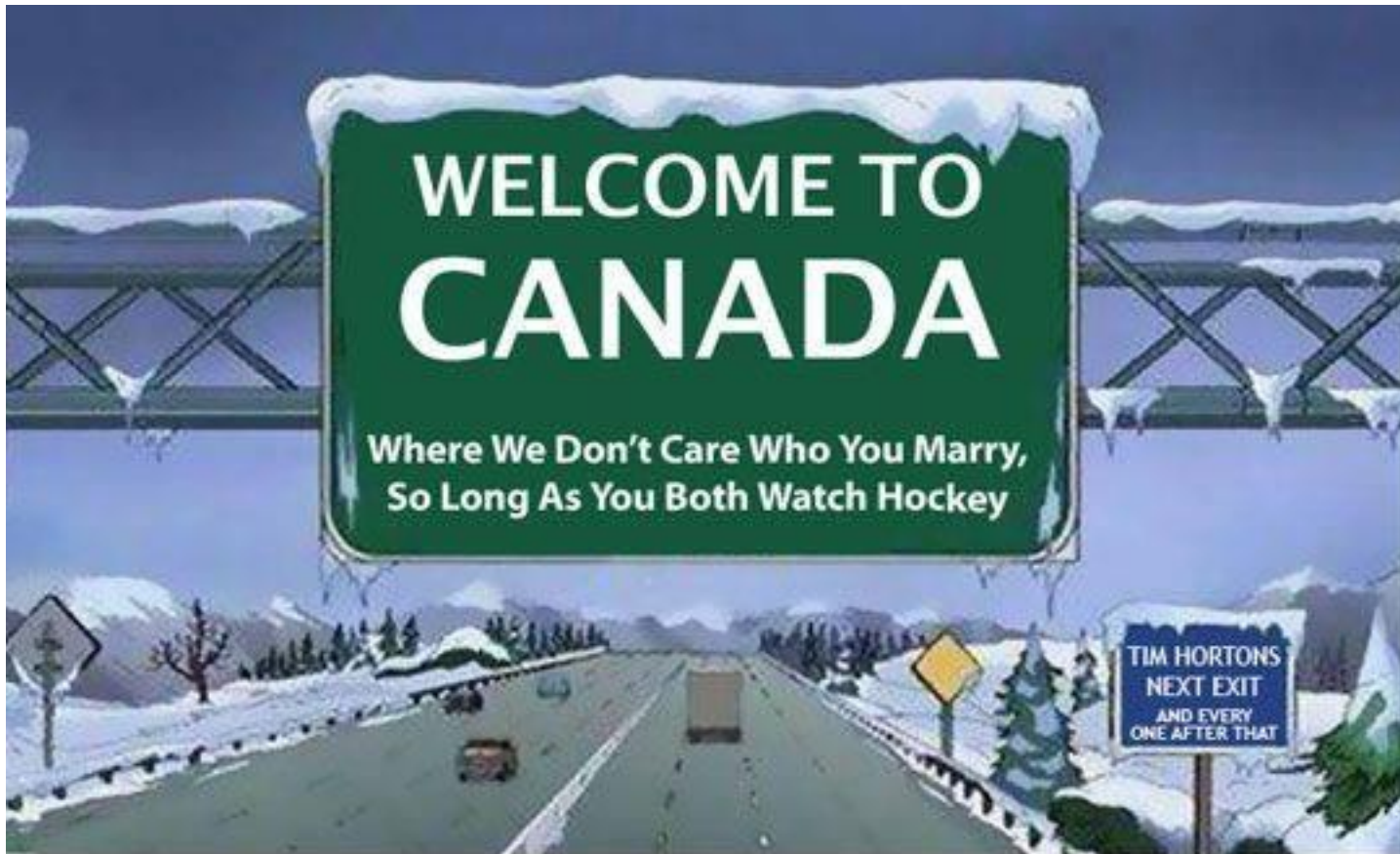


Association of Social Work Boards

# ***Legal Implications and Processes: The Challenge of Mobility***

Friday May 1, 2015  
1:30pm – 2:45pm

ATKINSON  
ATKINSON  LLC



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# Speaker

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NMTCB  
FARB

## SENIOR CITIZEN TEXTING CODE....

ATD~At The Doctors

BFF~Best Friend Fell

BTW~Bring the Wheelchair

BYOT~Bring Your Own Teeth

FWIW~Forgot Where I Was

GGPBL~Gotta Go Pacemaker Battery Low

GHA~Got Heartburn Again

IMHO~Is My Hearing-Aid On

LMDO~Laughing My Dentures Out

OMMR~On My Massage Recliner

OMSG ~Oh My! Sorry, Gas

ROFLACGU~Rolling On Floor Laughing And Can't  
Get Up

TTYL..Talk To You Louder

If you are  
going to text...

