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Stephen R. Block
NASW, Colorado Chapter

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THE SUNSET REVIEW OF A SOCIAL WORK BOARD OF EXAMINERS:
A CASE EXAMPLE

STEPHEN R. BLOCK

NATIONAL ASSOCIATION OF SOCIAL WORKERS,
COLORADO CHAPTER

ABSTRACT

The author reviews the events following the passage of Colorado's pioneer Sunset Review Legislation in 1976. The experiences of the 36 states which passed Sunset Legislation have been varied. Lobbying efforts in addition to costs have played a significant role in the review process and outcome. A case analysis of the Sunset Review of the Colorado Social Work Board of Examiners illustrates the tenacity of a group of professionals determined to maintain legal regulation of the social work field. The group's success was a result of political organization and the technical expertise required to influence policy makers.

The scenario goes something like this: In 1976, just one year after the enactment of a Colorado Social Work Practice Act and the establishment of a Social Work Board of Examiners, the Colorado Legislature initiated the first Sunset Review Law in the country.

The original concept of Sunset Review was conceived by the Colorado Chapter of Common Cause. They envisioned it as a tool which would enable state government to be more accountable through a process of joint executive and legislative evaluations of programs created by statute. In Colorado, the passage of House Bill No. 1088 of 1976 provided for the termination of the 39 boards and commissions in Colorado's Department of Regulatory Agencies. Starting July 1, 1977, one-third of the boards and commissions were scheduled for termination every other year. In addition, any newly created agency, as well as those which survived the review cycle, would be given a terminable life of six years. After six years, the agency would be scrutinized through the Sunset Review process. In all cases, the boards and commissions would be abolished unless they received a mandate from the Colorado Legislature to continue existence. Legislative consideration would be based on both a performance audit conducted by the executive branch and by legislative hearings where the public could respond and give testimony. According to statute, the agency under review must demonstrate a 'public need' for its continuance.¹

Under the new Sunset Law, the first round of agency reviews concluded with an array of changes. The Legislature continued nine boards. Three of the nine were re-established with modifications--the Collection Agency Board, the Racing Commission, and the Passenger Tramway Safety Board (which regulates ski lifts). In addition, two other boards--the Cosmetologists Board and the Board of Barber

Examiners--were consolidated. Also, three boards were abolished--the Board of Shorthand Reporters, the State Athletic Commission, and the Board of Professional Sanitarians.

During this same review period, the Colorado Legislature was unable to complete a thorough review of six sizeable agencies. The Legislature postponed review of the Public Utilities Commission, the Division of Insurance, the Board of Life Care Institutions, the Board of Nursing Home Administrators, the Electrical Board, and the Board of Mortuary Science. In the following legislative session all six boards were continued and the Legislature created a new oversight board for the Division of Insurance.²

Colorado's initial experience appeared to have accomplished the sunset aim of streamlining government. In turn, the popularity of sunset grew like topsy. Twenty-three additional states adopted Sunset Laws by 1977, and every state legislature has since given consideration to a mandatory agency evaluation mechanism.³

Sunset Review appears to have an impressive track record. From 1976-1981, approximately 1500 agencies were reviewed in all the sunset states: nearly 300 agencies have been terminated; approximately 500 were modified; and the balance, re-established with very little or no change (Common Cause, 1982).

Despite its successful record, Sunset Review is not without its problems. In fact, many states report difficulty with the review system including problems of cost, limited public participation, limited program evaluation experience, and the enormous amount of staff time that is required to complete an audit (Common Cause, 1982). The costs of the reviews have been reported to run between \$8,000 to \$12,000 each, and the average 1982 state sunset budget was over \$200,000 (Roederer and Palmer, 1981; Common Cause, 1982). In addition, eighty percent of the sunset states have not been able to report any savings as a result of the review process (Common Cause, 1982). Another major problem is the unwillingness of legislators to abolish boards in response to professional association lobbying pressure (Mitzman, 1979).

Disenchantment with Sunset Review has grown significantly. Seven of the sunset states have introduced bills calling for the repeal of their statute. One state--North Carolina--repealed its Sunset Law in 1981, and replaced it with an evaluation mechanism without the automatic termination authority found in Sunset. Ironically, even the pioneer state--Colorado--considered proposed legislation in 1981 to terminate the nation's first Sunset Law. Although this bill failed in the Senate by a two-to-one margin, its existence marked the level of frustration that legislators have experienced with sunset activity.

