



**Regulation Matters:
a CLEAR conversation**

Episode 86: Sunrise, Sunset, and the Media Spotlight – A Case Study in Regulation and Communication February 11, 2025

Line Dempsey: Welcome back to our podcast, Regulation Matters: a CLEAR conversation. Once again, I'm your host, Line Dempsey. I am currently the Chief Compliance Officer with Riccobene Associates Family Dentistry here in North Carolina, along with practices in South Carolina and Virginia. I've also been a board member and past president of CLEAR.

As many of you are aware, the Council on Licensure, Enforcement and Regulation, or CLEAR, is an association of individuals, agencies, and organizations that comprise the international community of professional and occupational regulation. This podcast is an opportunity for you to hear about important topics in our regulatory community.

Today, we're going to be talking about the sunrise review process, with the sunrise review of funeral service professionals in Colorado as a case study. Today's guests are Brian Tobias, Director of the Colorado Office of Policy, Research and Regulatory Reform, and Katie O'Donnell, Director of Communications and Public Engagement for the Colorado Department of Regulatory Agencies. Thank you for joining me today.

Brian Tobias: Happy to be here, Line. Thanks for having us.

Katie O'Donnell: Yes. Thanks for having us.

Line: Thank you again. Well, so the Colorado Office of Policy Research and Regulatory Reform recently conducted a sunrise review of funeral service professionals. So, let's talk about this sunrise process. I know some of our regulators have actually had to deal with this too.

How does the regulation of a new profession come about in Colorado? Typically, what is the process for this? How is it maybe different from other states? And Brian, if you would.

Brian: Yeah, thanks. So, as you indicated, Line, Colorado has a sunrise process. And it really is designed to look at, whenever somebody wants to regulate a currently unregulated profession or occupation, our sunrise process kicks in. Colorado began doing the sunrise process back in 1985. So we've been doing it for a while. And really, the idea there is to provide the General Assembly or our Legislature with objective research - to get away from media hype, the lobbying - and really give them some objective, neutral research.

Last time I looked, I think there are about 20 states that have some sort of a sunrise process or something similar to it. I expect that there are probably 20 different sunrise processes out there. Every state very likely has their own take on it. But our process anyway is triggered, like I said, whenever somebody wants to regulate a profession that is currently unregulated. They submit an application to us to my office. And we have a [sunrise application on our website](#) so people can look at it whenever they want. It contains 25 questions. It is not just a check-the-box and fill-in-the-blank kind of application. It really kind of is designed to solicit quite a bit of information from the sunrise applicant.

And so, for example, we ask about, what is the profession or occupation we're talking about? Give us a description of it. Who are these practitioners? How many are there? And sort of, what are you proposing to do? Are you proposing to have a full licensing program with education, training requirements, experience or apprenticeship requirements, examinations? What are you talking about in terms of regulating? Does the public have direct access to these practitioners? Do other states regulate these practitioners? And if so, how? And then finally, we also ask for examples of harm to the public. And I'm going to come back to that here in a minute. But that really is the key in every sunrise application is those examples of harm to the public.

Our process works on basically two 6-month cycles. So, we produce sunrise reports the end of June and the end of December. Anyone can submit an application, although it probably won't surprise your audience too much, Line, but it surprises others quite a bit that most of the applications are submitted by the professions themselves. So, these are the practitioners looking for the state to regulate them.

Our legislature has given us five criteria to use in evaluating a sunrise application. These are the criteria we use to ultimately come to a conclusion as to whether to recommend regulation or not. The first criterion is really at the heart of the sunrise process. That asks whether regulation is necessary to protect the public. And that is really where we drill in and drive home the importance on the sunrise applicant to provide us with specific examples of harm. How are these practitioners harming the public such that state intervention in the marketplace is justified? And that is the key driver. I know sunrise applicants probably get tired of us asking for those examples of harm. And I sympathize with them because it's tough, right? There is no regulatory program in place. There is no central repository of complaints. So, the sunrise applicant really has to dig and try to find how their colleagues are

harming the public, because that's ultimately what we're looking for. And that really is the key to the other criteria because the next one we ask is, is competency the issue?

So, we will look at those examples of harm we have and then we'll say, 'what was the root cause of that harm?' Was it a lack of competency, or was it something else? Is it intentional conduct? Is it criminal conduct? What is causing the harm? Next we ask, does this profession exercise independent judgment? Are these practitioners independent practitioners, or are they supervised by others? That will help to inform whether regulation is necessary, and if it is, what it looks like. We'll also look to see whether criminal history should serve as a barrier to entry. And again, going back to those examples of harm, was criminal conduct involved? What does this occupation or group do that might justify, you know, limiting individuals who have certain criminal histories from engaging in that practice?

