

Guidebook for Social Work

Disciplinary Actions



Association of Social Work Boards Guidebook for Social Work Disciplinary Actions

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Introduction

Social work Regulatory boards and councils are created and empowered through the enactment of legislation intended to regulate the profession in the interest of public protection. The duties involved in protecting the public through the enforcement of the practice acts are very complex, highly legalistic, and will involve board members, additional board staff, investigators, attorneys, and others necessary to fulfill this essential mission. For most board members, the regulatory vocabulary is new and the legal protections encompassing the licensure and enforcement processes can be difficult and confusing. But the members of the regulatory board, with proper training, preparation and knowledge, should be equipped to make important decisions regarding the licensure eligibility and the potential to administratively discipline individuals determined to have violated the law. Members of the board will be asked to understand and interpret the value system behind the laws which apply to the regulation of the practice of social work. This guide is intended to provide a road map to the process of regulation, to assist social work regulators in fulfilling their mission within the bounds of the law. Of course, each board has the benefit of legal coun-

sel and is encouraged to seek and follow legal advice rendered.

As part of their responsibilities, but to differing degrees, social work boards and councils have disciplinary responsibilities under the practice Act. These responsibilities generally empower the board to accept and investigate complaints and, where determined appropriate, levy disciplinary actions against individuals who violate the practice act. This publication has been developed by the Association of Social Work Boards (ASWB) as a resource for its member boards and is intended to identify suggested definitions for disciplinary related matters and, with respect to differing jurisdictional language in law, to encourage uniformity in the interpretation and enforcement of board actions.

The guidelines reflect the essentials of a modern Social Work Practice Act and coincide with the ASWB Model Social Work Practice Act (ASWB Model Act) prepared by the ASWB Model Law Task Force and adopted by the Delegate Assembly in November 1997. As one of its ongoing responsibilities, the ASWB Regulations and Standards Committee (formerly the Discipline and Regulatory Standards Committee) is charged with reviewing and, where necessary, recommending amendments to the ASWB Model Act. Suggested amendments are reviewed by the ASWB Board of Directors and eventually voted upon by the Delegates prior to placement in the Act. Member boards are encouraged to refer to these guidelines when assessing relevant portion of applicable laws.

Like all ASWB publications, this booklet is primarily intended to assist social work boards in their fundamental task of protecting the health, safety and welfare of their constituents. References to “board”, “councils”, “committees” “boards” and “social work boards” are inclusive of all regulatory authorities that may be responsible for the regulation of social work practice, including disciplinary actions.

SECTION A

Complaint Process

The complaint process differs from jurisdiction to jurisdiction. Social work boards must take care to ensure that licensees who are subjected to administrative actions against their licenses are provided with certain “due process rights.” While subject to differing interpretations, the provision of due process rights is essential to ensure that board action adverse to the license follows a procedural process that does not offend the constitutional and statutory protections afforded to licensees.

Initially, the administrative actions of a board of social work will commence with a complaint being filed against a particular practitioner. That complaint will generally be received by the board administrator for initial determination as to its validity. Under certain circumstances, a complaint may be discarded at this stage as meritless or not within the purview of the regulatory board.

Complaints that are in need of further attention are assessed to determine whether “probable cause” exists and merits continued action within the regulatory process. It is recommended that a subcommittee of the board be established to assess these complaints and determine whether they

should be subjected to further actions, negotiations and/or investigation. It is this subcommittee that works in conjunction with the Attorney General representative and investigators. At some point in time during this process, the licensee will likely be notified of the complaint.

Should the licensee be notified and negotiations to resolve the matter be unsuccessful, the complaint will eventually proceed to a formal charge. A formal charge is served upon the licensee and includes the specifics of the complaint with citations to the sections of the practice act alleged to have been violated. After notification of the charge, the process continues as discovery is undertaken. Short of a resolution of the matter through a consent order, the matter may proceed to a formal hearing before the board. Although it is not mandatory and individual circumstance should be considered, those individual board members who participated in the subcommittee to determine probable cause and investigated and negotiated the matter should consider recusing themselves from the hearing so as not to violate the licensee's due process rights by being predisposed to determine the case or having access to information prior to the hearing. It is always advisable to seek legal counsel if questions about recusal arise.