Since its beginning in 1976, legislators have gradually decreased their support of Sunset Review as a reaction to the criticism they have encountered. For example, the Colorado Deputy State Auditor publicly reported disillusionment over the Legislature's minimal efforts in the review process (Pierce and Hagstrom, 1977). Criticism was also assailed at the Texas Legislature where legislator voting patterns on sunset audits were clearly a reflection of the amount of campaign contributions they received during the election races (Common Cause, 1982). In North Carolina, the Legislature was accused of buckling under

the pressure of lobbyists and interest groups leading to the repeal of the North Carolina Sunset Law (Common Cause, 1982).

Back in Colorado, legislators came to their own defense.⁴ Some spoke of repealing the Sunset Law, while others thought it should be modified so that the review cycle was every ten years. Furthermore, some legislators held a more extreme view which consisted of killing some regulatory boards in order to demonstrate to the public that they were indeed serious about curbing government. The crusade to kill off regulatory agencies came at an inopportune time for the Colorado Social Work Board of Examiners. They were scheduled for the next review!

PREPARATION FOR SUNSET REVIEW

The potential for a problematic review of the Colorado Social Work Board of Examiners was recognized earlier on. Reports from the Kansas Chapter of the National Association of Social Workers on the Sunset Review of the Kansas Board of Social Work Examiners indicated legislator interest in the number of complaints adjudicated by the Board. There was also strong interest in the idea of merging the Psychology Board with the Social Work Board.⁵ In Colorado, consumer complaints against social workers numbered only fifteen in a six year period. Seven of those cases, however, were against unlicensed social workers for which the Board did not have any jurisdiction. Of the remaining eight cases, four were closed based on findings of no violations; two cases were still under investigation; and, two cases were referred to a Board hearing. By the beginning of the review period, one of the two cases was still pending a decision. The other case resulted in a licensee suspension. Thus, the argument that a Social Work Board of Examiners was needed to protect the consumer was, like in Kansas, a weak position. In addition, there was a desire among Colorado social workers to reject the amalgamated board concept like the one that was developing in Kansas. In fact, the Kansas experience prompted Colorado social workers to communicate their position on the umbrella board issue in a letter to the Executive Director of the Colorado Department of Regulatory Agencies.⁶

In response to the potentially problematic review, a Surviving Sunset Review Committee was appointed by the Colorado Chapter, National Association of Social Workers' President. Ten Chapter members were selected to serve on the Committee based on their substantial social work experience as well as their ability to represent social workers from a variety of practice settings. The Committee was staffed by the Chapter Executive Director and assisted by a graduate social work intern. Committee activities were financed by Chapter funds and contributions from several sources including individual social workers, the Colorado Society for Clinical Social Work, the Colorado School Social Work Association, and from a National Association of Social Workers' Program Advancement Fund (PAF) Grant.⁷

By September 1979, the Chapter Committee was meeting on a monthly basis. Initial meetings were devoted to formulating a direction for the year. These early planning sessions also provided the Committee with an important opportunity to educate each Committee member on the fine points of the Colorado Social Work Practice Act⁸ in addition to reviewing the arguments for and against occupational

regulation (Hardcastle, 1977; Johnson, 1977; Shimberg, 1976; NASW, 1976). Other concerns that were examined included several issues that were raised by the State Auditor's Office and the Department of Regulatory Agencies. Among these concerns were the limited number of consumer complaints; the five year eligibility requirement for the LSW II type of license; and, the inability to enforce the reciprocity clause with other states.⁹ Another concern that was raised by the auditing groups was the limitation the Act had on regulating the practice of social work. Both auditing agencies thought that the Act only served to protect the title of "Licensed Social Worker."

LEGISLATIVE EVENTS AND THE LOBBYING EFFORT

The Chapter Committee secured a Senate sponsor and a House sponsor to introduce a bill calling for the continuation of the Social Work Practice Act of 1975. The new bill contained some housecleaning measures to help clarify the boundaries between the Registered Social Worker and the Licensed Social Worker I. While the Committee recognized the benefit that the Sunset Review could have on cleaning up some difficult sections in the law, they felt the best strategy would be to suggest few changes and be obliging when amendments were introduced in the legislative hearings (Block et al, 1983).