And then finally, we look to see what are the alternatives? Are there any alternatives to state regulation? Anything that's more cost effective that can still protect the public based on the harm we identified on that first criterion, but maybe short of actual state regulation.

And I think really, the key is that first question, Line. What is the harm? Everything flows from that. The other criteria are really not dispositive in and of themselves. But if we conclude that there is harm and that regulation is justified, those other criteria really kind of help flesh out what that regulation ought to look like at the end of the day.

At the end of the report or at the process, we will make a recommendation to either regulate or not. And if we do recommend regulation, we may (though we're not required to) recommend what that regulation ought to look like. And from there, it really goes back to the sunrise applicant to pursue legislation. That's not something we do; that's not something the state does. A lot of times during the sunrise review process, we'll get questions about 'Well, why is the state trying to do this? Why is the state looking to do this?' It's not the state. It's somebody else outside the state has asked us to look at it.

The sunrise applicant can then pursue legislation, regardless of what we recommend. If we recommend against regulation, they can still, if they can find a bill sponsor, they can still move forward with legislation. And they've got two legislative sessions to do that. Our legislature meets every year, or I think it's 120 days starting in January. And then they go through early May, early January to early May. And then, if they don't pass legislation during those two sessions and they want to continue to pursue regulation, they need to start the process all over again.

Line: Well, that's very helpful to understand kind of what the process is. And I know today we're kind of looking at a case study, if you would, of what happened with the funeral home professionals. So, I guess what prompted that review specifically?

Brian: Sure, so contrary to popular belief you know, this review, the sunrise review was not prompted by the horrific events that happened in southern Colorado in 2023, or were revealed in 2023, I should say. We began a sunset review. So my office also conducts sunset reviews in Colorado. We began the sunset review of Colorado's regulation of funeral homes and crematories in November of 2022. That was a pre-scheduled sunset review. It had probably been on the books for probably close to 10 years, somewhere in that range.

So, the sunset review itself was not prompted by any single event. It was already there. It was already going to happen. So, in late fall of 2022, we met with the professional association as part of the sunset review. And they very early on started talking about wanting to pursue licensing of individuals - funeral service practitioners. Because we cannot address new regulation like that in a sunset review, we discussed with them the sunrise process - told them all about it, how to submit an application. And so then in June of 2023, they did submit the sunrise application. So, from that point on the sunset review and the sunrise review were sort of running in parallel.

Now, we knew because we were in contact with the association, we knew that they were very likely going to submit the application. So, we did begin a lot of outreach and stakeholder engagement on the sunrise review as part of the sunset review. Obviously, there's a lot of overlap with respect to stakeholders, subject matter, everything like that. So, we were able to get a little bit of a head start on it that way. And then Katie can correct me - I'm sure she has the exact date burned into her head - but I think it was right around October 5th of 2023 news of the horrific events in Penrose, Colorado broke. For those of you who maybe don't know, this was the event in Penrose, Colorado, where law enforcement discovered that there were over 100 human remains that had been improperly stored and news broke of that right around October 5th. And then, of course, the sunset review sunset report came out on October 15th. So, just 10 days later, so you can see where a lot of people started confusing that the sunset and then the sunrise were prompted by those events, even though they had already been put in motion months earlier.

The sunrise report came out on December 31st of 2023, so just a couple months after the sunset report. And then ultimately during the 2024 legislative session, legislation was introduced, and it was passed by the end of the session.

Line: So, Brian, obviously this is, you know, quite timely with everything that was happening, but can you maybe take us through some of the key points that were considered during the sunrise review?

Brian: Sure. So, you know, like I said earlier, our sunrise applicants always get tired of us focusing on the harm. But the harm to the public is always key. And in this case, it was no different. The magnitude of the harm, I think, in this case was probably exceptional both in terms of number and emotional intensity, if you will. So, the harm is always the key. And we always have to ask, was the harm caused by lack of competency or something else? In this particular review, there was a lot of - commingling maybe isn't the right word - but certainly instances where competency was

questionable, but there were also intentional or fraudulent acts. So, it was really sort of a combination of different types of harm stemming from the same profession and basically the same industry. But always the harm is always the focus.

Line: Now, I do know that legislature has made some decisions here recently. What are, I guess, looking back at the review itself, some of the key findings from that and then kind of what happened next?

Brian: Sure. So, we engaged with or received comments from over 100 individuals as part of the sunrise review, which is exceptional. It really is exceptional. We don't usually get that much individual input on a sunrise review. And in this case, we had multiple examples of harm and multiple types of harm.

