



U.S. COUNSEL'S COMMENTS

## Streamlined Licensure



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### Background

As occupations and professions evolve through practitioner development, influential trade associations, litigation, and, eventually, duly enacted state-by-state legislation, the likelihood of uniformity in licensure lessens. These difficulties in achieving uniformity are, in large part, grounded in the United States Constitution. The 10<sup>th</sup> Amendment vests those powers not specifically reserved to the federal government to the states. The concept of federalism via the 10<sup>th</sup> Amendment is a founding principle in the governance structure of the United States. The regulation of the occupations and professions has been left to the states through what is often referred to as the state's police powers.

Under this authority, a state enacts legislation creating and delegating authority to the regulatory board. The practice act (or enabling legislation) sets forth the parameters of licensure eligibility, scope of practice, enforcement authority, and other powers necessary to allow the board to adequately fulfill the intent of the legislation. Once a state exercises its authority to enact legislation, persons operating within the scope and place of practice must comply with the relevant statutes.

One can imagine how nuanced political interests and differing circumstances of each state can result in different scopes of practice, licensure eligibility criteria, renewal requirements, continued competence, board authority and governance structures. The concept of federalism and states' rights allows for such a patchwork of regulation. As a result, states have different requirements that do not easily lend themselves to mobility of practitioners and portability of licensure.

Layer technological advancements on top of the states' right to regulate the occupations and professions, and the results are ripe for challenge and criticism. Of late, economists and others are challenging the need for and rights of the states to regulate the professions. These economic arguments portray regulation as an unnecessary barrier to entry into practice and limiting consumer/client access to practitioners. In short, these libertarian approaches seek to shift the burden onto the state to justify its reasoning for regulation and, at the same time, promote a "buyer beware" system of enforcement and consumer protection.

The Association of Social Work Boards (ASWB) was created to develop social work licensure

examinations that could be used by all U.S. members to assess entry-level competence as part of licensure eligibility criteria. Over time, with the membership of the Canadian provinces, the exams have been validated as applicable to the United States and Canada. This uniformity in the exam program is built on the job task analysis that determined that the practice of social work carries sufficient commonalities across state and international borders allowing for the use of one exam for each scope for assessing competence. ASWB has also developed and is developing additional programs to promote uniformity among and between member boards to assist them in fulfilling their respective public protection mandates.

One of these resources is the Model Social Work Practice Act (Model Act), which has served since the 1990s as a means of promoting uniformity of legislation. The Model Act was developed by a diverse task force with input from a wide variety of stakeholders. Since then, the ASWB Regulation and Standards Committee has been charged with, among other duties, reviewing the Model Act and, where appropriate, proposing changes. Suggested statutory language in the Model Act is approved by the ASWB delegate assembly when modifications are proposed.

### **Voting: Licensure by endorsement**

At the 2018 Annual Meeting of the Delegate Assembly, delegates will be asked to review and approve modifications to the Model Act addressing the principles of endorsement of licensure. Before

embarking on a description of the amendments, it is prudent to define key terms.

“Reciprocity” refers to an agreement among or between states that allows licensees in one jurisdiction to obtain licensure in the other reciprocating jurisdiction. Somewhat of a no-questions-asked approach, reciprocity agreements are built on an agreed upon recognition of licensure. If a license is in good standing (subject to definition), the state into which the licensee is seeking licensure will accept the application and issue a license. Reciprocating candidates still file an application, pay applicable fees, and agree to comply with and be bound by the second state’s laws. There is no discretion in the board under a reciprocal agreement.

“Endorsement” refers to a process whereby the state into which a licensee is seeking to endorse performs an analysis of whether the individual was licensed elsewhere under similar circumstances. Under an endorsement process, the receiving state has the discretion to grant or refuse a license to the applicant based on that analysis.

Along with politicians and judges, new regulators and veterans often confuse the terms and use them interchangeably. However, for purposes of clarity in language of statutes and the Model Act, criteria are painstakingly considered and words chosen carefully.