On January 8, 1981, the second day of the new General Assembly year, the bill to continue the Social Work Practice Act came before the Senate Health Committee for its first legislative hearing. As in both their reports to the Legislature, the State Auditor and the Executive Director of the Department of Regulatory Agencies testified against the continuation of the Act. In addition, the President of the Colorado Division of the American Association for Marriage and Family Therapy spoke against the merits of the Act. He asked the Senators to abolish the Social Work Board of Examiners and create in its place a Behavioral Science Board which would include the counseling groups that were not licensed, such as the guidance counselors, pastoral counselors, vocational rehabilitation counselors, and the (non-M.S.W.) marriage counselors.

Although opposition arguments were strong, the biggest blow came from the Colorado Social Work Board of Examiners--the group that the Chapter Committee was attempting to sustain. Testimony from members of the Board did not convey much knowledge of the Act, nor did they display any zeal in support of it. In fact, the Board members that were present in addition to the Board Administrator were not able to respond with exactness to legislator inquiries concerning the number and status of cases that were investigated and reviewed. Consequently, Chapter Committee members whose testimony followed the Board's presentation simply could not capture the interest of the Senators. A vote at this juncture would have meant certain defeat for the bill. Fortunately, the bill's chief sponsor was also the Chairman of the Senate Committee. As Chairman, he exercised his authority to postpone a vote on the bill.

In an attempt to turn around the sentiment against the social work bill that prevailed during the January 8th hearing, the Chapter Committee diligently lobbied Senators who served on the Health Committee. In addition, over two hundred letters were generated by activating the Chapter Education Legislative

Action Network's (ELAN Committee) telephone contact system. In February, the Chapter Committee returned to the Senate Health Committee's chamber to discover that the lobbying efforts paid off. That morning, the bill passed out of the Senate Committee, although in an amended form. The amended bill reduced the life of the bill from its six year cycle to only one year. According to the author of the amendment, the social work profession should return in one year with a new bill which includes a provision for the regulatory control of the behavioral science practitioners not currently covered by statute. Also, a second amendment was adopted which would prohibit the Colorado Department of Personnel from including licensed social workers in the sample population used for the State's wage and salary survey. Apparently, the amendment's maker feared that a licensed social worker's salary would be high, thus pushing the cost of State salaries upward.

The next day, the full Senate approved the amended bill and sent it to the Colorado State House of Representatives for their consideration of the bill. With the assistance of the bill's House sponsor, it was appointed to the House Health Committee which gave the psychologists an unfriendly reception during an earlier Sunset Review.

The Chapter Committee spent a considerable amount of time preparing for the House Committee hearing. The result was an improved range of testimony. Furthermore, a handout was created for this occasion which identified that social workers saw more clients than both the combined caseloads of psychologists and psychiatrists (Thompson et al, 1980; Grosser and Block, 1983). The handout also reported that there are as many social workers that are engaged in private practice as there are psychiatrists. Moreover, the Chapter Committee questioned the logic of terminating the Social Work Board of Examiners while leaving the Psychology Board and the Medical Examiners Board intact. The House Committee agreed and they passed the bill on to the Rules Committee with an amendment to restore the bill back to an extended life of six years.

Next, the bill was sent to the House Rules Committee which has the responsibility for determining when a bill will be brought before the entire Assembly for a vote. It was here that the Chapter Committee was stonewalled by the Rules Committee Chairman who proclaimed that he was going to "kill" the bill by not placing it on the House Calendar.

In response to this new crisis, the Chapter Committee spent the next three days working earnestly to change the Chairman's staunch position. As before, the Committee was aided by the Chapter ELAN Committee. They were able to generate sixty mailgrams from constituents of the Rules Chairman. Meanwhile, the bill's two House sponsors pleaded its cause, and sympathetic lobbyists from outside the human service field agreed to help at the request of the Chapter's Lobbyist, President, and Executive Director. Within hours of the deadline, at which time the bill would face its automatic death, the Rules Chairman decided to schedule the bill on the House Calendar.¹⁰

The bill would now be examined by the full House. However, the bill's House sponsor used her charm and reputation to help move the bill successfully

through the House without any debate. The House also agreed to assign the bill to a Conference Committee since House and Senate versions differed. The Conference Committee consisted of the bill's two major sponsors in addition to two Senators and two Representatives. At the time of the Conference Committee meeting, the Senate sponsor was absent (due to a death in his family). In his absence, the House sponsor chaired the meeting and verbalized a strong pro-bill position. The Chapter Executive Director was the only witness that was called to testify. Afterwards, the Conference Committee reached a consensus of opinion. They agreed to restore the bill to its original six year version, and to strike the amendment concerning the wage and salary survey sample.

