



**Keep your board
from riding off into the sunset
and other hazards for
regulatory boards in the political arena**



This document is intended to give social work regulatory boards an overview of sunset and other potentially damaging legislative occurrences.

Threats to the effective regulation of social work aren't limited to things as obvious as sunset, the dead end of a law on a given date. There can also be small losses of strength and autonomy, including the sudden appointment of an oversight body or a shift of the social work board into another agency where non-social workers will have control.

This is basically a how-to; how to position social work regulation in your jurisdiction to withstand attempts to eliminate or weaken legislation or funding, and how to react in an emergency.

Since it often takes an emergency for board members to pick up information like this, the emergency section is first. Read pages 1 through 7 to find out what has worked for other boards.

If current legislation is not looming, or when the crisis is over, read the rest as a way of getting some insurance against similar crises.

And, as an overall theme to keep in mind while you're reading, consider the strides social work has made in a relatively short time, and plan to build on that progress already made. The profession can be viewed seriously by lawmakers and others now because it takes itself seriously. It has a standard examination by which to measure minimum competency used by all 50 U.S. states, Washington, D.C., the U.S. Virgin Islands, and the Canadian provinces of Alberta and British Columbia. It has recognized educational accrediting through the Council on Social Work Education (CSWE); and there is an inclusive Public Protection Database (PPD, operated through ASWB). Jurisdictions are sharing ideas about the definition of practice, licensing categories, uniform discipline, and other regulatory topics through ASWB.

Improvements in laws to achieve greater regulatory consistency are part of the mobility initiative. Working toward these goals with legislatures is also working against the concept of sunset licensure anywhere.

When the sun starts to set

All can be going well

The social work law in your jurisdiction is in place, it's working pretty well, social workers and clients alike seem pleased with it. The profession is gaining recognition, and insurance companies and other segments of the public at large are starting to realize that licensure is important to social workers.

But...

Abruptly, something called "sunset" kicks in. "Sunset" is a provision in the law that builds in a time limit for legislation. The deadline may be set for the reexamination of some particular portion of the law or for an evaluation of its general usefulness and functioning. The result can be a much weaker law or even no law at all.

It can happen without a provision in the law

This same result can occur even without a sunset provision, particularly in times of governmental downsizing, taxpayer revolts, or simply a major change in administration.

Initiatives aimed at saving money often tend to target professional licensing, as an area that sounds like a good place for the “budget ax” and that plays well with the taxpaying public.

Cutting a licensing board sounds better than endangering security or chopping education. Social work licensing sounds like an easier place to make such cuts than, for example, a medical licensing board, where the consequences of incompetence are an immediate physical threat.

What all this amounts to is that any social work board, anywhere, could find itself facing what amounts to a sunset evaluation. In a worst case scenario, a jurisdiction could have no board and no law almost overnight.

Board members, or indeed any licensed social worker, should be prepared for such an occurrence. There have been recent successes in a number of jurisdictions where hard work and good organization by boards and allied professional associations have been able to avoid the loss of regulation.

It helps if your house is in order

It helps to have your board, staff, budget, and records in good working order, and it also helps to have some clear lines of communication already open to lawmakers and others who might be influential. Some ideas about how these two things are done follow.

But if not...

If you are suddenly facing sunset or a similar threat, what you want to know is not what you should have done ahead of time, but what you can do now. Fortunately, there are some answers.

The key to surviving these threats is communication. Getting your message across, the message that regulation is important to the profession and to the public, is essential. Boards, professional organizations, and licensed social workers in jurisdictions that have survived political crises know the importance of mobilizing forces to speak clearly and with strength to those who make the decisions.

Develop a united, organized voice

Supporters of licensure have worked through professional organizations and other networks, making contacts with social work agencies, health care facilities, and other institutions, to gather the emergency forces to speak out. With the use of available mailing lists and other contact routes, social workers were encouraged to use mail, fax, email, and phone to tell legislators that professional regulation isn't a luxury.

But numbers alone aren't enough. Legislators and others who make the financial decisions for a jurisdiction want good information to use as a basis for a defensible vote. They want understandable, concise points to present and explain.