Many variations of formal hearings exist within social work regulation including the use of a hearing officer, administrative law judge or other individual to facilitate the administrative process. The procedures to follow are found within the Model Social Work Practice Act or Administrative Procedures Act (APA).

SECTION B

Grounds for Disciplinary Actions

Social work boards are empowered to undertake disciplinary actions against individuals (see Section F, Unlicensed Practice for an explanation of the use of the term “individual”) over whom the board has jurisdiction. It is recommended that the practice act delineate certain grounds which constitute activities subjecting individuals to administrative discipline by the board. The language of the ASWB Model Practice Act, contained in Article IV, Section 401, identifies the grounds for discipline. While this is an encompassing list, boards have the flexibility of using some discretion when determining conduct which merits disciplinary action. For example, “unprofessional conduct as determined by the board” provides a “catch all” and is designed to encompass varying circumstances which merit discipline and will change over time. Regulators should review the laws and regulations in their jurisdiction to determine whether the grounds for discipline are contemporary and provide appropriate mechanisms for public protection.

Specific reference is made to the introductory language of Section 401 of the ASWB Model Act which empowers the social work board to “refuse

to issue or renew, or ...suspend, revoke, censure, reprimand, restrict or limit the license of or fine any person....” This important language provides the social work board with not only the authority to discipline a licensee, but the authority to refuse to issue or renew a license based upon conduct which falls within the delineated grounds for discipline. This added authority is important when a social work board is confronted with an applicant for licensure who may otherwise meet the delineated criteria within the qualifications for licensure section of the practice act.

SECTION C

Disciplinary Procedure

Authority of Social Work Boards

Social work boards generally may initiate proceedings at the administrative level and, in some instances, at the judicial level to enforce their practice act, rules and regulations. Under principles of due process, boards are required to exercise these enforcement proceedings in a non-discriminatory manner and in accord with applicable administrative law, practice act, regulations or by-laws and other applicable laws and constitutional principles.

Protection of Legal Validity

Boards may, on information received from third parties or on their own, initiate investigations to determine whether an individual has violated their practice act. To assure fairness and to legally protect the validity of any disciplinary action taken by the board, board members or their delegates who are actively involved in the investigation of a complaint should not, if the matter is referred for disciplinary action, participate in any of the process employed to adjudicate the matter.

Applicable Administrative Law

The procedures followed by social work boards in adjudicating an administrative matter may be covered by case law, separate legislation or another form of guidance. The form this guidance takes will prescribe the structure of the formal hearing and give direction on key matters like testimony, presentation of evidence, discovery rights, subpoena power, record of the proceedings, appeal and other general hearing procedures.

Informal Conferencing

Many complaints can be resolved short of a formal hearing/adjudication. The committee carrying responsibility for investigation may hold an informal closed meeting with the individual under investigation where alternate dispute resolution methods may be utilized. If an agreement is reached that resolves the matter, the terms of the agreement should be confirmed in writing. In most jurisdictions, only the board can confirm the terms of such a settlement agreement. Board members who serve on informal conferencing committees must be aware of potential conflict of interest issues and may not be able to participate in the ultimate board approval or disapproval of a recommended informal resolution. Recusal by conflicted board members helps preserve the ability of the board to proceed to a hearing when it disagrees with the proposed settlement terms. Concluded and confirmed agreements are not confidential and become a part of the individual's record. Failure to reach an agreement contemplated in an informal conference does not preclude the option of proceeding to a formal hearing of the matter.

Summary Suspension

It is recommended that social work boards be authorized to summarily suspend a license before a formal hearing should extraordinary circumstances exist which require the immediate protection of the health, safety and welfare of the public. Under such authority, the board may summarily suspend the license of a practitioner without a formal adjudication. However, a formal hearing must be held within a short period of time specified by the statute (e.g. thirty days). It is in this formal hearing that the individual will be afforded due process rights.

