



NEWS

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Health Care Fraud Subject of Senate Hearing

The need for national information on health care practitioners who lose their licenses was the subject of a recent hearing before the U.S. Senate Special Committee on Aging headed by Senator John Heinz, Pennsylvania.

Witnesses testifying before the committee included Frances S. Berry, director of CLEAR, and William L. Wood, executive director of the New York State Office of Professional Discipline and chairman-elect of CLEAR. CLEAR is an affiliate of The Council of State Governments.

The hearing was called to highlight and explore findings from a General Accounting Office report released May 1. The report examines the problem of Medicare and Medicaid patients who are being treated by health practitioners whose licenses were revoked or suspended in another state for not meeting minimum professional standards.

Wood and Berry emphasized the need for states to exchange disciplinary information on a routine basis. To make this possible, CLEAR recently established the National Disciplinary Information System (NDIS) to report on disciplinary actions taken against licensed professionals in a number of disciplines in all states. CLEAR is working with the U.S. Department of Health and Human Services (HHS) to make the NDIS information network available to HHS.

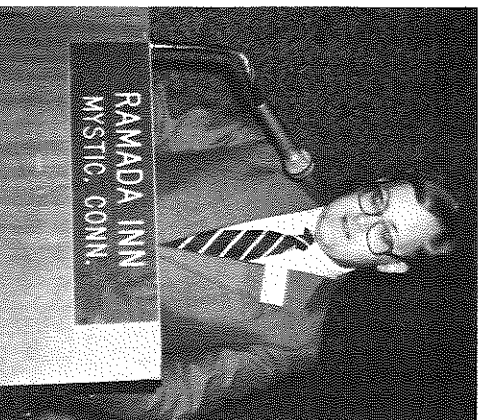
National CLEAR Conference To Study Continued Competency

The agenda for the fourth national CLEAR conference to be held in San Francisco Sept. 5-8 is established and promises to be informative and lively. Last year almost 400 people from over 40 states attended the Chicago CLEAR conference. Early registrations indicate that this year's conference will also be well attended.

The CLEAR committees will meet on Tuesday, Sept. 4, and CLEAR members are invited to attend. The conference will open on Wednesday with two days of general conference sessions. During these two days, 12 panels and roundtables will be convened, covering a wide range of critical licensing and regulatory issues.

Beginning Friday, Sept. 7, and continuing through noon on Saturday, four special training sessions designed to meet the diverse information needs of people within the licensing community will be offered. For specific details on the program topics see the agenda on page 6.

A special session on "Assuring Continued Competency in the Professions" is on the program Thursday, Sept. 6, from 8:30 a.m.-12:30 p.m. The session will consist of three parts. In Part I, brief presentations will be made on the continuing competency methods employed in four professions: accountants, physician assistants, nursing home administrators. (Continued on page 7)



Jim Douglas, Vermont Secretary of State (left), and Jim Carey, Director of Licensing and Administration, Connecticut Department of Consumer Protection, spoke at the recent Northeast Regional Training Conference. See story page 3.

High Court Decision Warrants State Regulatory Board Review*

On Monday, May 14, 1984, the United States Supreme Court decided *Hoover v. Ronwin*, No. 82-1474 (U.S. May 14, 1984). On the facts of the case, the Court held that the particular bar examiners at issue were immune from suit under federal antitrust law. However, due to the severely limited scope of the Court's 4-3 holding—and the distinction the Court drew between the bar examiners at issue and *all health and other regulatory boards*—the decision warrants careful review by all board members.

In *Ronwin*, an unsuccessful candidate for admission to the Arizona Bar sued members of the Committee on Examinations and Admissions in their individual capacity. The crux of *Ronwin's* allegation was that the bar examiners established a cutoff score at an artificially high level to exclude competitors of current Arizona lawyers rather than to protect the public against incompetent practitioners. As background, it is an established principle of federal antitrust law that the federal antitrust laws are generally interpreted not to

apply to the actions (including regulatory actions) of a sovereign state. This principle is known as the "state action" doctrine. At issue in *Ronwin* was whether the activities of the members of the Arizona Bar Committee on Examinations and Admissions were acts of the sovereign state.