Those providing such information must have more than opinions. Facts and data are needed, made understandable and readily available. Numbers are often the best arguments in the political arena.

For example, you need to know, and be able to supply, the number of social work licensees in your jurisdiction, the number of complaints made, the number and type of disciplinary actions taken, the amount of time it takes to handle a complaint, and the number of hours of investigation involved. You should be able to say how much pro bono work is done and what sort of clients are served. Again, numbers are the key—if you can tell a lawmaker how many poverty-level families are being served by licensed social workers, and how many licensees

offer expert testimony in court cases, you have a good start on demonstrating the importance of the profession.

An excellent number you can give a lawmaker is the comparison of the licensed social workers in a jurisdiction with the licensees of other professions.

Three essential points to make

Licensure supporters need to stress the importance of regulation from the public viewpoint, and they also need to explain that this is not a high-cost frill. Three easily understood points to make:

- The social work profession is an important provider of mental health care
- Social work regulation helps protect those who are not able to protect themselves
- Social work licensing pays for itself through fees from licensees

It should be stressed to lawmakers that regulation of mental health care providers is a legitimate use of the police powers of the jurisdiction, and that professional associations do not have the authority to be legitimate substitutions. A secondary point is that people seeking mental health care are usually in a vulnerable state; they need some form of credentialing to serve as a reliable source of information about individual practitioners.

The financial discussion probably carries more weight than you think; budgets are always at the forefront for governments. The facts are that boards are made up of unpaid volunteers, and that there are enough social work licensees in most jurisdictions for fees to fund regulation. Moreover, social work fees often help fund the regulation of other professions, or even go into the general coffers.

Other ammunition

Past that first layer, licensing also provides:

- A credential for employers, insurance companies, and federal programs as well as clients
- A code of ethics by which to measure practitioners
- Confidential communications for clients protected by law
- Grievance procedures for clients without the need to hire lawyers
- A framework of control by volunteer professionals knowledgeable about ethical, competent practice

Regulation helps ensure that those who begin practice are qualified and competent. In most jurisdictions, levels of licensure make distinctions in scope of practice for the benefit of clients and professionals. On the other hand, without licensing, there is no standard for quality assurance, and no method of redress short of going to the legal system on an individual basis.

Often, the suggested replacement for licensure is self-regulation by the profession. Not only does this approach weaken the jurisdictions' "police powers," but it raises the question of the profession protecting itself and its own—the "there but for the grace of God, go I" syndrome. Professional social workers need the strengthening influence of government-approved standards and a board appointed by someone outside the profession to deal appropriately with their peers.

Public regulation = public interest

This cannot be overemphasized. What should be pointed out to legislators and others is that public regulation has no interest other than the public interest, while what is essentially a trade group might momentarily forget the importance of the public welfare.

The idea of regulation through professional organizations is simply unworkable. First, membership in such associations is voluntary. If an individual chooses not to belong to the association, and many do, there obviously is no hold exerted, and no disciplinary control is possible. Most government regulatory boards include at least one public member, rather than drawing all members from within the profession, as professional associations tend to do. There are even antitrust considerations.

Fairness through a single standard

Government regulation also brings standardization to licensure and discipline, rather than allowing one professional group for social workers to only reprimand for an offense, while another suspends membership entirely for the same act.

Government involvement, in short, takes away the troubling aspects of considering social work services as a commodity in the marketplace—particularly significant in light of the nature of those services and their immeasurable impact on human lives.

Standards to be met by professionals must be higher than the standards of the marketplace, since the consumers who make up the marketplace lack experience and expertise. There is no *Consumer Reports* for social work services.

Who is the public that is being protected?

Legislators need to know exactly what they are dealing with when social work regulation comes up as an issue. Coalitions of people who are speaking for the profession need to be prepared to explain what social workers do, and to list some of the positions social workers hold that involve a form of public trust.

Historically, social workers more than any other profession have served the impoverished, victimized and unassimilated members of society—and legislators should be recalled that these people vote.

How do they need protection?

