

 Council on Licensure,  
Enforcement and Regulation

**Colorado's Sunset  
Review**

  
2010 Annual Educational Conference - September 23-25

Presenter : Bruce Harrelson, Director  
Office of Policy, Research and Regulatory Reform  
Colorado Department of Regulatory Agencies

*Promoting Regulatory Excellence*

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When it was first created in 1976, Colorado's Sunset Program was reported on the front page of the "Wall Street Journal" as a remarkable innovation in state government.

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**Sunset Review Criteria**

- Does the agency operate efficiently and effectively?
- Does the composition of the board or commission represent the public interest?
- Does the agency encourage public participation in its decisions rather than participation only by the people it regulates?
- Economic impact of regulation and whether the agency restricts or stimulates competition.
- Are complaint investigation and disciplinary procedures adequate to protect the public?
- Are final dispositions of complaints in the public interest or self-serving to the profession?

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<b>Sunset Timeline</b> <ul style="list-style-type: none"><li>• Reviews begin in November – one and a half years prior to the agency's repeal date.</li><li>• Reviews are completed by October 15 of the year prior to the agency's repeal date.</li><li>• Hearings are conducted during the next regular session of the Legislature.</li><li>• Agency is either continued, modified and continued, or terminated.</li></ul>		

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<b>Sunset Review</b> <ul style="list-style-type: none"><li>• Attend board meetings to observe the board in action</li><li>• Interview board members and agency staff</li><li>• Review board minutes</li><li>• Review complaints and disciplinary actions</li><li>• Conduct a literature review</li><li>• Survey other states</li><li>• Survey licensees</li><li>• Survey complainants</li><li>• Interview constituencies (professional associations or citizen advocacy groups)</li></ul>		

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<b>Colorado Sunrise/Sunset Recommendations</b>  Total Recommendations - 986  Percent Passed - 79%		

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<p style="text-align: center;"><b>Sunset Accomplishments</b></p> <ul style="list-style-type: none"><li>• Increased public membership on state boards and commissions</li><li>• Introduction of more efficient administrative practices and disciplinary procedures for agencies</li><li>• Streamlined statutory hearing and enforcement processes</li><li>• Improved reciprocity provisions to allow for equitable entry into the Colorado marketplace by qualified applicants licensed in another state</li></ul>		

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<p style="text-align: center;"><b>Sunset Accomplishments, Cont.</b></p> <ul style="list-style-type: none"><li>• Updated practice entry standards and disciplinary options for regulated occupations</li><li>• Stronger prohibitions against conflicts of interest</li><li>• Elimination of duplication or overlap of functions and unnecessary licensing of professions</li><li>• Termination of 45 programs or advisory committees</li></ul>		

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<p style="text-align: center;"><b>Sunset Case Studies</b></p> <ul style="list-style-type: none"><li>• Sex Offender Management Board</li><li>• Advanced Practice Nursing – Prescriptive Authority</li><li>• Taxi Regulation</li></ul>		

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**Inquiring Minds Want to Know . . .**

- Agency Budget
- Licensing
- Examination
- Complaint
- Final Agency Action
- Audit and Inspection

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**Sunset Shortcomings**

- Failure to reduce the size of government
- The amount of time and money spent by legislators and staff is high
- Lack of citizen input and disproportionate influence by agencies and by lobbyists
- Lack of adequate evaluation criteria to apply to agencies under review
- Failure to reduce the size of agencies and commissions that have effective lobbying constituencies

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**PEW Health Professions Commission Recommendation**

States should develop evaluation tools that assess the objectives, successes and shortcomings of their regulatory systems and bodies to best protect and promote the public's health.