An example of the statutory language granting to the board summary suspension authority is contained in the ASWB Model Social Work Practice Act. (Article IV, Section 402)

Cease and Desist Orders/Injunctions

It is recommended that social work boards be empowered to issue cease and desist orders against individuals who are unlawfully engaged in the practice of social work. This jurisdictional authority should extend to not only licensees, but to any persons found to have violated the act. Jurisdictional authority of social work boards over unlicensed practitioners is essential to providing public protection. (see Unlicensed Practice Authority, Section F) Where appropriate, boards of social work may obtain a court injunction to restrain individuals from continued violations of the practice act or regulations. Court ordered injunctions are punishable through contempt proceedings and are enforced through the judiciary. The issuance of a cease and desist order or court injunction does not preclude subsequent disciplin-

ary action by the board should continued violations of the statute(s) or regulation(s) occur.

SECTION D

Permissible Sanctions

Social work boards are generally empowered within the practice act to sanction individuals for violating the practice act. While the terminology used from jurisdiction to jurisdiction may be similar as to the sanction(s) that may be imposed by the board, interpretations of such language may be different. It is also important to recognize that available legal actions vary between jurisdictions. For this reason, ASWB provides the following glossary of terms for consideration by social work boards when determining the appropriate sanction available under circumstances where disciplinary action is merited. Readers are encouraged to review the Guidelines for Sanctions (Section F) within these guidelines to assist social work boards in drafting appropriate final orders that will withstand legal scrutiny as well provide enough information to the disciplined individual, future boards and other interested parties for purposes of licensure reinstatement or re-application.

Revocation

Revocation of the license of a social worker terminates the right to practice social work within that jurisdiction. It should be noted that, in spite of licensure revocation, many jurisdictions pro-

vide an opportunity for the disciplined individual to apply for a new license or reinstatement of a previously issued license. Many jurisdictions do not contain any limitation as to the period of time which must expire prior to the application for re-licensure following revocation. Thus, boards may be presented with an application for re-licensure or reinstatement from a revoked individual soon after the board action. Under such circumstances, the board will need to provide a legal basis for approving or denying the reinstatement application. It is imperative that final orders be appropriately drafted.

Suspension

Social work boards are generally empowered to suspend the license of a practitioner, withdrawing the right of the individual to practice social work in that jurisdiction for a specified period of time. Orders appropriately drafted suspending the license of a practitioner should mandate that the individual reapply to the board for permission to practice or for the reinstatement of the license. The original order suspending the license should dictate the circumstances under which the suspension may be lifted. With unlawful activities of a lesser degree, licensure suspensions can be “automatically” lifted based upon the passage of time, providing the individual with the renewed right to practice without board approval.

In jurisdictions where revocations may statutorily provide for the right of an individual to reapply for licensure after a set period of time (e.g. one or two years), social work boards may want to consider using a longer suspension with delineated reinstatement rights. Under such

circumstances, the disciplined individual will be removed from practice as well as bear the burden of establishing the right to reinstatement to the satisfaction of the board. A long-term suspension may be more effective than a revocation where the statutes provide for the right of reinstatement application after the expiration of a shorter period of time than the suspension.

Probation

Social work boards are generally empowered to place the license of a practitioner on probation for a period of time subject to certain specific conditions determined by the board. Under these circumstances, the licensee is permitted to continue practice subject to compliance with the conditions set forth in the order determining the probation status. A violation of the conditions of probation can result in additional disciplinary action taken by the board. Usually, an abbreviated hearing can take place to determine the violations of the probation conditions without the necessity to re-examine the initial wrongdoing which led to the order determining the probationary status.

Limited Licensure

The social work board's authority to sanction may include the power to issue limited licenses, or the power to order that a practitioner's professional activities be restricted to only those areas allowed by the board. In such cases, the practitioner is permitted to practice, albeit within a limited scope. Violations of this limited licensure order can lead to additional disciplinary actions imposed by the board. Again, an abbreviated proceeding can take place to determine the violations of the limited licensure order to revisit the initial violations of the practice act.

Censure

Social work boards are generally empowered to censure those found to have violated the practice act. A censure involves a formal condemnation by the board for wrongdoing. A censure act may require specific actions to be undertaken by the practitioner, such as repayment of fees to a client.