In any discussion about why licensure is needed, it should be made clear that social workers are involved daily in sensitive, difficult, and high-risk activities such as:

- Taking children out of homes, or returning them to homes
- Setting up plans for mentally ill or mentally disabled adults to leave institutions and assimilate into the community
- Notifying authorities about suspected sexual abuse of children
- Providing counseling to emotionally distressed individuals, many of whom are sexually and financially vulnerable to the unscrupulous
- Providing counseling to troubled families
- Helping people, often the least advantaged members of society, make personal and financial changes in their lives
- Working with police and courts in a variety of ways

Other information which should be made available to policy-makers includes the fact that clients of many social workers, particularly those in public agencies, are not people who are well-equipped to weigh the qualifications of those to whom they must turn to for help. Without the standards set by licensure, poorly educated or less-than-competent persons performing social work functions may do intentional or accidental harm.

The possibility of sexual misconduct or other inappropriate dual relationship engaged in by a practitioner should be brought to the attention of legislators, with the number of disciplinary actions brought on such grounds used to add emphasis. The real need to be sure there is protection available in the therapeutic relationship is perhaps best illustrated by such facts.

In a number of jurisdictions, social work licensure has been either initiated or made more restrictive on the basis of one or more controversial cases in which harm has been done to someone who had depended on a therapist or other practitioner. Sexual misconduct is often involved.

If there has been such an occurrence in your jurisdiction, proponents of licensure who will be communicating with the media or lawmakers need to have the facts about the incident at hand. If there has been disciplinary action under current social work law, the details of that action should also be communicated with accuracy.

For the social workers themselves

Now, while issues that affect the taxpaying public are of more interest to legislators, it helps to mobilize social workers if it is pointed out that licensure lends credibility to the profession. It also keeps social workers on an even footing when they are in competitive situations with practitioners in other mental health fields, particularly where other government regulations may require credentials.

Before Crisis Strikes.....

Taking stock

In general, boards can improve their odds for a healthy survival in the political arena by occasionally taking stock. The stark deadline set up by a sunset provision is just the most obvious, concrete reason for looking at the organization and operation of social work regulations.

Simply put, boards need to be able to quickly sum up why they should continue to exist. They need the facts and numbers on licensees, disciplinary actions, and other activities. The legislative process operates on information and perception.

The best defense

Good, fast, accurate, meaningful information is the best defense. Gathering such information should be an ongoing effort. Boards need to continually look at their own organization, their procedures, and their finances, as well as the laws, rules, and regulations under which they exist.

Use this document

Use this document to guide yourself through a look at your board and a general assessment. This can take time, but it will be of lasting value.

An honest and careful self-assessment can make boards aware of dangers within that can make them vulnerable from without. Such an examination can also clarify areas in which more effort is needed to improve the legislative climate. That climate is the environment in which boards must exist, and it can have a powerful and unexpected effect on the stability of regulation.

A team approach

Such an assessment can be done by a committee or a team, including both board members

and staff, with perhaps a neutral, uninvolved person as a sounding board. The questions may seem difficult, but lack of a straightforward answer can indicate areas of concern. Sometimes, simply working to reach an answer can help show the way toward developing improvements.

Boards with a large number of relatively new members may find the questions particularly hard to address, because of unfamiliar terminology or lack of information for comparison. This is yet another value of a first effort, since it can be preserved in writing for future boards, as a baseline for measurement.

Help from ASWB

One source of advice would be an attorney, if one is available to the board. Questions may also be addressed to the Association of Social Work Boards at its headquarters, where someone will be available to help. Answers often come from staff members immediately, or research assistance will be offered.

If you'd really rather not

Say you have a waiting list of a dozen disciplinary actions, and there is a long list of special cases to be considered by your board. You don't have a sunset clause right now, and don't see one on the horizon.

If a board prefers not to dive in and really undertake an assessment, the questions in the following pages can simply serve as a jumping-off point for some thoughtful discussion. If there is a political pitfall around the corner for a particular board, members may find one of these queries the catalyst for recognizing it. Having members read over this document, and then set aside part of a meeting to discuss any major concerns, is a valid way of doing some quick self-protection.