# Obligatory Objectives

- This session will discuss the following:
  - An overview of “state” based regulation
  - The Role of the Federal Government
  - Are these barriers “getting in the way”?
  - How the ASWB Model Act attempts to address the issues



# An overview of “state” based regulation

- United States Constitution: 10<sup>th</sup> Amendment
  - The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
  - *“all has been retained that has not been surrendered”*

# Federalism.....

- The United States government is based on **federalism**.
- Federalism is a method of government that allows two or more entities to share control over the same geographic region.
- Each person in the United States is subject to the laws of that city, county, state and our federal government.



# Federalism....The Supremacy Clause

- The Supremacy Clause.....federal laws are the ‘Supreme Law of the Land.’
- Article VI, section 2 of the U. S. Constitution
  - “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.”
  - Thus a Supreme Court ruling can be binding on state courts if involving a constitutional issue.

# Examples of Federalism

## Controlling

- Immigration
- Treaties
- Common National Defence
- Interstate commerce
- Mint money
- Declare war
- Establish post offices

## Last Constitutional Slide...Preemption

- Duly enacted federal law trumps state law....
  - Voting rights
  - Medical devices
  - Drug
  - Interstate commerce

*Does professional regulation impede interstate commerce?*

## Are these barriers “**getting in the way**”?

- *What gets in the way of actualizing professional mobility inside and across jurisdictions?*
- Preference is to recognize regulation first, and secondarily address the perspective of the practitioners .....
- Of course we understand that access to social workers is a public protection issue too....

# What Gets in the Way?

- Law
  - Constitution
  - States rights
  - Practice acts
- Politics
- Professionals protecting professionals
- History
- Reluctance to change

# How does the ASWB Model Act address the issues

- Section 107

- (a) practice entering the model state = practice in the model state
- (b) practice originating in the model state to client elsewhere = practice in the model state
  
- *Consequences to clients, regulatory boards, licensees, practitioners*

# How does the ASWB Model Act address the issues

Section 104 Practice of Baccalaureate Social Work

Section 105 Practice of Masters Social Work

Section 106 Practice of Clinical Social Work

- *Consequences to clients, regulatory boards, licensees, practitioners*

# How does the ASWB Model Act address the issues

Section 301(h)(1).....temporary practice

current license

in good standing

prior written application and board approval

within scope designated by license

no more than 30 days per year

Section 301(h)(2).....temporary practice under declared emergency

current license

in good standing

upon prior written notice to board

within the scope designated by license

during time of declared emergency

- *Consequences to clients, regulatory boards, licensees, practitioners*



# How does the ASWB Model Act address the issues

- Section 307 Examinations
  - Authority to use examination entity (ASWB)

# How does the ASWB Model Act address the issues

- Section 308 Qualifications for Licensure Transfer
  - Licensed elsewhere
    - Written application & paid fee
    - Age of majority
    - Good moral character
    - Social work degree at designation
    - Initial licensure qualifications meet those qualifications of the model state
    - Passed examination
    - SW license in good standing
    - All other professional licenses in good standing

# How does the ASWB Model Act address the issues

- Section 311 Source of Data
  - In making licensure eligibility determinations and to promote uniformity and administrative efficiencies ...
    - Rely upon expertise
    - Documentation and verified data
    - Gathered and stored
    - Not for profit organization
    - With shared public protection mission

# Keys to Mobility

- What is the practice of social work (statute)
- Where does practice occur (statute)
- Proactive legislature
- Proactive boards (rule making, policies, outreach)
- Informed consumers
- Informed licensees
- Support from academia
- Support from professional association

# What Are the Real Keys to Mobility?

- Uniformity, uniformity, uniformity, uniformity
- How is this achieved?
  - Statutes
  - Rules/regulations
  - Applications/renewals
  - Data management
  - Let go of the “this is how we do it” mentality
  - Embrace change.....*AS REGULATORS!!!!*

# What Are the Real Keys to Mobility?

- Uniformity, uniformity, uniformity, uniformity
- Can this be achieved?
  - Yes!...How?
    - Understand your laws
    - Support legislative changes
    - Embrace commonalities
    - Promote uniformity
    - Look for solutions
    - ASWB

# Social Work Regulation 2025

...ok maybe 2035...or 2050....or ????

- Uniform applications/renewals
- Almost uniformity in scopes
- Almost uniformity in titles/acronyms
- Central repository of data
- National certification (NOT federal!)
- State licensure...via acceptance of certification
- States retain rights to grant and enforce licensure

I'm not crazy.

i prefer

the

term

mentally

Hilarious.



Thank you!!