

**RECOMMENDATIONS REGARDING
THE COMPLAINT PROCESS
OF THE MINNESOTA BOARD OF SOCIAL WORK**

Developed by the Complaint Work Group
Subcommittee of the
MINNESOTA COALITION OF LICENSED SOCIAL WORKERS
October, 2000

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Coalition Complaint Work Group**

HISTORY

Concerns about the Minnesota Board of Social Work's complaint process were brought to the Board's Advisory Committee by Alan Ingram, Executive Director of the National Association of Social Workers, MN Chapter. In October, 1997 Alan wrote, in a letter to the Board, about "the growing number and intensity of reports by (NASW) members indicating at least the perception of unfair or unduly adverse procedures" regarding the Board's complaint process. The Board's Executive Director responded in writing, asking NASW to "be specific" about the reports, stating that "if licensees are not comfortable talking to me directly, then perhaps you can serve in an intermediary role and present the specific concerns."

The NASW Board directed Alan to seek responses from members about their experience with the licensing board via NASW's newsletter. A significant number of members did respond with concerns about the complaint process.

NASW brought its concerns to the Minnesota Coalition of Licensed Social Workers. At its May, 1998 meeting, the Coalition decided to form a work group to address dissatisfaction with the Board's complaint process. In a memo to the Board and to the Board's Advisory Committee, the Coalition explained its decision. "The Coalition wishes to support and work with NASW, which is one of its member groups. We also believe that it is imperative to deal with unhappiness with the complaint process in view of our interest in the licensure of public agency social workers. In our meetings and in private conversations with county social workers and supervisors, we repeatedly hear that their fear of struggling with complaints of vindictive clients to the Board is a major reason they don't want to be licensed. In order to proceed with a new licensure mandate, we need to be confident that the complaint process is indeed working fairly and well."

The Complaint Work Group began meeting in June, 1998. Membership eventually expanded to include seven social workers. The five work group members from the Coalition were Nicky Bredeson, LICSW, Betsy Horton, LICSW, Alan Ingram, LISW, Rosemary Martin, LICSW, and Pam Luinenburg, LGSW. Pam Berkwitz, LICSW, who serves on the Board's Advisory Committee, and Ida Swearingen, LICSW, from the Walk-In Counseling Center were also members.

The Complaint Work Group agreed to examine the issues raised by the social work community, to identify ongoing problems, and to offer recommendations for resolution. The group's ultimate goal was to be assured that the complaint process protects the public from harm while offering appropriate due process protections to practitioners against whom complaints are brought.

The Complaint Work Group has met twenty times since June of 1998. All members agreed it was important to explore issues and problems as fully as possible in order to make realistic recommendations. Besides initial consults with complainants, the work group also met with the following individuals:

Gary Schoener and Ida Swearingen, Walk-in Counseling Center

Nancy Berg, Gary Debele, Tom Pearson, and Phil Villaume, attorneys who have represented social work licensees in the Board's complaint process

Kris Eiden, Peter Krieser, Bob Holley, and Hollice Allen, Attorney General's Office; Penny Troolin, Board of Social Work; and Sandy Robin, Board's Advisory Committee

Mark Umbreit, Center for Restorative Justice & Mediation, School of Social Work

Jane Braun, Barbara Kaufman, Lois McDougal, Mary Olympia, Steve Sawyer, and Penny Troolin, Board of Social Work/Board's Complaint Panel members; and Sandy Robin, Board's Advisory Committee

Jane Braun, Barbara Kaufman, Mary Olympia, Steve Sawyer, and Penny Troolin, Board of Social Work/Board's Complaint Panel members

The Coalition's Complaint Work Group faced a complex and lengthy task. Most of those we interviewed played different roles in the complaint process and had unique points of view about what was working well and what needed to be changed. We incorporated into our recommendations what we considered valuable and what the social work community had learned about complaint issues since the Board's inception in 1987. Some of our ideas are based on the complaint process of the Louisiana State Board of Board Certified Social Work Examiners. In order to stay on track throughout our process, we measured our recommendations against the Board's mandate to protect the public.

When discussing the intricacies of the complaint process, the Complaint Work Group found it important to explore basic and best standards of practice and differing degrees of harm to clients. This helped to clarify our thinking about appropriate roles, procedures, and boundaries of all those involved in the complaint process. Another touchstone for the group was discerning what was required of the Board by rule and by statute.

