Attachment B

Dora

Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2008 Sunset Review: Psychiatric Technicians Licensure Program

October 15, 2008

Dora
Department of Regulatory Agencies

Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2008

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Psychiatric Technician Licensure Program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2009 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 42 of Title12 C.R.S. The report also discusses the effectiveness of the Program and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director

1560 Broadway, Suite 1550 Denver, Colorado 80202 Phone 303.894.7855
Fax 303.894.7885 Toll Free 800.866.7675 www.dora.state.co.us V/TDD 711

Consumer Protection

Dora

Department of Regulatory Agencies

Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

2008 Sunset Review: Colorado Psychiatric Technicians

Summary

What is Regulated?
Two types of licensed psychiatric technicians (LPTs) are regulated in Colorado. LPTs working with developmentally disabled populations are issued LPT-DD licenses, and LPTs working with mentally ill populations are issued LPT-MI licenses.

Why is it Regulation?
The General Assembly created the Psychiatric Technician Practice Act in 1967. The General Assembly passed this legislation to ensure that properly trained personnel were available to care for patients in Colorado state institutions.

Who is Regulated?
During fiscal year 06-07 there were 1,145 LPTs in Colorado. Of those, 831 were licensed to work with developmentally disabled persons and 314 were licensed to work with mentally ill persons.

How is it Regulated?
Section 12-38-108(k), C.R.S., vests the Colorado Board of Nursing (Board) with the authority to regulate LPTs and establishes that the primary regulatory duties of the Board are to license qualified applicants and approve education programs preparing psychiatric technicians for licensure.

What Does it Cost?
The Board regulates registered nurses and licensed practical nurses, as well as LPTs. The Board does not maintain a separate budget for LPTs.

What Disciplinary Activity is There?
During the period under review, fiscal year 02-03 through fiscal year 06-07, there were 33 total disciplinary actions taken, including: 10 revocations/surrender of license, 3 suspensions, 6 probation/practice limitations, and 14 letters of admonition.

Where Do I Get the Full Report?
The full sunset review can be found on the internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the regulation of psychiatric technicians until 2014, then allow the regulation to repeal by operation of law.

The term "psychiatric technician" is title-protected in Colorado, meaning that only those holding an LPT license may refer to themselves as psychiatric technicians. However, the practice of psychiatric technicians in the United States is largely unregulated. It is reasonable to conclude that most aspects of psychiatric technician practice do not require oversight by the Board. The one aspect of practice requiring regulation – medication administration – could be established more efficiently via other regulatory mechanisms.

Repeal the section of the Colorado Nurse Practice Act regarding delegating the selection of medications.

Section 12-38-132(1), C.R.S., could be construed to restrict the ability of certified nurse aides with medication aide authority (MAA), including those working as psychiatric technicians, to administer medications. Removing this sentence will permit the Board to proceed with the revision of *Chapter XIII, Rules and Regulations Regarding the Delegation of Nursing Tasks* in order to accommodate changes to the MAA program. Therefore, this provision should be repealed.

Major Contacts Made During This Review

Colorado Board of Nursing
Colorado Mental Health Institute at Pueblo
Colorado Department of Human Services
Front Range Community College
Grand Junction Regional Center
Kansas Board of Nursing
Pueblo Community College
Pueblo Regional Center
Wheat Ridge Regional Center

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr

Table of Contents

Background **1**

Introduction *1*

Types of Regulation *2*

Sunset Process *4*

Methodology *4*

Profile of the Profession *5*

History of Regulation *7*

Legal Framework **8**

Program Description and Administration **14**

Licensing *15*

Examinations *17*

Inspections *18*

Complaints/Disciplinary Actions *19*

Analysis and Recommendations **21**

Recommendation 1 – Continue the regulation of licensed psychiatric technicians for five years, until 2014, then allow the regulation to repeal by operation of law *21*

Recommendation 2 – Repeal the section of the Colorado Nurse Practice Act regarding delegating the selection of medications. *29*

Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

[1] Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The regulatory functions of the Board of Nursing (Board) relating to Article 42 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2009, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of licensed psychiatric technicians (LPTs) should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Division of Registrations. During this review, the Board must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff attended Board meetings, interviewed Board staff, reviewed Board records and minutes including complaint and disciplinary actions, interviewed LPT educators and administrators of facilities employing LPTs, visited sites where LPTs are employed, interviewed health care providers, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Profession

The term "psychiatric technician" is title-protected in Colorado, meaning that only those holding an LPT license may refer to themselves as psychiatric technicians. However, because the practice of psychiatric technicians is mostly unregulated outside of Colorado, in this report the term "psychiatric technician" is used as a generic term to refer to an occupation. Those holding LPT licensure will be referred to as LPTs or *licensed* psychiatric technicians. In Colorado, the important distinction between psychiatric technicians and LPTs is that LPTs may administer medications.