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<b>Benefits of Sunset</b>		
<p>Forces legislature to focus on problems and issues facing professions and boards</p>		
<p>Creates positive reforms and improves legal framework</p>		
<p>Continuation creates ongoing affirmation of mission and purpose</p>		

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<b>Audits!</b>		
<p>The Mission of the State Auditor and her staff is to serve as the government watchdog for the citizens of Colorado, conducting independent financial and performance audits of the State's agencies, colleges, and universities. As stewards of public funds, the State Auditor strives to promote accountability and improve the operation of all levels of government. Audits focus on reducing costs, increasing efficiency, improving the quality of services, and ensuring the accuracy and integrity of financial information.</p>		

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<b>Speaker Contact Information</b>		
<p>Bruce Harrelson, Director Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform – <a href="http://www.dora.state.co.us/opr">http://www.dora.state.co.us/opr</a> 1560 Broadway, Suite 1550 Denver, CO 80202 <a href="mailto:Bruce.harrelson@dora.state.co.us">Bruce.harrelson@dora.state.co.us</a> (303) 894-2993</p>		

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2010 Annual Educational Conference - September 23-25

Regulatory  
Accountability:  
Evolving Models of  
Oversight

Presenters: Richard Steinecke  
Steinecke Maciura LeBlanc

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Thoughts on Oversight

- "Not to oversee work[ers], is to leave them your purse open" Benjamin Franklin
- "Accountability breeds response-ability." Stephen R. Covey
- "It is not only what we do, but also what we do not do, for which we are accountable." Moliere

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Thoughts on Oversight

- "We are accountable for our decisions in our personal life so why shouldn't we be just as accountable in our work life." Catherine Pulsifer
- "We are accountable only to ourselves for what happens to us in our lives." Mildred Newman
- "It was accountability that Nixon feared." Bob Woodward

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<h3>Overview</h3> <ul style="list-style-type: none"><li>• Canadian context</li><li>• Forms of accountability</li><li>• Case study: Ontario health professions</li><li>• Strategies for regulatory reform</li><li>• Reducing the burden of compliance</li></ul>		

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<h3>Canadian Context</h3> <ul style="list-style-type: none"><li>• Self-regulation<ul style="list-style-type: none"><li>– Mandate delegated by statute</li><li>– Parliamentary system with Minister accountable to the Legislature</li></ul></li><li>• Pattern: public outcry, an official study, amendments to the statute</li><li>• Also, stakeholder initiated reforms<ul style="list-style-type: none"><li>– E.g., OFC, HPRAC, mobility</li></ul></li></ul>		

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<h3>Accountability</h3> <ul style="list-style-type: none"><li>• Forms of accountability<ul style="list-style-type: none"><li>– Structural (e.g., public members)</li><li>– Political (to the Minister)</li><li>– External review of individual decisions</li><li>– Program scrutiny</li><li>– Direct to the profession</li><li>– Direct to the public</li></ul></li></ul>		

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<h3>Accountability – Structural</h3> <ul style="list-style-type: none"><li>• Ratio of public members on Council increased from c. 25% to c. 40%<ul style="list-style-type: none"><li>– Most committees require a public member</li><li>– Discipline panel requires 2 public members</li></ul></li><li>• Equal status<ul style="list-style-type: none"><li>– Increasing tendency to be chairs</li><li>– Occasionally even as President</li></ul></li><li>• Usually no public/profess'l split on issues</li></ul>		

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<h3>Accountability - Political</h3> <ul style="list-style-type: none"><li>• General oversight (e.g., annual report)</li><li>• Approval of regulations</li><li>• Appointment of public members</li><li>• Right to inquire of and direct Council<ul style="list-style-type: none"><li>– Can require reports of specified information</li><li>– Power to make a College regulation</li><li>– Operational audits</li><li>– Ability to appoint a supervisor</li></ul></li></ul>		

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<h3>Accountability - Internal</h3> <ul style="list-style-type: none"><li>• Varies with governance of College</li><li>• Not over a committee's statutory duty</li><li>• Indirectly Council can<ul style="list-style-type: none"><li>– Appoint and remove committee members</li><li>– Set general policies</li><li>– Appeal discipline and fitness decisions</li><li>– Receive and comment on general reports of committees (and specify form of reports)</li></ul></li></ul>		