Although a detailed analysis of *Ronwin* and related authorities is beyond the scope of this letter, this case raises serious questions about continuing antitrust exposure of members of current professional regulatory boards outside the legal field:

1. *Applicability of a State Supreme Court Regulatory Model to Other Professions:* Immunity from suit avoids complicated, protracted, costly and personally disruptive litigation and should be an active concern of all regulatory board members. Although *Ronwin* conferred immunity on the bar examiners in that case, the Supreme Court distinguished the bar examiner's model from that of all other professional regulatory boards (Opinion at p. 22, fn. 34):

The consequences of reversal (finding immunity) by the Court today will have only a limited effect. Our attention has not been drawn to any trade or other profession in which the licensing of its members is determined directly by the sovereign itself—here the state Supreme Court.

The narrowness of the model used by the Court is underscored by its heavy reliance on the previous decision in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)—where immunity involving the Supreme Court in the same state as *Ronwin* had already been recognized.

2. *Autonomy of Boards:* State courts have often exercised close control over the legal profession. However, many state boards in other professions seek autonomy from the legislature that can supervise their activities. Under a "state supreme court" model, immunity may require close legislative oversight over previously autonomous board eval-

uations, thus raising significant legal and political issues.

3. *Delegation and Distribution of Power Between Legislative and Executive Branches:* Historically, the trend has been for legislatures to delegate rule-making power to regulatory boards. However, if immunity requires control by the sovereign legislature in regulation of professionals other than lawyers, this may cut in the direction of extensive statutory requirements and less extensive board regulations. If such is the case, substantial statutory revisions could be required in a majority of states.

4. *Further Immunity Concerns:* Under previous state action cases, private actions were immune if they were (a) conducted pursuant to a clearly articulated and affirmatively expressed state policy to displace competition with either regulation or monopoly and (b) actively supervised by the state. *Ronwin* did not apply this analysis, but found the Supreme Court to be the sovereign itself and the conduct under its authority and control to be immune. *Ronwin* does not directly address the appropriate tests for determining immunity in situations of legislatively controlled boards. In these situations, the degree of specificity of authority, control and delegation may be important determinants of board-member immunity. Board members are likely to have a significant interest that statutes properly reflect their concerns in this area.

Ronwin will raise substantial concerns on the part of board members and professional associations. The next step in addressing these concerns will be the workshop on board-member liability and legislative drafting at the September CLEAR meeting in San Francisco and the antitrust manual on board-member liability.

*This article is from a letter to CLEAR from Kim Zeitlin, a Washington, D.C. attorney. News and comments from readers are welcome and will be included in CLEAR News as space permits.

CLEAR News

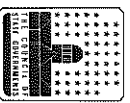
Vol. 1

No. 2

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The quarterly CLEAR newsletter is free to all CLEAR members and is available for \$15.00 to others. Contact Ellen Hume (606) 252-2291 for subscription information.

Fran Berry, Program Manager
Licensure and Regulation
Ellen Hume, Administrative Assistant
Licensure and Regulation



In cooperation with
The Council
of State Governments

CLEAR Sponsors First Regional Training Seminar

The first CLEAR regional training seminar took place in early May in Mystic, Conn. The one-day seminar was successful, with over 170 people from 18 states attending.

Jim Douglas, Vermont's secretary of state, opened the seminar with a keynote address to a standing-room-only crowd. Mary M. Heslin, commissioner of the Connecticut Department of Consumer Protection, and Julia H. Tashjian, Connecticut Secretary of State, also gave welcoming remarks.

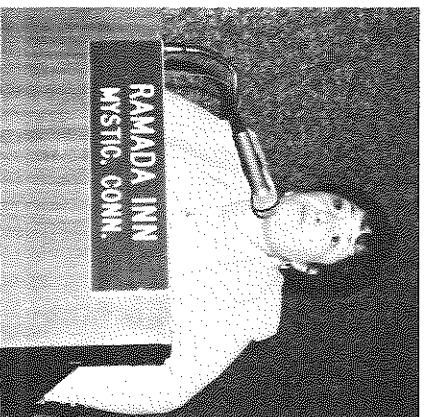
Timothy Moynihan, deputy majority leader of the Connecticut General Assembly, and Kathleen Ward, vice chairperson, Executive Department and Administration Committee, moderated a session on "What the Legislature Expects of Licensing

Boards." Other session topics were "Responding to Sunset Audits," "Rules of Evidence," "Administrative Law: A Fourth Branch of Government," and others.

The conference was hosted by the Connecticut Department of Consumer Protection and sponsored by CLEAR.