Psychiatric technicians typically care for mentally ill or developmentally disabled individuals in psychiatric or substance abuse hospitals, residential facilities, or state facilities. A psychiatric technician's daily work varies dramatically depending on the work setting: psychiatric technicians working in residential settings for the developmentally disabled may assist patients with activities of daily living, such as bathing, dressing, grooming, and toileting, while those working in a psychiatric hospital may lead group activities and assist with therapy sessions. In some cases, psychiatric technicians administer medications. Psychiatric technicians are also responsible for maintaining a safe, secure environment for patients and staff. This requires considerable skills in communication and milieu management, as well as training in how to safely restrain and isolate patients with behavioral problems.

Regardless of setting, a critical element of psychiatric technician practice is to observe, document and report changes in patients' conditions. Psychiatric technicians typically have daily contact with patients, making them likely to observe changes in patients' conditions that might go unnoticed by higher-level healthcare providers.

Psychiatric technicians are not considered independent practitioners and typically work under the supervision of a psychiatrist, psychologist, registered nurse, social worker, or psychotherapist.

Because many patients require round-the-clock care, psychiatric technicians may be required to work nights, weekends, and holidays. Psychiatric technicians work with a wide variety of populations, from developmentally disabled individuals who require extensive assistance with activities of daily living, to individuals with serious psychiatric problems who may become agitated, disoriented, or violent. For these reasons, work as a psychiatric technician can be physically as well as emotionally demanding.

There is no national, uniform standard for the education and training requirements of psychiatric technicians. In most states, psychiatric technicians learn their skills on the job from experienced workers.[2]

[2] Occupational Outlook Handbook, 2008-2009 Edition, U. S. Department of Labor, Bureau of Labor Statistics. *Nursing, Psychiatric and Home Health Aides*. Retrieved September 25, 2008, from http://stats.bls.gov/oco/print/ocos165.htm

Colorado is one of two states that require prospective psychiatric technicians to complete a formal training program and pass a competency evaluation. In Colorado, these training programs are vocational in nature and do not typically result in the conferral of a degree. The only other state that currently licenses psychiatric technicians—California—requires its psychiatric technicians to complete considerably more training than Colorado does, akin to that required of licensed practical nurses.

In Colorado, LPT training is currently offered by the regional centers for the developmentally disabled, which are administered by the Colorado Department of Human Services, and Pueblo Community College.

Even after completing the required education and attaining licensure, newly hired LPTs—particularly those working with the mentally ill— undergo considerable on-the-job training.

Two different organizations currently offer national certification of psychiatric technicians.

The National Health Career Association (NHCA) offers a certification for Mental Health Technicians. To qualify for the examination, candidates must have a high school diploma or equivalency and must have either completed an NHCA-approved training program or have worked in a mental health technician capacity for at least one year.[3]

The American Association of Psychiatric Technicians offers four levels of national certification. Level One certification requires the passage of a 201-question open-book examination. Each successive certification requires increasing levels of college coursework in any subject area and work experience in the mental health field. Level Four certification requires additional work experience as well as a bachelor's degree in a mental health or developmental disabilities field.[4]

Neither Colorado nor California requires certification as a condition of state licensure.

Median hourly earnings of psychiatric technicians were $11.49 in May 2006. The middle 50 percent earned between $9.20 and $14.46 an hour. The lowest-paid 10 percent earned less than $7.75, and the highest-paid 10 percent earned more than $17.32 an hour.[5]

---

[3] National Healthcareer Association, National Certification Examinations Informational Brochure, p. 1.
[4] American Association of Psychiatric Technicians. *The Certification Process*. Retrieved June 16, 2008 from http://www.psychtechs.org/cert.shtml
[5] Occupational Outlook Handbook, 2008-2009 Edition, U. S. Department of Labor, Bureau of Labor Statistics. *Nursing, Psychiatric and Home Health Aides.* Retrieved June 9, 2008, from http://stats.bls.gov/oco/print/ocos165.htm

In 2006, there were approximately 60,000 psychiatric technicians employed in the United States.[6] Because most states do not require licensure of psychiatric technicians, most of these are unlicensed.