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<b>Accountability - External</b>		
<ul style="list-style-type: none"><li>• HPARB / LAT / CRC<ul style="list-style-type: none"><li>– Complaints decisions (with exceptions)</li><li>– Registration decisions (by applicant)</li></ul></li><li>• Ontario Divisional Court<ul style="list-style-type: none"><li>– Discipline, Fitness, Registration</li><li>– Judicial Review applications</li></ul></li><li>• Human Rights Tribunal<ul style="list-style-type: none"><li>– Registration, complaints, regulation-making</li></ul></li></ul>		

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<b>Accountability – Program</b>		
<ul style="list-style-type: none"><li>• HPRAC (Advisory Council)<ul style="list-style-type: none"><li>– Effectiveness of patient relations / QA</li><li>– New professions, amendments to legislation</li></ul></li><li>• OFC (Office of the Fairness Commissioner)<ul style="list-style-type: none"><li>– Annual reports</li><li>– Periodic audits</li><li>– Consultation on registration regulations</li></ul></li><li>• Mobility (MTCU, Coordinating Group, etc.)</li></ul>		

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<b>Accountability – To Profession</b>		
<ul style="list-style-type: none"><li>• Circulation and comment requirements for regulations and by-laws</li><li>• Newsletter for profession</li><li>• Ability to attend Council meetings and discipline hearings</li><li>• Election of some members of Council<ul style="list-style-type: none"><li>– Means of selecting respected persons</li><li>– Not a “constituency” representative</li></ul></li></ul>		

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<h3>Accountability – To Public</h3> <ul style="list-style-type: none"><li>• Public access to Council meetings and discipline hearings</li><li>• Public access to portion of register</li><li>• Public access to discipline decisions</li><li>• Right to ask to intervene at discipline</li><li>• Media</li><li>• Ultimately via Minister &amp; Legislature</li></ul>		

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<h3>A Short History of the RHPA</h3> <ul style="list-style-type: none"><li>• 1975 HDA</li><li>• 1982 Schwartz “HPLR” Blueprint<ul style="list-style-type: none"><li>– Over 3 separate governments</li><li>– Culminating in 1991 Bill</li><li>– Sexual abuse amendments - 1993</li></ul></li><li>• 2001, 2006 HPARB review</li><li>• 2006 OFC amendments</li><li>• 2007 amendments</li><li>• 2009 amendments</li></ul>		

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<h3>Regulatory Hesitations</h3> <ul style="list-style-type: none"><li>• Cost / burden</li><li>• Fairness</li><li>• Imbalance</li><li>• Lack of predictability</li></ul>		

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<p style="text-align: center;"><b>Strategies for Regulatory Reform</b> <i>(E.g., a new form of QA)</i></p> <ul style="list-style-type: none"><li>• First, stay out of trouble</li><li>• Consider what you can do without legislative amendments</li><li>• Finding a legislative vehicle</li><li>• Obtain the data</li><li>• Stakeholders, stakeholders, stakeholders</li><li>• Old fashioned government relations work</li></ul>		

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<p style="text-align: center;"><b>Reducing the Burden of Compliance</b></p> <ul style="list-style-type: none"><li>• Be realistic about what can be achieved<ul style="list-style-type: none"><li>– Things will only get worse</li></ul></li><li>• Awareness, orientation, engagement</li><li>• Market what you are doing to overseers</li><li>• Have a dispute resolution process</li><li>• Share resources / networking</li></ul>		

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<p style="text-align: center;"><b>Conclusion</b></p> <ul style="list-style-type: none"><li>• Increasing regulatory oversight is inescapable</li><li>• “What does not kill you makes you stronger”</li><li>• Managing change</li></ul>		

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<b>Speaker Contact Information</b>		
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