After Conference Committee, the bill was returned to the House for its final consideration. After its passage, the bill was sent to the Senate. However, the Senate sponsor (from Colorado Springs) was still absent. In need of a Senate advocate, several Colorado Springs social workers along with the Chapter Lobbyist convinced another Colorado Springs Senator--who early in the process was against the bill--to agree to speak in support of the bill. As it turned out, the original Senate sponsor arrived back to the Senate Chambers just in time to present the bill to a weary Assembly. The bill passed unanimously.

NOTES

1. State of Colorado House Bill 1088 of 1976 requires a performance audit to take into consideration: the extent in which the Board has permitted qualified applicants to serve the public; affirmative action requirements complied with; operated in the public interest; agency recommendations to serve the public better versus the profession; impact of the rules and regulations; public participation in the rules making; the efficiency by which complaints have been handled.
2. In 1979, thirteen agencies were reviewed in Colorado, ten were continued and three were terminated. In the 1980-81 legislative session, thirteen agencies were reviewed, four were modified, four were continued for one year, two were consolidated, and three were terminated.
3. The 36 sunset states and the year they adopted Sunset Legislation are as follows: In 1976, Colorado, Alabama, Florida, Louisiana; in 1977, Alaska, Arkansas, Connecticut, Georgia, Hawaii, Maine, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington; in 1978, Arizona, Indiana, Kansas, Maryland, South Carolina; in 1979, Illinois, Mississippi, Nevada, West Virginia, Wyoming; in 1980, Delaware; in 1981, Pennsylvania.
4. For example, on Saturday February 7, 1981, two legislators held a press conference during which time Senator Hefley stated, "the Legislature lacks

the backbone to do what needs to be done with agencies up for review." One week earlier, Senator Durham said he wanted to do away with the Sunset Law because the Legislature lacked courage to take a stand against lobbyist pressure.

5. Information regarding the Kansas sunset audit came from materials received from the Kansas Chapter of the National Association of Social Workers. Additional information was shared in conversation with the Kansas Chapter, NASW Executive Director, Carl Myers. See, The Kansas Sunset Audit, Kansas Division of Post Audit, released November, 1978.
6. A letter was sent to Gail Klapper, Executive Director of the Department of Regulatory Agencies, from the Chapter Sunset Review Committee, on July 30, 1980.
7. The Program Advancement Fund Grant was awarded for two reasons: One, to help the Chapter in its efforts to maintain legal regulation of the profession. The second reason was to establish a set of guidelines that would be useful for other State Chapters that would become involved in Sunset Reviews.
8. There are three levels of Social Work Regulation in Colorado. Eligibility requirements for the Registered Social worker include an M.S.W or B.S.W. plus two years of supervised experience, and a fee. The Licensed Social Worker I, requires two years of supervised experience, plus an M.S.W., an exam, and a fee. The Licensed Social Worker II requires five years of supervised experience, plus an M.S.W., an exam, and a fee. The Social Work Practice Act of 1975 also contains a provision for privileged communication, public employee and not-for-profit employee exemption, continuing education of 14 clock hours for renewal, and a clause on reciprocity. However, reciprocity has not been honored to date since applicants come from states with different eligibility requirements.
9. The official position of the State Auditor's Office was revealed in the Sunset Audit of the Board of Social Work Examiners, released July, 1980. Information was also gleaned through conversation with Dan Hall, Program Evaluator, Colorado Department of Regulatory Agencies, on January 25, 1980.
10. Although the Rules Chairman decision to place the bill on the House Calendar may be attributed to the aggregate efforts of the Chapter Committee, the sponsors, the lobbyists, and the Chapter membership, the Chairman stated his reason for placing the bill on the Calendar was in order to not interrupt the Sunset Review process.

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