The employment prospects for psychiatric technicians are projected to change very little or not at all. Any growth in demand for psychiatric technicians might be fueled by the aging population's need for mental health services, and an increasing number of mentally disabled adults who were formerly cared for by elderly parents who will continue to need care.[7]

History of Regulation

The General Assembly created the Psychiatric Technician Practice Act (Act) in 1967 to ensure that properly trained personnel were available to care for patients in Colorado state institutions. The Act permitted LPTs to work with mentally ill populations only.

In 1976, the Act was changed to allow LPTs to administer medications in state hospitals and other institutional settings.[8]

In 1979, legislation was passed expanding the definition of LPT to include those who work with the developmentally disabled, and establishing distinct licensing requirements for LPTs wishing to work with this population. Consequently, the Act effectively went from regulating one profession to regulating two: LPTs who work with the mentally ill, and LPTs working with the developmentally disabled.

A sunset review was conducted in 1984, and based on the sunset recommendations, the General Assembly made numerous housekeeping changes to the Act, primarily relating to the disciplinary process.

DORA conducted a second sunset review in 1994. The resultant bill removed language restricting LPT practice to state hospitals and institutions approved by the Department of Human Services. The bill also revised the curriculum requirements for LPT education programs.

[6] U.S. Department of Labor, Bureau of Labor Statistics. *Occupational Employment and Wages, May 2007, 29-2053 Psychiatric Technicians.* Retrieved on July 10, 2008 from http://www.bls.gov/OES/current/oes292053.htm#nat
[7] Occupational Outlook Handbook, U. S. Department of Labor, Bureau of Labor Statistics. *Nursing, Psychiatric and Home Health Aides.* Retrieved June 9, 2008, from http://stats.bls.gov/oco/print/ocos165.htm
[8] Senate Bill 76-048.

Legal Framework

The laws relating to licensed psychiatric technician (LPT) regulation are contained within Article 42 of Title 12, Colorado Revised Statutes (C.R.S.), known as the Licensed Psychiatric Technician Practice Act (Act). The authority to regulate LPTs in Colorado is vested with the Colorado Board of Nursing (Board).

The Board is housed in the Division of Registrations of the Department of Regulatory Agencies. The Governor appoints the Board's eleven members, with Senate confirmation. Representation on the Board is as follows:[9]

- Two licensed practical nurses (LPNs) currently practicing as such, one of whom must be employed by a rural hospital;
- A total of seven registered nurses (RNs), including:
  - One engaged in professional nursing education;
  - One engaged in practical nursing education;
  - One engaged in nursing service administration;
  - One employed in home health care;
  - One registered as an advanced practice nurse;
  - Two staff nurses, one of whom is employed in a hospital and the other in a nursing care facility; and
- Two public members, who are not licensed, employed, or in any way connected with any health care facility, agency or insurer.

There is no LPT representation on the Board.

All Board members must be Colorado residents. All members holding nursing positions must be licensed in Colorado and be actively employed in their respective nursing professions: the RN members must have been so employed for at least three years.[10]

Board members serve three-year terms,[11] and may serve no more than two consecutive terms.[12] The Board must annually elect one of its members as president.[13]

The Board must meet at least quarterly.[14] Board members are entitled to a $50 per diem for days spent at Board meetings and hearings as well as reimbursement for actual and necessary expenses incurred in the discharge of their official duties.[15]

[9] § 12-38-104(1)(a), C.R.S.
[10] § 12-38-104(1)(b), C.R.S.
[11] § 12-38-104(1)(c)(I), C.R.S.
[12] § 12-38-104(1)(c)(III), C.R.S.
[13] § 12-38-104(1.5), C.R.S.
[14] § 12-38-106, C.R.S.
[15] §§ 12-38-104(3) and 24-34-102(13), C.R.S.

The Board's powers and duties in relation to LPT regulation are:[16]

- To adopt and revise rules;
- To renew, grant, suspend, limit the scope of, and revoke LPT licenses;
- To prescribe standards and approve curricula for LPT educational programs and provide for surveys of such programs;
- To accredit LPT educational programs, and deny accreditation to or withdraw accreditation from programs that fail to meet prescribed standards;
- To conduct hearings regarding withholding or denying LPT licenses;
- To cause the prosecution and enjoinder of any person violating LPT laws.