You know, I already mentioned the incidents and the events in Penrose, Colorado. In the years prior to the sunrise review, there were also several higher profile examples of instances of harm in the industry. There were some folks on the western slope of Colorado who were selling human remains without the permission of the families. There was a coroner in the mountains who also happened to own a couple of funeral homes and a crematory who was also improperly storing bodies and several other things. But at the end of the day, we had 20 documented cases that we could point to and analyze as part of the sunrise review. And then on top of that, we had even more anecdotal cases of harm. We have an online portal where people can submit comments to us either anonymously, or they can identify themselves. And so we have a lot of public comment come in through that avenue. At the end of the day, a lot of the harm came down to improper storage, improper handling, record keeping problems, improper embalming, and just a general lack of respect for the decedents. It was really pretty overwhelming. Like I said, some of that harm was competency related. Some of it was based on intentional acts. But at the end of the day, we had ample evidence that the public was being harmed, and so, we recommended that regulation be imposed.

The bill that resulted from that in the 2024 session had bipartisan sponsorship and bipartisan support throughout the legislative process. And that bill was signed finally on May 24th of 2024. In terms of next steps, our Division of Professions and Occupations is tasked with standing up a program. I know they're doing that now. Last I heard they were looking to start issuing licenses late this year, so late 2025.

Line: Excellent. Well Katie, I wanna chat with you a little bit. Specifically, I'm sure there was a lot of media. You know, I saw media attention about the incidents that happened in Penrose, but I think, you know, with that media coverage and the recent incidents that had happened there - the very tragic and disturbing cases of the mishandling of the human remains, that kind of thing - Can you talk about the agency's approach to responding to that media coverage, both before and also maybe during the sunrise review?

Katie: Yeah, media coverage was definitely far and wide, national coverage out way further stretching than Colorado. I think Brian mentioned, but I'll reiterate: timing was completely coincidental. And so, there's a lot of media education around this not being a reactionary response. Also sets an odd precedent that we didn't want to set, right? These are well thought out, well planned, and not pulled together last minute. I would say from a media standpoint, it gave us an opportunity to highlight the great work that COPRRR does.

They're kind of a behind-the-scenes agency that doesn't typically have a lot of media attention. That sure changed with this last year's sunrise and sunset. Because this was an active investigation, there wasn't a lot that we were allowed to tell the media about what was actually going on from an investigatory standpoint. So, it gave us a really good opportunity to background our media on the COPRRR process.

And we spent, I spent, a lot of time talking to our local media about the differences between our sunrise and sunset process, the length of the time involved in these reviews. But also the next steps, because I think there's a lot of confusion from the general public and certainly from our media on 'Okay. Now, what happens next?' And I think the media focus really pushed our legislators last year to take a very serious look at what both the sunrise and the sunset brought forth in recommendations. Not to say they don't always pay attention, but there was just such heightened awareness on wanting to have change in this industry brought forth by how the media coverage was from the time that the open investigation happened till the time legislators started hashing through this in session last year.

Line: All right, so I'll pretend like I'm the media. What happens next? So, with that, I get now that we have legislation that has been established. How is the agency communicating about this to licensees, to the public, to the media? How are you guys doing that now?

Katie: Yeah, so it does take a while to stand up the licensing piece. There's two pieces to this, right? The sunrise and the sunset both had recommendations, both had bills go through last year. And so there are different components that go into effect - some immediately and some in a few years. The professional licensing takes a while to get stood up, but also has a lot of industry stakeholdering.

So there's two ways that we've looked at communication. We have spent the summer working closely with the families that were impacted from the three kind of bigger high-profile cases in the last few years to make sure that they got a voice in this process. They've been amazing thought partners with us in coming and telling their story. That really was very compelling for the legislators to hear, right? Not just regulators recommending things, but also the families really sharing their story.

And we didn't want them to get lost in our rulemaking process, right? So, legislation goes through, it all gets signed, and then our rulemaking starts. Some of that has already started. We do a lot of industry stakeholdering and also publicly ask for feedback. There's a lot of families that were impacted, but also folks who aren't part of the families that have big feels on how this industry should

be regulated, and they get a say in this. We will be rolling into some additional stakeholdering through this year to finalize our rulemaking for the professional licensing piece.

A lot of the rules for the sunset recommendations to expand authority and expand inspection have already gone into place. And so that brings me to the next piece, which is the public education around this outside of the stakeholdering. There are big changes coming to this industry. And so, we've done a handful of things. We've created kind of [a booklet](#) that tells people all the changes that they should expect from this industry. It's really helpful for the industry that doesn't understand the changes that are coming, but it's really also helpful for the public. If you are in a state of needing a funeral home professional, you are not often in a mindset to sit and compare or look at what I need. And is this person actually doing the things that they're supposed to be doing the right way? And so, we'll be starting here some public awareness as the licensing piece of the professional starts to come forward, but we're already starting to do a little bit more on what you should be expecting. What are the expectations of this industry?