Proposed amendments in 2018 include modifications to Article III, Section 308. Licensure Transfer. In the current Model Act, “licensure transfer,” was a phrase used to attempt to encompass both reciprocity and endorsement

statutes and to avoid perpetuating confusion between the two. The first modification proposed by the 2018 RAS Committee is to rename the section and use only the term “endorsement.”

Additional wholesale changes to section 308 would streamline eligibility criteria for licensed social workers who seek to obtain licensure in additional states. The RAS Committee sought to simplify this section of the Model Act as part of social work mobility implementation to encourage jurisdictions considering additional licensing of a licensed applicant to recognize the due diligence of the jurisdiction(s) that originally licensed the social worker. Proposed section 308 requires that “an applicant currently licensed as a social worker in another jurisdiction must provide evidence satisfactory to the Board,” including an application at the equivalent designation/scope, payment of the applicable fee, and proof that the applicant has an active license in good standing. (It remains up to the jurisdiction where the applicant is currently licensed to determine what constitutes a license that is “active” and “in good standing.”) Discretion remains with the endorsing board to assess the licensee’s eligibility under Article IV, Discipline/ Enforcement, that can form the basis for denial of application.

### **Supporting Mobility implementation**

The bases behind the proposed modifications are twofold in support of Mobility implementation. The first is to simplify endorsement procedures and provide effective and efficient means of determining licensure

eligibility in a timely manner. Such an approach will remedy what is driving some of the critics of state-based licensure systems to argue that the process is time consuming and expensive. The second is to promote a licensure system that facilitates mobility of practitioners and practice (via technological means) and portability of credentials while respecting the rights of the state boards.

Mobility and portability are important topics, and state boards are encouraged to embrace the needs of the social work communities that are inclusive of clients, potential clients, licensees, academia, and the public in general. It is believed that the proposed amendments to the Model Act will facilitate the needs of society while respecting states' rights to determine who can and cannot practice social work. With that said, the profession has evolved over the years and uniformity should be promoted. Effective and efficient licensure processes, both initial licensure and endorsement, are based on a system of trust—trust that the state that granted the original license appropriately reviewed licensure eligibility criteria. The evolution of social work regulation now allows for recognition of uniformity and the benefits of collective action.

ASWB has concluded through its job analyses over the years that social work practice is consistent across state and Canadian borders allowing for the validation of one examination per designated scope to assess entry-level competence. The Council on Social Work Education (CSWE) and the Canadian Association for Social Work Education (CASWE) have evolved

educational accreditation systems that recognize education components across respective state and provincial lines. Thus, the education and examination components of the statutes addressing licensure criteria have generally achieved uniformity.

With education and examination decisions based upon uniform criteria, the remaining issues address experience (practice/supervision requirements), personal history, and moral character. These criteria have led to legal and political scrutiny based upon what may be perceived as arbitrary decisions. Once a licensee is engaged in practice, it is difficult to justify denial of endorsement applications (or for that matter, delayed reviews of such applications) when similar criteria have already been vetted by another board and the applicant has been practicing for a period of time.

As part of the Mobility implementation, ASWB is enhancing the connections among its member boards through a centralized databank of licensee “profiles” that will include primary source and other information about the licensee. A profile will be made accessible to licensing decision makers in the jurisdiction where the licensee is seeking licensure at the request of the licensee. The benefits to the jurisdiction include decision making remains with the board; accessibility to timely information to assess for eligibility; and freedom from storing the data, which could become subject to open records laws otherwise. The benefits to licensees include peace of mind that all their important records are electronically stored; streamlined application processing

for additional licensure; and efficiency of having the data in one place.

ASWB member boards adopted the Mobility resolution in 2017, agreeing to examine their statutes, rules/regulations, and policies to identify any barriers to the implementation of such a program. That work has been completed, and the results informed the recommendations of the RAS Committee. Addressing mobility of practitioners and portability of licensure is critical to meeting the needs of the consuming public, protecting clients and licensees, and satisfying the political pressures facing the regulatory boards. The proposed amendments to the Model Act address these issues and will streamline the processes of member boards when assessing licensure eligibility determinations, enhance mobility, and diminish redundancies in licensure. Member boards and delegates are asked to consider the amendments and prepare to engage in dialogue while in San Antonio, Texas.