Before accepting the Complaint Work Group's recommendations, the Coalition requested that the work group get additional feedback from the social work community. Each of the Coalition's seven member professional groups chose two social workers to review and comment on the final draft of the recommendations. Work group members considered all the feedback and incorporated further refinements into its final recommendations. The Coalition sincerely thanks the following fourteen social workers who reviewed and commented on the draft recommendations:

Minnesota Association of Home Care Social Workers
Susan Dolph, LISW and Kay Hansen, LISW

Minnesota Conference on Social Work Education
Michael Chovanec, LICSW and Ralph Holcomb, LISW

Minnesota Nursing Home Social Workers Association
Peggy Lens-Harnden, LSW and Carol Payne, LSW

Minnesota School Social Workers Association
Gene Edwards, LSW and Pat Juàire, LICSW

Minnesota Society for Clinical Social Work
Clay Sankey, LICSW and Carol Schreier, LICSW

Minnesota Society for Social Work Leadership in Health Care
Pat Ahrens, LICSW and Ken House, LICSW

National Association of Social Workers - Minnesota Chapter
Angeline Barretta-Herman, LICSW and Susan Mewborn, LICSW

Obviously, implementing some of the Complaint Work Group's recommendations would require changes in statute and rule. However, we believe making the changes would be worth the effort and expense, because they would reduce complaint process costs, balance the due process rights of licensees with Board authority, and improve protection of the public.

INTRODUCTION

The Minnesota Board of Social Work is mandated to serve and protect the public by establishing and enforcing standards of licensure, continued competency, and ethical conduct. Social workers who do not meet these standards by engaging in unsafe, unethical, or incompetent practice must change their behavior or surrender their license. The public expects and deserves this protection from harm; the social work community endorses it.

The Minnesota Coalition of Licensed Social Workers affirms the Board's mandate. The Coalition believes that the recommendations would expand and improve protection of the public while offering appropriate due process protections to licensees against whom complaints are brought. When discussing changes to the process, the Coalition's Complaint Work Group did not consider recommendations that lowered public protection or raised overall cost.

The Board of Social Work has adopted an adversarial model for its complaint system based on our country's legal system. Both civil and criminal legal processes are presently evolving to make use of less adversarial procedures, such as mediation and restorative justice. The Board's current adversarial process is appropriate in some cases against licensees, while in others it can raise costs and impede timely and just resolutions. The Coalition's recommendation of adding procedures that are less adversarial to its complaint process affords the Board more choice and flexibility. These procedures would reduce expenses for both the Board and licensees, would be less time consuming, and would encourage licensees who have committed violations to admit fault and change behavior, all of which improves public protection.

GENERAL RECOMMENDATIONS

1. The Complaint Process--Increasing Flexibility and Lowering Cost. The Coalition recommends that the Board adopt and use additional complaint process procedures in order to provide more flexibility in responding to the public and to licensees. We recommend that education, mediation, and restorative justice be more fully utilized along with more adversarial procedures.

Rationale. Adversarial procedures are appropriate for licensees who will not cooperate or learn, for those social workers whose behavior requires full investigative and prosecutorial procedures. With additional options of education, mediation, and restorative justice available, the Board's Complaint Panels could choose other procedures well-suited for cooperative licensees, for those willing to utilize Board interventions and to change their behavior. The less adversarial options would save time and money while maintaining the standards for public protection.

2. Harm to the Public. A broad spectrum of social work practices considered to be violations are reported to the Board. The Coalition recommends that the Complaint Panels evaluate and use the concepts of degree of significant harm or the degree of risk of significant harm involved in each case to determine which remedies are most appropriate.

Rationale. Reports against licensees can range from a failure to keep appropriate records or to bill appropriately to minor boundary issues to predatory behavior against clients. At one end of the spectrum is licensee practice that is below practice standards but does not cause significant harm or risk of significant harm to clients. Many of these errors of practice judgment do not require punishment. Rather, the licensee needs education and practice improvement. At the other end of the spectrum is licensee behavior or practice resulting in great harm to clients or great risk of harm and requiring a surrender of license and additional discipline.

Deterrence is a key element of public protection. Discipline, however, is not the only deterrent. In a real sense, every interaction between the Board and a licensee over practice issues is a deterrent to harmful practice because of the inherent power of the Board. In many cases, the non-disciplinary interventions have sufficient deterrent value.