Following the conference, the CLEAR steering and long-range planning committees met and, among other actions, established Orlando, Fla., as the site for the 1985 National CLEAR Conference to be held Tuesday-Saturday, Aug. 13-17. The committees also initiated planning for future regional training seminars. Further planning on regional conferences will be held in San Francisco, including "Organiz-

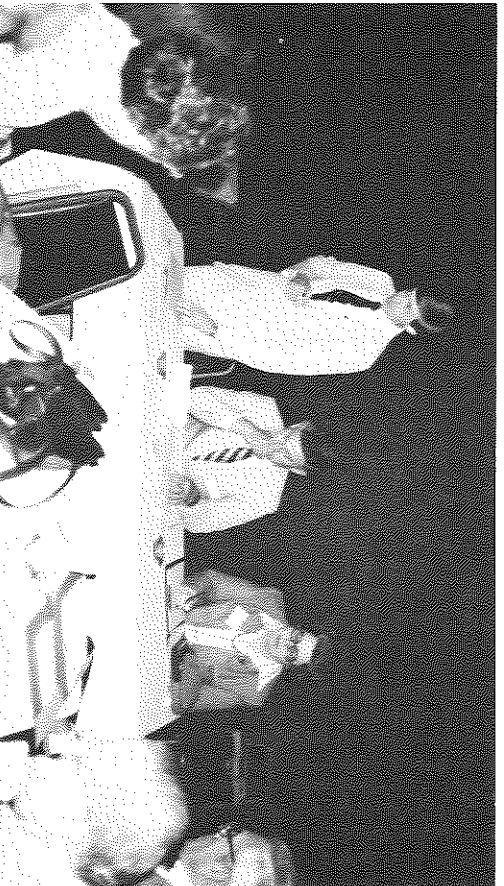
ing Regional/State Board Member and Administrator Training Programs" on Friday, Sept. 7, 9:00-10:00 a.m.



Julia H. Tashjian, Connecticut Secretary of State, gives opening remarks at the seminar.



Wellington Webb, Executive Director, Colorado Department of Regulatory Agencies, speaks at a session on "Administrative Law: A Fourth Branch of Government."



Rep. Robert Murray, Maine State Legislature (left); Timothy Moynihan, Deputy Majority Leader, Connecticut General Assembly (middle); and Kathleen Ward, Vice Chairperson, Executive Department and Administration Committee, New Hampshire, are the panelists at the session entitled "What the Legislature Expects of Licensing Boards."

CLEAR Studies Health Personnel Credentialing

CLEAR and The Council of State Governments have been awarded a three-year contract to conduct a project on the analysis and exchange of information and data on state credentialing of health personnel.

Under the contract awarded by the Bureau of Health Professions, U.S. Department of Health and Human Services, CLEAR will collect state statutes and regulations on 13 health

professions annually and compile comparative state information on key topics. Key topics include regulatory and enforcement functions of the licensing boards, type of state regulation, type of examinations used, licensure requirements, continuing competency requirements and fees.

The project will begin July 1, 1984. A national advisory committee

will oversee the project, and Fran Berry, CLEAR's director, will serve as the project director. Project staff will produce several annual publications, including an annual overview of state credentialing of health personnel. Project staff will also respond to individual requests for comparative state credentialing information using the project's computerized data base.

States Investigate Bogus Doctors

In our last CLEAR News we published a CLEAR Alert concerning individuals who "purchase" bogus medical degrees and apply for state medical licensure with these fake degrees in hand. Many states continue to investigate individuals with suspicious credentials. A summary of several states' efforts to deal with this problem follows, and, for your information, we have included a list of states' enforcement officials that deal with licensure investigations.

New York Since the DeMesones conviction, the state of New York has opened and investigated approximately 500 fraudulent medical degree cases. Seven indictments took place on July 12 in New York and three additional federal indictments resulted from a joint effort by the New York Office of Professional Discipline and the postal inspector.

To date, two cases have been referred to the Massachusetts Attorney General and two to the Pennsylvania Attorney General. Other cases have been referred to Iowa, Missouri and California. Indictments are expected in many of these cases.

In response to demand by enforcement officials involved in investigating bogus doctors, Daniel Kelleher reports that the New York State Office of Professional Discipline is hosting a two-day program on the criminal investigation of fraudulent medical degrees issued by Caribbean schools. The program will be attended only by those governmental agencies who are actively engaged in the investigations and prosecution of these matters. The program will be held Aug. 21-22 at the New York City office.