The Board is required to form an advisory committee of at least three LPTs to advise the Board on matters relating to LPT testing.[17]

One of the primary duties of the Board is to license qualified applicants. As part of this duty, the Board must develop a licensing examination.[18] The examination must be offered at least annually.[19]

To qualify for LPT licensure by examination, applicants must:

- Submit an application;[20]
- Pay a license fee;[21]
- State whether they have been convicted of a felony or a misdemeanor involving moral turpitude;[22]
- Attest that they have not committed an act which would be grounds for disciplinary action;[23]
- Have completed a four-year high school course or the equivalent thereof;[24]
- Provide evidence of having graduated from an accredited LPT educational program;[25]
- Provide evidence that they are lawfully present in the United States;[26] and
- Pass an examination.[27]

[16] § 12-38-108(1)(k), C.R.S.
[17] § 12-38-108(1.1)(a), C.R.S.
[18] Board Rule V, § 2.1.
[19] § 12-42-106(2), C.R.S. and Board Rule V, § 2.3.
[20] § 12-42-104(1), C.R.S.
[21] § 12-42-104(2), C.R.S.
[22] § 12-42-104(2), C.R.S.
[23] § 12-42-105(1)(a), C.R.S.
[24] § 12-42-105(1)(b), C.R.S.
[25] § 12-42-105(1)(c), C.R.S.
[26] § 24-34-107(1)(a), C.R.S.
[27] § 12-42-106(1), C.R.S.

To qualify for licensure by endorsement, applicants must meet the above requirements with one exception: instead of passing an examination, applicants must provide evidence of LPT licensure in another state with license requirements substantially equal to Colorado's.[28]

If the education program the applicant attended focused on care for the developmentally disabled (DD) community, he or she will be licensed as an LPT-DD. If the education program focused on the mentally ill (MI) community, the applicant will be licensed as an LPT-MI. Those wishing to work with both populations must obtain two separate licenses.

LPTs must renew their licenses every two years,[29] and those who are not currently practicing may apply for inactive status. After a five-year period on inactive status, the licensee must reapply and meet all the requirements for initial licensure, including retaking the examination.[30]

A critical responsibility of the Board is to suspend, limit the scope of, or revoke the licenses of LPTs who have the violated the Act.[31] The Board may also deny initial licensure to an applicant if there is probable cause to believe that the applicant has violated the Act.[32]

Grounds for discipline include:[33]

- Procuring or attempting to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;
- Having been convicted of a felony or any crime that would constitute a violation of the Act;
- Willfully or negligently acting in a manner inconsistent with the health or safety of persons under the LPT's care;
- Having had a license to practice as an LPT or any other health care occupation suspended or revoked in any jurisdiction;
- Negligently or willfully practicing as an LPT in a manner failing to meet generally accepted standards for such practice;
- Negligently or willfully violating any order, rule, or regulation of the Board;
- Falsifying or failing to make essential entries on patient records;
- Being addicted to or dependent on alcohol or habit-forming drugs;

[28] § 12-42-109, C.R.S.
[29] Board Rule V, § 4.1.
[30] § 12-42-112(3), C.R.S. and Board Rule V, § 4.4.
[31] § 12-38-108(1)(k)(I), C.R.S.
[32] § 12-42-114(2), C.R.S.
[33] § 12-42-113(1), C.R.S.

- Having a physical or mental disability rendering the LPT unable to practice as an LPT with reasonable skill and safety to patients and which may endanger the health or safety of persons under the LPT's care;
- Violating the confidentiality, as prescribed by law, of any patient;
- Engaging in any conduct constituting a crime as defined in Title 18, C.R.S., and which conduct relates to employment as an LPT;
- Willfully failing to respond in a materially factual and timely manner to a complaint; and
- Practicing as an LPT during a period when the person's license has been suspended or revoked.