Reprimand

Social work boards are generally empowered to issue reprimands to individuals found to have violated the practice act. A reprimand is a more formal censure or statement of wrongdoing on the part of the practitioner. It is generally used where a board believes that a formal notice of wrongdoing is necessary but without the removal of licensure or removal of the individual from practice.

Fines

Some social work boards may be empowered to issue fines up to certain statutory limits against individuals found to have violated the practice act. These fines are generally penal in nature and subject the individual to payment of a monetary amount to the general funds of the jurisdiction. As a general rule of thumb fines should not be used to support the activities of the board nor should they be included as part of the revenues associated with the operating budget. Although exceptions to this rule may apply it is important for boards and councils to avoid the appearance of incentivizing fines through their disciplinary actions.

The imposition of fines upon an individual in an administrative proceeding may subject the disciplinary action to double jeopardy scrutiny

under constitutional principles should the individual have also been fined as part of a criminal proceeding for the same wrongdoing.

Assessment of Costs

Social work boards should be empowered to assess costs upon individuals for the investigations, prosecutions, and adjudications of administrative matters where individuals are found guilty of violating the practice act. The assessment of these costs should include all costs associated with the administrative prosecution including attorney's fees. The authority to assess costs provides social work boards with an important power in resolving matters short of an expensive formal hearing.

An example of the statutory language granting to the board authority to assess costs is contained in the ASWB Model Social Work Practice Act. (Article II, Section 213 (b)(8)(i)-(v))

Use of Examinations

Social work boards may be empowered to require the successful completion of a particular examination, including the initial licensure examination. As part of the disciplinary process should an individual be removed from practice for an extended period as part of a disciplinary sanction, it may be appropriate to require the applicant to establish minimum competence as part of the reinstatement process. Jurisprudence exams as well as ethics exams are also resources available to boards as a measure of re-licensure eligibility.

Continuing Education

Boards of social work are likely empowered to require the successful completion of certain continuing education courses as part of the disciplin-

ary process. Continuing education courses may be specific to certain subject matter (i.e. ethics) or may be general in scope. Individuals removed from the practice may also be required to substantiate the successful completion of continuing education for the time they have been removed from the practice. For example, an individual removed from the practice for a three (3) year suspension should still be required to complete the continuing education hours imposed upon current licensees.

Other Concerns

Probationary terms can include many points including assessment of mental or physical health or impairments to practice, oversight and continuing supervision, and assignments.

Reporting

It is important for the safety of the public that all actions be reported to the ASWB Public Protection Database (PPD).

SECTION E

Guidelines for Sanctions

After an administrative hearing in which an individual has been found to have violated the practice act, an order will be entered setting forth important aspects of the hearing and findings. It is recommended that final adverse orders be carefully crafted to ensure compliance with applicable federal, provincial and state laws as well as constitutional principles. These orders should contain at least the following elements:

1. burden of proof
2. findings of fact
3. conclusions of law
4. sanction
5. reinstatement rights/conditions
6. publicity
7. right to appeal or appeal rights

It may be argued that due process principles or applicable statutes require consistency in sanctions to be considered by the board as part of the deliberative process. The subject has been the topic of intense legal debate with regard to the extent, if any, to which a board must strive for consistency in sanctions. Because specific “rules”

cannot be referenced, it is likely that this legal debate will continue.

First and foremost, social work boards must only enter sanctions which they are empowered to assess upon individuals. That is, a board can only revoke a license if it is statutorily empowered to provide for such a revocation. Of course, similar authority must be granted to the board to suspend, fine, assess costs or impose other sanctions which may be appropriate within the administrative authority of the board. Boards of social work must be assured of such authority before entering the sanction.

Range of Actions

As outlined above, boards of social work are generally empowered to enter sanctions which have a wide range of implications upon an individual. In order to justify the eventual sanction issued by the board, the circumstances of each situation must be considered. The more egregious the facts surrounding a particular disciplinary matter, the more exacting the sanction may be. Sanctions can range from simple letters of censure or reprimand to long-term suspensions or revocations. It appears that very few jurisdictions provide boards of social work with the authority to permanently revoke a license.