Here's how to start:

- Read through this document.
- Mark your answers under "Basics."
- Go through the next few pages and rate your board on the areas listed.
- Add up your numbers and see where your board fits.
- If your numbers are high, great. Put your findings in writing, and face the future with confidence.
- If your numbers are low, use your self-assessment to decide where your priorities are.
- Begin with your first priority to make changes.

Assessment questions are broken into several categories: organization and administration, legislation and the courts, and education and communication. A rating system is used because some numerical basis of evaluation is helpful; obviously, all this is not really so easily quantified.

Numbers can vary because of the size of your board, because of its inclusion as part of a composite board, or because of the number of social workers in your jurisdiction. Use the numerical system as it is intended, as a rough guideline.

First, the Basics:

1. What kind of law does your jurisdiction have?

- Registration only, with social workers required only to meet minimum requirements to be listed as social workers
- Title, under which only the use of the term “social worker” is limited
- Practice, in which unlicensed persons are not allowed to provide social work services to the public

2. Should the law be stronger in order to do the job of registration that needs to be done?

- Yes
- No

3. If you answered “yes” to question #2, can the needed changes be made through rules and regulations, or is legislative action needed?

- Rules and regulations
- Legislative action

Organization and Administration

1. Evaluate board powers

- Can the board enforce a practice act, and adopt the regulations it needs?
Give yourself 1 point for yes, 0 for no.
- Does the board have the right to employ and direct staff?
Give yourself 1 point for yes, 0 for no.
- Is the board able to retain the fees it charges, and to administer its own funds?
Give yourself 1 point for yes, 0 for no.

2. How long since an evaluation?

- How long has it been since the board took the time to evaluate its organization, budget, procedures, legislative and policy activities, and communications?
Give yourself 1 point for an evaluation within the last five years, 2 for an evaluation within the past two years.
- How long has it been since the board made any changes in any of these areas?
Give yourself 1 point for changes within the last five years, 2 points for changes in the last two years.

3. Has there ever been a sunset?

Has there ever been any other form of evaluation—a legislative audit that went beyond simple budget questions—either as the result of a sunset clause or because of some other legislative inquiry?

Give yourself 3 points if the board has experienced such an event, 0 if it has not.

Did the evaluation suggest changes that were implemented?

Award your board 1 point for each such change. And, this is important — if changes were suggested that were not made, SUBTRACT 2 points for each.

4. Are written materials available?

Is information on the duties and the powers of the board made available to members in writing?

1 point for yes, 0 for no.

Is such material part of an orientation package for new members?

1 point for yes, 0 for no.

Is the ASWB New Board Member Training Manual distributed, with the needed jurisdictional additions?

1 point for yes, 0 for no.

5. The responsibilities of meeting

How regularly does the board meet?

1 point for each meeting during a six-month period.

How many of its members attend all (or almost all) meetings?

0.5 point for each member who attends regularly.

6. How do board members function?

Do board members all serve as generalists, or are there committee assignments?

1 point if committee assignments are made, 0 if everyone does all the same functions.

7. Staff

Does the board employ and direct its own staff?

1 point if yes, 0 if no.

If staff is assigned from a pool available to a state department or larger office, is enough time from qualified people allotted for the board's needs?

1 point if yes, 0 if no.

Is staff properly trained and knowledgeable about the board?

Give a bit of leeway here; rate on a scale of 0 to 3 points.

Do staff members have assignments for the responsibilities of licensing, discipline, education, and communication as well as tracking of laws and court decisions?

Rate your staff organization on a scale of 0 to 5.

Are there written job descriptions for staff?

1 point if yes, 0 if no.

8. Revenues

Are revenues that are generated by the board through its fees for its own use, or do the fees go into the general fund?

2 points for own fees, 0 for general fund.

_____ Total Points on this page

- Are all costs covered by fees from the examination, licensing and other fees?
1 if yes, 0 if no.
- Can the board set its own fees?
1 if yes, 0 if no.
- Does the board control its own budget?
1 if yes, 0 if no.