Any person believing an LPT has violated these grounds for discipline may file a written complaint with the Board. Complaints may also be initiated by the Board on its own motion.[34]

To handle disciplinary matters, the 11-member Board is divided into two panels of five members each, with the Board president serving on both panels.[35] Each panel acts as both an inquiry and a hearings panel.[36] The role of the inquiry panel is to evaluate complaints and, if appropriate, recommend further investigation. If an inquiry panel finds a complaint merits investigation, the licensee complained against is given written notice of the complaint, and is given 30 days to respond to the complaint in writing. Upon receipt of the licensee's answer or at the conclusion of 30 days, whichever occurs first,[37] the inquiry panel may refer the complaint for further investigation.[38]

If, upon receiving the results of the investigation, the inquiry panel determines that formal action is required, the panel refers the complaint to the Attorney General's Office (AGO) for the filing of formal charges and the initiation of the hearings process.[39]

Upon receiving the results of the investigation, the panel may determine that formal action is not required. In this case, the panel may decide to:[40]

- Dismiss the complaint;
- Issue a confidential letter of concern; or
- Issue a letter of admonition.

[34] § 12-38-116.5(3)(a)(II), C.R.S.
[35] § 12-38-116.5(1)(a), C.R.S.
[36] § 12-38-116.5(1)(b), C.R.S.
[37] § 12-38-116.5(3)(a)(II), C.R.S.
[38] § 12-38-116.5(3)(a)(III), C.R.S.
[39] § 12-38-116.5(3)(c)(V)(A), C.R.S.
[40] § 12-38-116.5(3)(c), C.R.S.

Within 20 days of receiving a letter of admonition, a licensee has the right to request in writing that formal disciplinary proceedings be initiated. If the panel receives the licensee's request in a timely manner, the letter of admonition is vacated and the matter is referred for hearing.[41]

Either a hearings panel or an administrative law judge (ALJ) may conduct a formal disciplinary hearing. All matters referred to one panel for investigation are heard by the other panel if referred for formal hearing. If the ALJ presides over a hearing, he or she issues an initial decision pursuant to the state Administrative Procedure Act.[42] The hearings panel that would have heard the case had it not been referred to an ALJ may file exceptions to the initial decision, as may the respondent.[43]

The licensee complained against may be present in person, represented by counsel, or both, to offer evidence in his or her defense. At formal hearings, witnesses must be sworn and a complete record must be made of all proceedings and testimony.[44]

If the charges in the complaint are not proven at hearing, the hearings panel or ALJ must enter an order dismissing the complaint.[45]

If the charges in the complaint are proven at hearing, the hearings panel or ALJ may recommend discipline be imposed. The disciplinary options include:[46]

- Issuing a letter of admonition;
- Suspending the license for a specified time period, or indefinitely;
- Revoking the license; or
- Placing the license on probation.

If the hearings panel or ALJ finds the licensee may not be able to practice as an LPT with reasonable skill and safety, either due to a mental or physical condition, the licensee may be ordered to undergo a mental or physical examination.[47]

If the Board receives credible evidence—either via a written complaint or otherwise—that an LPT is acting in manner that poses an imminent threat to the public health and safety, the Board may issue a cease and desist order to that LPT. The Board may also issue cease and desist orders against those who are found to be practicing as an LPT without a license.[48]

Any final disciplinary action of the Board is subject to judicial review in the Colorado Court of Appeals.[49]

[41] § 12-38-116.5(3)(c)(IV), C.R.S.
[42] § 12-38-116.5(1)(c), C.R.S.
[43] § 12-38-116.5(1)(d), C.R.S.
[44] § 12-38-116.5(4)(a), C.R.S.
[45] § 12-38-116.5(4)(c)(II), C.R.S.
[46] § 12-38-116.5(4)(c)(III), C.R.S.
[47] § 12-38-116.5(8)(a), C.R.S.
[48] § 12-38-116.5(15)(a), C.R.S.
[49] § 12-38-116.5(12), C.R.S.

The Board is responsible for approving LPT education programs. Any institution within the state of Colorado desiring to conduct such a program must apply to the Board.[50]

Over the course of the application process, the institution must provide evidence that the organization, administration, and implementation of the program complies with the Board's rules and all other state and federal regulations. The institution must also document that it possesses sufficient qualified faculty, including a qualified director, and sufficient financial and clinical resources to support the program.[51]

The curriculum offered by an LPT education program must contain theoretical content and clinical practice to prepare the student to care for clients with developmental disabilities or mental illness in institutional and community settings.[52] All LPT education programs must include at least 200 clock hours of theory and 200 clock hours of clinical practice[53] covering the following topics:[54]

- Fundamental nursing principles and skills; and
- Growth and developmental and other physical and behavioral skills; and
- If a technician is to be licensed to care for clients with developmental disabilities, mental retardation theory and rehabilitation nursing principles and skills,

  OR

  If a technician is to be licensed to care for clients with mental illness, psychopathology and psychiatric nursing principles and skills.