Social work boards are encouraged to assess the circumstances of each particular disciplinary matter and determine the appropriate sanction, taking into consideration their primary purpose of public protection. It may be worthwhile for a board to consider previous circumstances with similar fact patterns and examine the sanction as-

sessed. The more informed a board is with regard to previously issued sanctions, the less likely a legal challenge will be forthcoming on appeal.

If consistency in sanctions is dictated by statute, a legal challenge to the process will cite the particular statute. Additional legal arguments that can be anticipated would include constitutional principles of due process or equal protection under the law. Today, very few cases exist which provide for the successful challenge of board disciplinary actions based upon “inconsistencies” in sanctions.

With this in mind, it is difficult to craft guidelines which recommend certain sanctions based upon specific conduct undertaken by an individual. However, it should be noted that board sanctions can provide for creative ways to ensure individuals are responsive to identified needs. These sanctions can include mandatory continuing education within specific areas of practice, ethics, fraud or other topics. Sanctions may also include mental health evaluations or drug/alcohol treatment requirements, random urine analysis or additional means to ensure the disciplined individuals establish a compliance record to demonstrate fitness to practice. Under the limited licensure authority, boards may also limit the scope of practice of individuals to specific practice settings that are in need of protection. Depending upon the severity of the circumstances, social work boards are likely empowered to assess multiple sanctions to an individual based upon wrongdoing established at the hearing.

Boards of social work should strive for consistency in sanctions to the extent possible,

understanding that each set of circumstances is in need of analysis and deliberations consistent with the public protection mission of the board. Where possible, boards are encouraged to review previously rendered disciplinary actions in similar cases to establish a record of consistencies in the event of a legal challenge. The extent to which the record should be established during deliberations is likely dependent upon whether such deliberations are undertaken as part of an open meeting (as required under certain state laws) or are not subject to disclosure under open meetings laws or Freedom of Information Acts.

SECTION F

Unlicensed Practice

By design, and throughout this publication references to persons subject to the jurisdictions of social work boards use the term “individuals” rather than licensees. With the advent of technological advancements and the ability of individuals to practice social work without physical presence within additional jurisdictions, it is imperative that social work boards be empowered to maintain jurisdiction over all individuals who may violate the practice act. Jurisdictional authority of the board should extend beyond licensees to all individuals. This administrative authority over unlicensed practitioners provides an additional mechanism beyond the criminal sector to protect the public. Underscoring this important responsibility at the administrative level is the fact that criminal prosecution of unlicensed practitioners is often a low priority in the office of the prosecutor. The authority of social work boards to administratively address unlicensed practice and issue cease and desist orders, injunctions, fines, assessment of costs or other sanctions is an important resource in board activities.

It appears that several social work boards are not legislatively empowered to maintain jurisdic-

tion over unlicensed practitioners. The ASWB Model Social Work Practice Act provides for such jurisdiction. (Article III, Section 301(f))

Definitions

APA—Administrative Procedures Act. Legislation in a jurisdiction that is not contained in the social work practice act, but that guides the administrative process.

Board—A regulatory body created by law and empowered for the purpose of protecting the health, safety, and welfare of the public through the regulation of the social work practice. This term is used interchangeably with the term “council.”

Censure—A formal condemnation for wrongdoing.

Consent decree—A legal order entered, that has the agreement of both the board or council and the individual. Language used by boards and councils may vary considerably and include consent order, settlement agreement and others.

Council—A regulatory body created by law and empowered for the purpose of protecting the health, safety, and welfare of the public through the regulation of social work practice. This term is used interchangeably with the term “board.”

Discovery—The disclosure of pertinent facts or documents by one or both parties to a legal action or proceeding.

Due process rights—The right of an accused person to be accorded all legal rights under the laws of the jurisdiction and of the U. S. Constitution.

Licensee—The holder of a license to practice under the laws of a jurisdiction.

Probable cause—A reasonable ground for supposing that a charge is well-founded.

Public Protection Database—A database, maintained by ASWB, of any actions taken by social work regulatory bodies against the license/registration of a social worker.

Recuse—Withdraw, or remove oneself from participation.

Sanction—A disciplinary action taken against an individual.

Summary suspension—The temporary removal of a license to practice without any formal adjudication.