Obviously, there's a lot of eyes on it right now. But I'm really making sure the public will understand that once that licensing piece goes in for the professionals, you can look up a license, you can look up discipline, you can look up concerns that we've had. Those are all public on our system. So, before there wasn't a way for the public to submit complaints against an individual. Once that licensing component is up and running, they will be able to be publicly searched and looked at just like any of our other professionals. And so we do a lot of that education here in Colorado about, 'Go look up their history before you seek services,' right. We regulate so many different professionals; that information is public. So, there's lots of ways for our consumers to be aware. And so, the funeral home industry will be one of those that we'll be pushing as those professional licenses go into effect.

Line: Well, that's great. Thanks, Katie. I appreciate you telling me about that. Now, Brian, the issues that you guys identified in Colorado. How does that, I guess, relate or is it indicative or related to kind of the national trends that are going on? I guess maybe asking it better a different way, you know, how does Colorado's approach basically compare to other states?

Brian: So, it's kind of hard to tell, kind of hard to answer, you know, how what's happening in Colorado compares to other states. We're the last state to regulate funeral service professionals. So I think in that sense, the environment in Colorado is fairly unique in the sense of, you know, what is or is not happening here versus what's happening in other states.

But, you know, you do still hear the occasional story about human remains being stolen or improperly stored or improperly handled. And so, that's not unique to Colorado. That does happen; it happens everywhere. So at the end of the day, I mean, I think time will tell. We're scheduled to conduct the first sunset review of the funeral service professionals in 2030. So, you know, in 5 years or so, we will have a better picture of what regulation is accomplishing, if it's addressing those examples and those

types of harm that we identified, and then you know, whether we need to make any changes, any tweaks to that.

Line: So overall, Brian, what are some best practices for sunrise review when considering requests for regulation of a profession? And perhaps some things regulators can consider even if sunrise review isn't a process that is used in their jurisdiction or state?

Brian: Always focus on the harm. I know I've said it- I don't know how many times I've said it just in the conversation, but always focus on the harm. If the public isn't actually being harmed, why should the state intervene in the marketplace? A lot of times we will hear, you know, as we're engaging with stakeholders, there's a potential for harm, that this could happen, and so that's why we should regulate. There's always a potential for harm in everything. I think the sunrise process is uniquely situated to look at the actual harm and flesh that out. What is the harm? And what is at the heart of the harm? What's causing it? And that's what will help design an effective regulatory program.

I mean, so that really gets at the threshold question, like I said at the beginning: is regulation necessary to protect the public? And so, the sunrise process is really focused on fixing the actual problem- identifying the problem and then fixing it. If all you have is potential for harm, then I think you run the risk of enacting an overly broad regulatory program. If you don't know what you're trying to address, you're going to have a much broader blanket; as opposed to when you identify the specific harm, that helps you tailor regulation to addressing the actual problem. So, you have less of a chance of over regulating, instead having what a lot of people will call right-touch regulation and really adjusting the regulation to the problem.

So, I think whether a state has a sunrise process or not, I think it is always a fair question to ask, what are we trying to fix? What is the harm? A lot of time then legislators will consult with regulators to design a program. And I think it's always fair, what problem are you trying to fix? And I think that's at the heart of the question.

Line: Excellent. Well, thank you so much. It was really interesting to hear about the sunrise process in Colorado and how you communicated this information to the stakeholders. So thank you, Brian and Katie, for speaking with me today.

Brian: Thanks for having us.

Katie: Of course. Thanks for having us.

Line: Absolutely. It has been a pleasure. And we'd love to continue this conversation with our members on the CLEAR Regulatory Network. This podcast episode will be posted there along with some questions for our members to consider. Those questions are, if your jurisdiction has a sunrise

review process or something similar in place, what are some best practices you can identify? And secondly, how does your organization handle media coverage when issues or concerns come up in an industry or profession you oversee? We greatly appreciate and thank our members for your discussion and feedback on the CLEAR Regulatory Network. And if you haven't already, we invite and encourage you to join and take part in the online discussions.

I also want to thank our listeners for tuning in for this episode. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. If you're new to the CLEAR podcast, please subscribe to us. You can find us on Podbean or any of your favorite podcast services. And if you've enjoyed this podcast episode, please leave a rating or comment in the app. Those reviews help us to improve our ranking and make it easier for new listeners to find us.

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