Any program meeting the established requirements is accredited by the Board. The Board may conduct inspections of the program periodically to assure its compliance with the statutes and rules. If an inspection reveals any deficiencies, the Board must notify the program in writing, and the program has one year to correct the deficiencies. Failure to do so can result in revocation of the accreditation.[55]

[50] § 12-42-111(1)(a), C.R.S.
[51] Board Rule VI, § 4.
[52] § 12-42-111(1)(a), C.R.S.
[53] Board Rule VI, § 4.3.
[54] § 12-42-111(1)(b), C.R.S.
[55] § 12-42-111(4), C.R.S

Program Description and Administration

The Colorado Board of Nursing (Board) is vested with the authority to regulate licensed psychiatric technicians (LPTs). There are two distinct LPT license types. The Board issues LPT-DD licenses to LPTs working with developmentally disabled clients, and LPT-MI licenses to those working with mentally ill clients. The Board is also responsible for accrediting all LPT education programs.

The eleven-member Board is divided into two panels, Panel A and Panel B. The panels meet monthly, typically on the last Wednesday of the month, to consider licensing and disciplinary matters. Full Board meetings, where all 11 members attend, occur quarterly, in January, April, July, and October. The agendas of the full Board meetings are typically related to policy issues, including rulemaking, as well as issues in nursing education and national nursing trends.

The Division of Registrations (Division) provides administrative and managerial support for the Board in fulfilling its legislative mandate.

Table 1 illustrates, for the five fiscal years indicated, the Board's overall expenditures and staffing levels. The Board does not maintain a separate budget for LPTs, so the following reflects the total cost of its regulatory activities, including the regulation of registered nurses (RNs) and licensed practical nurses (LPNs).

Table 1
Agency Fiscal Information

Category	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Total Program Expenditures	$2,248,479	$2,316,728	$2,387,284	$2,421,905	$2,906,168
Full-Time Equivalent Employees	13.5	10.75	10.75	15.5	15.5

Since the Board licenses over 65,000 RNs and LPNs, and just over 1,200 LPTs, the vast majority of these resources go toward the regulation of registered and practical nurses.

In July of 2003, the Division underwent a major reorganization, creating centralized units to handle licensing, customer service, and central intake functions for all Division boards and programs. The above table reflects only those full-time equivalent (FTE) employees employed by the Board for enforcement, inspection, policymaking, and non-routine[56] licensing functions.

[56] "Non-routine" refers to applications requiring special Board review, such as those where the applicant was educated in a foreign country, or those where the applicant answers "yes" to one of the background screening questions.

Table 2 shows the fees the Board charges for LPT licenses, permits, and authorities.

Table 2
LPT Licensure Program Fees

Original License by Examination	$65
Examination	$35
Original License by Endorsement	$20
Renewal	$30
Late Fee (for renewals after the expiration date)	$15
Reinstatement	$45
Duplicate License	$5

The fees are the same for LPT-DD and LPT-MI licenses.

Licensing

There are two primary routes to LPT licensure in Colorado: by examination and by endorsement. Applicants must complete the appropriate application and submit it with all supporting documentation to the Division's Office of Licensing (Office). A licensing specialist reviews the application and notifies the applicant of any deficiencies. Once the application is complete, a licensing specialist evaluates the application to ensure the applicant meets the requirements for licensure. If requirements are met, the license is issued. If not, the licensing specialist notifies the applicant in writing, and the application is kept on file for one year.

Table 3 illustrates, for the five fiscal years indicated, the number of new licenses issued by method.

Table 3
New LPT Licenses Issued by Method

Fiscal Year	LPT-DD			LPT-MI		
	Exam	Endorsement	Total	Exam	Endorsement	Total
02-03	55	1	56	22	7	29
03-04	57	2	59	17	2	19
04-05	72	2	74	16	2	18
05-06	60	3	63	6	3	9
06-07	68	0	68	26	2	28

The low number of new licenses by endorsement reflects the fact that California is the only other state currently licensing LPTs. That said, both Kansas and Arkansas licensed psychiatric technicians in the past, and both states allow psychiatric technicians licensed under the old law to continue to renew their licenses. Consequently, anyone holding an LPT license from California, Kansas, or Arkansas would likely be eligible for Colorado licensure by endorsement.