9. Record-keeping

- Does the board have an internal system for tracking licensees who have come before it for disciplinary hearings or about whom complaints have been made?
 1 if yes, 0 if no.

Legislation and the Courts

1. How are your legislative contacts?

- Do board members maintain contacts with legislators on a regular basis, rather than waiting until there is a threat to the licensure law or a dire need for a change or update?
 1 if regular contact, 0 if not.
- How often is there communication?
 2 if more often than each legislative session, 1 if during each session, 0 if less frequently.
- Is someone actually assigned to do the communicating?
 1 if yes, 0 if no.

2. What about other contacts?

- Does the board also communicate regularly with other organizations that could have similar interests in legislation, including other licensing boards or professional associations such as the National Association of Social Workers (NASW) and the Clinical Social Work Association (CSWA)?
 1 if yes, 0 if no.
- Is there a staff member whose job description includes interacting routinely with others who have an interest in social work regulation?
 1 if yes, 0 if no.
- Does someone on the staff take the responsibility for reporting to the board on relevant legislative activities?
 1 if yes, 0 if no.
- Does the board work with, or request information from, social work boards in other jurisdictions?
 1 if yes, 0 if no.
- Does the board similarly exchange information and views with national and chapter social worker groups, consumer groups, and public organizations?
 1 if yes, 0 if no.
- Does the board also work with governmental agencies, legislative members or staff, or members of the staffs of governors or other jurisdictional authorities?
 1 if yes, 0 if no.

3. Active participation

How many proposals to the legislature did the board become involved in during the past year?

1 point for each.

How many of these measures resulted in desired laws or changes?

Give yourself 2 points for each.

Has the board reviewed its legislation in the past two years to see if it is still doing the needed job, or whether changes are required?

1 point if yes, 0 if no.

4. Is someone watching other proposals?

Does the board review federal and state legislative and regulatory proposals made by other groups that may affect it?

1 point if yes, 0 if no.

Is there ever any activity in response to such proposals?

1 point if yes, 0 if no.

5. Sunset has its uses

If there is a sunset provision, does the board use the sunset review as a way of checking for necessary legislative changes?

1 point if yes, 0 if no.

6. How good is your information?

Does the board have legal counsel available at its meetings?

1 point if yes, 0 if no.

Does the board have a way to be sure it is aware of court decisions that could affect it, through reports from its counsel or other means?

1 point if yes, 0 if no.

7. Complaint procedures

Who takes the initial responsibility for a complaint?

Give the board 1 point here if everyone knows.

What are the recording procedures for phone calls, letters, or other forms of report?

1 point if everyone on the board knows the procedures, unless what everyone knows is that there is no recording system, or it's haphazard.

Is documentation thorough?

Rate this on a 1 to 5 point scale.

Were any board actions appealed to the court system?

Subtract 2 points if the appeal was successful, or should have been. (We said this would be subjective.)

Education and Communication

1. Licensee complaints

How many reports on problems with licensees were received during the past year?

- A point system would not fit here, since the climate and consumer population in one jurisdiction can be dramatically different from others. But think over the following questions, and consider whether cases are being handled on the proper level. This is very important (and again, subjective). The bottom line here is that if the board suspects it has had cases in the system that weren't handled on the proper level, which were either dropped far too soon or pursued too far, subtract 5 points.*

How many cases actually came to the board? How many were resolved informally, and how many actually resulted in formal hearings? Are there still unresolved complaints?

- 0 or -5 points.*

2. Public relations

Were there expressions of public dissatisfaction about the handling of discipline of social workers in your jurisdiction during the past year?

- 1 if no, -1 if yes.*

Are phone-in reports checked out?

- 1 if yes, 0 if no.*

Are investigatory resources readily available?

- 1 if yes, 0 if no.*

Were there complaints about office responses?

- 1 if no, -1 for each complaint.*

Did the board take any action to encourage, or to insist on compliance with, the legal obligation to report information on licensees to the board?

- 1 if yes, 0 if no.*

Does the board know which agencies are required to make such reports?