The profession affirms the Board in its enforcement of basic standards of competent and ethical practice rather than best social work practice. It also acknowledges that judging between less than standard practice and practice constituting a risk of significant harm is difficult. However, it is these judgments that best determine which types of remedies are best suited to the licensee in each case.

SPECIFIC RECOMMENDATIONS

1. Licensee Notification and Response. Once the Board has decided to go forward with a complaint, the Coalition recommends that the Board notify the licensee of the substance of the complaint within 30 days. We also recommend that the licensee respond to the complaint in writing within 30 days after receiving the complaint. The decision about how to proceed should be based on both the nature of the complaint and the response of the licensee.

Rationale. The Coalition acknowledges that making this recommended procedural change would constitute a paradigm shift in the Board's complaint process. The Coalition also realizes that adopting the recommendation would require changes in rule and statute, and that they could affect the complaint processes at the other licensing boards. However, there is widespread support in the social work community and beyond for making these changes.

As members of the Complaint Work Group interviewed staff from the Walk-In Counseling Center, staff from the Attorney General's Office, and attorneys representing licensees, they repeatedly heard about the need for the recommended change in licensee

notification and response. The Coalition asserts that all parties involved in the complaint process would benefit if licensees would receive information about the complaints against them and could respond to the Board regarding them within 30 days.

The recommended notification and response procedure is being used successfully by the Louisiana State Board of Board Certified Social Work Examiners. Louisiana experiences very low rates of recidivism among licensees found to be in violation, has held only two full disciplinary hearings in 1999, and states that their process keeps costs down. The Coalition encourages the Minnesota Board of Social Work to contact the Louisiana board to learn more about their complaint operation.

Under the recommended procedure, licensees could attempt to show in writing that the allegations against them are unfounded and that they have been in compliance with the licensing statute. The Board of Social Work could then decide whether to use the Attorney General's Office to investigate further and could decide which procedures would be most appropriate to the case. Licensees could also acknowledge that the complaints against them are valid, and they could propose a remedy. Incentives for licensees to admit violations include avoiding the stress of protracted involvement with the complaint process and the higher attorney fees that accompany it, as well as the desire to change their behavior and retain their employment, do the right thing, get their career back on track, etc.

The Coalition's recommendation of new procedures for notification and response, each with a 30 day time limit, is a win/win procedure with benefits for the public, for the Minnesota Board of Social Work, for licensed social workers in general and for those against whom a complaint has been made. The Coalition understands that the Board sees the advantage in its present process as avoiding tainted evidence from the licensee under investigation. The Coalition would counter that the recommended process would offer advantages that outweigh that risk in the following ways:

- a. The public is better protected when licensees receive a notification that their conduct has come under scrutiny and that they must review and possibly change their behavior. Licensees are engaged in the process of corrective action, or at least in evaluating their practice, sooner.
- b. The Complaint Panels will get a more complete and global understanding of the nature and the context of what happened, more quickly, when the complainant and the licensee present their sides of the story early in the process. The way the licensee responds will offer the Board valuable information about how to steer the investigation in more productive directions and how to proceed with the case. The Board will obtain its information sooner and at less cost.
- c. The process for uncovering the truth is enhanced when the licensee has a chance to respond to the allegations within thirty days. It is probable that the Board could become fixed in its understanding of what happened when an in-depth investigation has taken place before hearing the licensee's response, which may raise new facts, issues, and nuances. It is difficult for anyone to integrate important new information

into his or her understanding of a case when that information comes late in the process. At that time, new information raised by the licensee could be wrongly viewed as defensive rather than accurate.

d. A more collaborative, less-adversarial process encourages licensee cooperation and lowers costs for both the Board and for licensees. Louisiana reports that a majority of licensees choose to admit violations rather than engage in cover-ups or a long, expensive involvement in the complaint process. From a psychological perspective, a participatory approach is more likely to engage the licensee in a sincere effort to learn to practice competently and ethically. Licensee ownership and investment in a resolution of the complaint is an effective way to achieve lasting change, which protects the public. For those licensees refusing to cooperate, the more adversarial procedures are still available.

2. Use of the Educational Conference and the Agreement for Corrective Action. The Coalition recommends use of the Educational Conference and the Agreement for Corrective Action as the preferred responses to licensing complaints. The Coalition recommends developing criteria for deciding when use of the Disciplinary Conference and the Stipulation and Order is more appropriate to a given case. The Coalition also recommends developing criteria for determining when an Educational Conference should be stopped and a Disciplinary Conference scheduled.