- The agenda will include:
 - Identification and analysis of the

degrees

- How, to whom, and by whom degrees were issued
- Sources of information
- The investigative process
- Criminal prosecution.

An important item of discussion will be the coordination of investigation and prosecution to prevent states or federal authorities from duplicating each other's efforts. For further information on this special program, contact Daniel Kelleher at the Office of Professional Discipline, (212) 557-2129.

Illinois Surprisingly, the state of Illinois is having virtually no problem with individuals attempting to practice medicine in the state with the purchase and use of fraudulent medical degrees. Enforcement officials there explained that Illinois has never accepted applicants for medical licensure with degrees from schools

Richard Long
Chief Investigator
Division of Occupational Licensing
Pouch D-Lite
Juneau, AK 99811
(907) 465-2535

Marc Grimm, Executive Director
Bd. of Medical Quality Assurance
1020 N St.
Sacramento, CA 95814
(916) 920-6353

Robert T. Longway, Administrator
Division of Registrations
Department of Regulatory Agencies
1525 Sherman St., Rm. 110
Denver, CO 80203
(303) 866-3304

Christine B. Spak
Hearing Officer
Medical Quality Assurance
150 Washington St.
Hartford, CT 06106
(203) 566-1011

Artis G. Hampshire, Director
Office of Compliance
Dept. of Consumer & Regulatory Affairs
614 H St., N.W.
Washington, D.C. 20001
(202) 727-7140

Joseph Lawrence, Director
Division of Regulation
130 N. Monroe St.
Tallahassee, FL 32301
(904) 488-1813

Gil Rodriguez, Administrator
Office of Investigative Services
130 N. Monroe St.
Tallahassee, FL 32301
(904) 488-3477

Eugene Douglas
Director of Investigations
State Examining Boards
166 Prior St., S.W.
Atlanta, GA 30303
(404) 656-3924

Russell S. Nagata
Complaints and Enforcement Officer
Regulated Industries Complaints Office
1010 Richards St.
Honolulu, HI 96813
(808) 548-2615

Glen Crick, Chief of Enforcement
Dept. of Registration & Education
17 N. State St., 17th Floor
Chicago, IL 62786
(312) 793-8504

David Miller
Chief Counsel of Public Affairs
Attorney General's Office
219 State House
Indianapolis, IN 46204
(317) 232-6330

(Contact Individual Boards)
Dept. of Licensure & Regulation
P. O. Box 30018
Lansing, MI 48909
(517) 373-1870

Ralph Engler
Deputy Secretary of State
2300 State Capitol
Lincoln, NE 68509
(402) 471-2554

Stephen F. Bonora, Chief
Enforcement Bureau
Room 508, 1100 Raymond Blvd.
Newark, NJ 07102
(201) 648-3500

Daniel Kelleher, Director
Division of Investigations
State Education Department
622 Third Ave.
New York, NY 10017
(212) 557-2129

that were issuing these fraudulent degrees. Therefore, no physicians with degrees from CETEC or CIFAS, whether practicing legally or through the use of a purchased degree, are licensed in the state.

Further explanation revealed that Illinois does have practicing professionals, i.e., nurses and pharmacists, who attempted to purchase or succeeded in purchasing a bogus medical degree. These individuals are being investigated within their legally licensed professions for unethical and unprofessional conduct.

California California's Board of Medical Quality Assurance identified the problem of fraudulent foreign credentials independently of the DeMesones case.

In August 1984, the board adopted guidelines requiring all foreign-trained medical school graduates to independently docu-

ment their coursework and training curriculum before the graduates can take the FLEX exam. Since August, only a few of the approximately 135 CETEC graduates who have applied to take the exam have been able to meet the documentation criteria. Overall, the number of foreign-trained medical graduates applying to take the FLEX exam has dropped dramatically since the guidelines were enacted.

The board has requested \$285,000 from the California legislature to fund a special fraud task force in the board's licensing division. The fraud task force will be responsible for continuing investigations on potential irregular credentials under the board's tightened credential review process. Of already licensed doctors, some 250 potential fraud cases are under active investigation at this time.