- 1 if yes, 0 if no.*

Have there been complaints about lack of information from the board, in its communications about licensing requirements?

- 1 if yes, 0 if no.*

Have there been complaints about lack of information from the board on complaints or actions?

- 1 if yes, 0 if no.*

Do either board or staff members make themselves available to speak to or answer questions for groups or audiences interested in changes in licensing changes, disciplinary procedures, or other areas of interest?

- 1 if yes, 0 if no.*

When was the last media interview or press release?

- 1 point if within the last year.*

Does the board publish a newsletter (or communicate in some other way) with licensees and the public about what it is doing?

- 1 if yes, 0 if no.*

Does the board regularly post or publish hearing announcements, news releases, an annual report, or media interviews so that those who need to know will know?

- 1 if yes, 0 if no.*

_____ Total Points on this page

3. Direct education

Has the board sponsored any educational programs for social workers during the past year?

1 if yes, 0 if no.

Are board members and staff continuing their own education in the field of regulation?

1 if yes, 0 if no.

If the board members are continuing their education, is it through on-the-job training at board meetings, by attending workshops and conferences, or by self-study?

1 point for self-study, 2 for workshops and conferences.

4. Professional information sharing

Does the board regularly send information to the Public Protection Database (PPD) maintained by ASWB?

1 if yes, 0 if no.

Does it respond readily when a national or chapter professional organization asks it to help in a survey or with research?

1 if yes, 0 if no.

Does the board have regular contact with boards in other jurisdictions or participate in ASWB's administrator list serve to give and receive answers to questions?

1 if yes, 0 if no.

Does the board use the ASWB as a resource and take advantage of ASWB programs?

1 if yes, 0 if no.

Emergency Preparation

1. Quick availability of numbers

Is the board prepared to provide information to legislators on how many social work licensees there are, and comparison figures on how many licensees other professions have in the state?

5 if yes, 0 if no.

Is the board prepared to provide information to legislators on how many complaints it receives in a year, and how quickly they are handled?

3 if yes, 0 if no.

Can the board (or staff) give comparative regulatory information from other jurisdictional laws?

3 if yes, 0 if no.

Does the board have a rough estimate of the number of poverty-level clients receiving services from social workers licensed in the jurisdiction?

1 if yes, 0 if no.

Does the board have an idea of how much pro bono work is done by social workers licensed in your jurisdiction?

1 if yes, 0 if no.

- Can the board provide information about the amount of court involvement of social workers licensed in the jurisdiction?
- 1 if yes, 0 if no.
- Are there some good anecdotal examples available demonstrating the value of regulation of social workers?
- 1 if yes, 0 if no.
- _____ Total Points on this page

_____ **Total Points from ALL pages**

About Your Score

There are more than 100 points possible, depending on the size of your board. If your score is within hailing distance of **100 points**, you are in excellent shape, and should just take your beach towel or rappelling equipment out to watch the glories of the approaching sunset. You are totally prepared, and should come through sunset without damage and probably strengthened. Just one caution — don't get overconfident.

If you scored **50 to 75**, you have some work to do. Go back to that priority list, think how you would feel if an unfriendly legislator was waiting outside your office right now, and get your house in order. Think of it as time well spent.

If you scored **0 to 49**, social work regulation is in danger in your jurisdiction, and not only from possible sunset provisions. Threats could also come from a number of other sources, public and private, in a recurring reduce-government cycle.

If you worked on the scoresheet pages to actually come up with a score, though, you've made a serious beginning. Go through the questions again and identify some priorities. Then get on the phone or email, cultivate professional contacts, and ask for some help. Start, one step at a time, to be able to make a case for public protection in your jurisdiction. Other social work regulators, ASWB, and other social work organizations can help — and they will.

In conclusion . . .

Threats to licensure are a very real element in the legislative arena. Boards that are serious about protecting laws that professional organizations and others have long worked for will take the threats seriously, and act to avoid "heading off into the sunset." There is help as close as a phone call, from ASWB and from others who have already experienced similar problems.

ASWB provides resources. Use them.

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