Rationale. The Coalition believes that corrective action using education and supervision to change licensee behavior would be effective in most cases. Our entire body of professional knowledge about how people function teaches social workers that punishment is not the best or only way of promoting behavior change. The Coalition advocates for the remedies that will most effectively cause licensees to bring their practice up to standard, if possible, as the best way to protect the public in a just manner. If change is not possible or in particularly egregious circumstances, the Coalition supports the surrender of license or other disciplinary actions that are needed to protect the public.

The challenge for members of the Complaint Panels is always to use their professional judgment about the licensee, the validity of the complaint, the motives, the amount of significant harm or risk of significant harm involved, the possibility of change, and all other pertinent factors to decide what types of corrective or disciplinary remedies are best suited to each case. Discipline in every case is unwarranted and unnecessary.

Educational Conferences are less costly than are Disciplinary Conferences, with their more extensive use of attorneys. They also engage licensees sooner in the process of corrective action and behavior change.

3. Use of Alternative Dispute Resolution. The Coalition and the social work community enthusiastically support the Board's decision to implement an ADR pilot project if it is feasible and desirable.

The Coalition recommends using ADR as a tool to achieve resolution between the Board and licensees.

a. Use ADR in either Educational or Disciplinary Conferences to resolve misunderstandings and disagreements between the Board and licensees.

Rationale. Mediation is being used in an increasing number of conflict situations, such as divorce and custody, commercial disputes, and other court-related conflicts. Mediation is focused heavily upon reaching a settlement when certain facts are disputed, and it avoids more formal and expensive proceedings.

b. In most cases, an established ADR procedure should be offered before a Disciplinary Conference can progress to a Contested Case Hearing.

Rationale. ADR procedures may avert costly Contested Case Hearings.

Although it is not common, a licensee may currently challenge the Stipulation and Order in writing. Coalition participants questioned whether there should be a process for the licensee and the Complaint Panel members to discuss differences verbally. Right now, this is usually done through attorneys, which is expensive and time consuming.

4. Due Process. The Coalition recommends strengthening due process protections for licensees in the following ways:

a. Develop and adhere to reasonable time limits for the investigation and all stages of the complaint process for both the licensee and the Board.

b. Include information on the licensee's legal rights and responsibilities with the letter of complaint notification.

c. Send periodic complaint process updates to licensees.

d. Record electronically all investigative interviews with licensees.

Rationale. A recorded interview will provide an accurate and inexpensive record for accountability for both licensees and the Board.

e. The Coalition recommends that information about licensee therapy or treatment be accessed only by a qualified, independent examiner who provides to the Board an assessment of the mental health or chemical health of licensees and whether the licensee may safely continue to practice.

In most cases there is no need to obtain licensees' personal, mental health records. A court order should be required in those exceptional cases when licensees' records need to be obtained over their objections

Rationale. Unnecessary intrusion into the privacy of licensees who happen to be mental health clients--which is now, with few exceptions, prohibited by both state and federal law and decisions--is not warranted. This type of intrusion weakens public protection by deterring mental health professionals from seeking treatment. The best evidence of fitness for practice comes from mental health evaluations rather than from an examination of therapy records.

f. When the therapy records of a licensee's client are needed and the client objects, the Coalition recommends that a court order be required to obtain the records.

Rationale. Requiring licensees to surrender client therapy records puts them in a double bind. Licensees could be charged with violating client confidentiality if they surrender the records and with failure to cooperate with the Board if they do not.

g. Present procedure requires publication of all Stipulations and Orders (S & Os). The Coalition recommends that new procedures for publishing be developed that take into consideration the significant harm done or the risk of significant harm to clients and the impact of publishing on the licensee. Making greater use of Educational Conferences and the resulting Agreements for Corrective Action would also address this issue, as statute does not require them to be published.

Rationale. An S & O publication can damage or destroy a social worker's practice even though the Board has determined that the licensee is able to practice safely. S & O publication can be even more damaging in smaller, outstate communities. We are aware that the Lawyers' Board of Professional Responsibility uses the "private admonition." An admonition enters licensees' records but is not published. It can be used effectively for teaching purposes without identifying the licensee.

5. The Coalition supports the Board's continuing efforts to develop and refine the training program for both Board staff and members.

Rationale. Training is especially relevant for making judgments regarding risk and degrees of significant harm and regarding the spectrum of reported licensee behavior.