Florida The Florida Board of Medical Examiners has established a Committee on Foreign Medical Graduates to review the credentials of any person applying for a medical license with a foreign medical school degree. Dr. Faircloth, the board's executive director, says the board plans to propose legislation that will give it powers to review the curriculum, faculty and facilities of foreign medical schools.

In an effort to provide contact names in the states for the enforcement activities resulting from the DeMesones mail fraud case, we are publishing the names and addresses of Directors of Enforcement and Investigation in the states for health regulatory boards. The list is not complete but is offered with the belief that a partial list is better than no list.

Anthony Z. Scher, Director
Division of Prosecutions
State Education Department
622 Third Ave.
New York, NY 10017
(212) 557-2159
(Contract Individual Boards)
Oregon State Health Division
P. O. Box 231
Portland, OR 97207
(503) 229-5032
William H. Pinn, Acting Chief
Occupational License Enforcement
Program
Transportation & Safety Building,
Rm. 608
Harrisburg, PA 17120
(717) 783-7236
Robert W. McClanaghan, Administrator
Rhode Island Department of Health
Professional Regulation
Room 104, 75 Davis St.
Providence, RI 02908
(401) 277-2827

Ivan Hurwitz, Director
Field Operations
State Board of Medical Examiners
Capitol Station, Box 13562
Austin, TX 78711
(512) 452-1078
Andrew J. Solys Jr.
Director of Investigations
Regulatory Boards
4th Floor, Doctor's Building
Nashville, TN 37219-5322
(615) 741-6837
William Pitt, Chief Investigator
Department of Business Regulation
Heber Wells Building
160 E. 300 South
Salt Lake City, UT 84110
(801) 530-6696
Reginald Brags
Board Investigator
109 State St.
Pavilion Building
Montpelier, VT 05602
(802) 828-2363

Gary E. Anderson
Compliance Manager
Department of Health Regulatory
Boards
517 W. Grace St., P. O. Box 27708
Richmond, VA 23261
(804) 786-0470
Ronald Weaver, Chief
Investigative/Enforcement Unit
Department of Licensing
12th and Franklin
Olympia, WA 98504
(206) 753-7007
John C. Temby, Administrator
Department of Regulation and Licensing
P. O. Box 8936
Madison, WI 53708
(608) 266-5434

Join Us at the 1984 Annual Conference of
**The Clearinghouse on Licensure, Enforcement
 and Regulation**

September 5-8, 1984
 The Sheraton-Palace Hotel
 San Francisco, California

GENERAL CONFERENCE SESSIONS
Wednesday, September 5 (1-5 p.m.) – Thursday, September 6 (8:30 a.m.-5 p.m.)

Sessions include:

- Examination Review Procedures
- Licensure Restoration
- Licensure Law Update
- Reviewing Credentials of Foreign Trained Medical Graduates
- Role of State in Accrediting Professional Schools
- Continued Competency Workshop (limited participation)
- Sunset: Future Changes and Directions
- Anti-Trust and Board Member Liability
- Unlicensed Practice Investigations
- Receptions Wednesday and Thursday evenings 6-7:30 p.m.

SPECIAL TRAINING SESSIONS

Friday, September 7 (9 a.m.-5 p.m.) – Saturday, September 8 (8:30 a.m.-Noon)

I. Board Member and Administrator Training Program

Sessions include:

- Expanding the Scope of Disciplinary Sanctions
- Written Board Policies
- Exam Security
- Setting Board Goals and Objectives
- Developing Regional Training Programs
- Peer Review Auditing in State Agencies
- Anti-Trust and Board Member Liability
- Role of State in Accrediting Professional Schools
- Getting Your Budget Through the Legislature
- Mock Disciplinary Hearing

II. Enforcement and Investigation Training Program

Sessions include:

- Interviewing and Statement Taking
- Incompetence/Unsafe Practice
- Developing Policy Procedure Manuals
- Using Polygraph Examinations
- Report Writing and Packaging
- Unlicensed Practice Investigations
- Conducting a Professional Investigation
- Drug Diversion
- Rules of Evidence
- Developing Effective Administrative Processes

III. Legislators and Legislative Staff Training Session

Sessions include:

- Drafting Legislation Workshop
- Questions a Legislator Should Ask: A Follow-up to the Publication
- Sunrise in the States: Can it Work?
- Mock Disciplinary Hearing

IV. Data Systems Training

Sessions include:

- Word and Data Processing Fundamentals
- System Development Basics: Approaching Data Automation
- State Systems Roundtable
- Complaint Tracking Automation
- Examination Processing
- Application Handling
- Office Automation

DATA SYSTEMS TRAINING SESSIONS
Friday, September 7 (8:30 a.m. - 4:45 p.m.)

(This is a correct schedule for the Data Systems meeting. Please note that the times printed in the CLEAR conference brochure are incorrect and should be disregarded.)

8:30 - 8:45 a.m.	Opening Session	11:00 a.m. - Noon	Concurrent Sessions (1) Systems Development Basics (First Hour) (2) Examination Processing
8:45 - 10:45 a.m.	Concurrent Sessions (1) Word and Data Processing Fundamentals (2) Complaint Tracking Automation (3) Automated Application Handling	1:30 - 2:30 p.m.	Concurrent Sessions (1) System Development Basics (Second Hour) (2) Office Automation
		2:45 - 4:45 p.m.	Joint Session (1) State Systems Roundtable

Note: While the training sessions have been constructed with a particular audience in mind, each session is open to all conference participants!

tors and family practitioners.

In Part II, the attendees will break into small groups. Using the nominal group technique, the groups will brainstorm issues related to continued competency, including the major problems to overcome and the major issues to address in implementing a relicensure or recertification program.

In Part III, the attendees will meet together in one group to hear the findings from each of the small group sessions.

Attendance at the Assuring Con-

tinued Competency session is restricted to 54 people and is by invitation only. However, if you are interested in attending the session, please contact the session coordinators—Jerry McClendon at (301) 443-6757 or Caroline Stellmann at (301) 576-6593.

Flying To San Francisco?

Delta Air Lines, in cooperation with The Council of State Governments, has made special arrangements to offer convention attendees at least 30 percent off regular round

trip day coach fares from all of their domestic cities (including San Juan) to San Francisco. Departures to San Francisco must be between Sept. 1-5, 1984, with a maximum stay of 15 days allowed. Reservations must be made and tickets purchased at least seven days before departure. In some cases, the overall 30 percent discount may not be the most economical fare, depending upon the routing and special promotional fares available. Delta will confirm you at the lowest rate available at the time your reservations are made.

1984 CLEAR ANNUAL CONFERENCE REGISTRATION

Return to: CLEAR, Iron Works Pike, P.O. Box 11910, Lexington, KY 40578

Please type or print the following information as you want it to appear on attendance lists & badges.

Name/Title _____

Agency _____

Address _____

City/State/Zip _____

Phone () _____

INSTRUCTIONS: Circle the registration fee which applies to you. A SEPARATE REGISTRATION FORM MUST BE COMPLETED FOR EACH PERSON BEING REGISTERED.

- A. CONFERENCE RATES: CLEAR MEMBER—\$140 Individual OTHERS—\$160 Individual
- B. Join CLEAR now and qualify for the discounted registration fee. Mark the appropriate category and add the membership fee to your registration payment.
- Full State: \$500
 - Indiv. State Bd.: \$50
 - Natl. State Bd. Assn.: \$300
 - Natl. Prof. Assn.: \$300
 - State Prof. Assn.: \$50
 - Individual: \$15

REGISTRATIONS POSTMARKED AFTER AUG. 24 SHOULD INCLUDE A \$20 LATE FEE.

Registration Fee (from section A above) ENCLOSED: \$ _____

CLEAR Membership Dues (from section B above) \$ _____

LATE REGISTRATION FEE: (After Aug. 24 add \$20) \$ _____

TOTAL FEES ENCLOSED \$ _____

REGISTRATION INFORMATION

Registration Fees: Fees include evening receptions, one luncheon, Continental breakfasts, coffee breaks and conference registration packet. Registrations should be accompanied by either a check or a purchase order made payable to CLEAR. Registrations received by Aug. 24 will be confirmed by return mail; those received after that time will be confirmed at the conference registration desk.

LATE REGISTRATION: A \$20.00 fee will be assessed for all registrations postmarked after Aug. 24.

Cancellation and Refund Policy: Registrants may cancel up to Aug. 24 and receive a full refund. After that time, refunds for cancelled registrations will be reduced by a \$15.00 service charge. NO REFUNDS WILL BE MADE AFTER THE OPENING CONFERENCE SESSION. Substitutions are always welcome and encouraged.