Table 4 illustrates the total number of LPTs for the five fiscal years indicated.

Table 4
Total Number of Licensees

Fiscal Year	LPT-DD	LPT-MI
02-03*	830	340
03-04	909	368
04-05	881	333
05-06	948	350
06-07	831	314

*The Division converted to a new licensing database in fiscal year 02-03, and due to this conversion, the licensing data for that year is not available electronically. These numbers were derived manually.

Applications for LPT licensure require applicants to answer detailed background questions. These questions are intended to identify applicants with a history of criminal convictions, disciplinary actions, alcohol or drug abuse, or other factors that may affect the applicant's ability to safely practice as an LPT. If the applicant answers affirmatively to any of the background questions, the application is subjected to an additional review.

The Board developed a decision tree to facilitate review of these "yes" applications. Office staff has the authority to administratively approve some of these applications within defined parameters. Examples of "yes" applications that staff may administratively approve include those disclosing:[57]

- Traffic convictions that do not involve driving under the influence (DUI), driving while ability impaired (DWAI) or felonies;
- A single conviction where the court has sealed the records; or
- Malpractice settlements that are over five years old.

If the violations are outside the parameters of authority delegated by the Board, Board staff assigns the application to one of the inquiry panels of the Board. Examples of "yes" applications that must be referred to a panel include those disclosing: [58]

- One or more felony convictions;
- Conviction(s) involving alcohol within the last 12 months; or
- Convictions that indicate a pattern or repeat offender status.

The appropriate panel reviews the application and decides whether to grant or deny licensure at one of its monthly meetings. If the Board denies the applicant licensure, the applicant is entitled to a hearing under the Administrative Procedure Act. The Board may also elect to license the applicant with conditions. Since those conditions are typically established via a stipulation and order, the applicant would then enter the disciplinary process so that an agreement can be reached.

[57] Board Guideline 01, Board of Nursing Staff Approval of Licensure.
[58] Board Guideline 01, Board of Nursing Staff Approval of Licensure.

Examinations

Applicants for LPT licensure must pass a state examination. The examination was developed by the Division's Office of Examination Services. There are two examination programs: the examination for Developmental Disability Specialty Area (PTD) and the examination for Mental Illness Specialty Area (PTM).

The examinations are administered twice a year, typically on the second Wednesday in January and July. The examinations are given in a paper-and-pencil format and are conducted at regional testing sites in Wheat Ridge, Grand Junction, and Pueblo.

Table 5 indicates the content areas for the PTD examination and the percentage of questions in each area.

Table 5
Content Areas for the PTD

Content Area Description	# of Test Items	% of Exam
Client Assessment	30	21%
Medication Administration	17	12%
Treatment Application	21	13%
Activities of Daily Living	15	10%
Behavior Management	8	6%
Maintaining Safe and Orderly Environment	30	21%
Adhering to Legal Policies and Procedures	11	8%
Infection Control	13	9%
Total Exam Items	**145**	

Table 6 indicates the content areas for the PTM examination and the percentage of questions in each area.

Table 6
Content Areas for the PTM

Content Area Description	# of Test Items	% of Exam
Assessing Behavioral and Physical Changes	16	12%
Performing Defined Nursing Activities	45	34%
Communicating with Others	9	7%
Anticipate Crises and Initiate Interventions	10	8%
Performing Security Checks	8	6%
Maintaining Safe and Orderly Environment	13	10%
Adhering to Legal Policies and Procedures	16	12%
Establishing Therapeutic Environments	14	11%
Total Exam Items	**131**	

The contrast between the content of the two examinations underscores the difference between the practice of LPTs caring for the developmentally disabled and those caring for the mentally ill.

Table 7 indicates the number of examinations administered to applicants seeking Colorado LPT licensure, and the pass rate.

Table 7
Examinations for Colorado Applicants

Fiscal Year	LPT-DD		LPT-MI	
	Number of Examinations Given	Pass Rate	Number of Examinations Given	Pass Rate
02-03	27	85%	16	88%
03-04	81	90%	93	91%
04-05	72	83%	13	100%
05-06	79	84%	31	85%
06-07	42	86%	5	80%

The number of examinees varies considerably from year to year. This is because there are only five approved LPT education programs in the state. If a single program does not hold a training class in a particular year, that can significantly decrease the pool of examinees.

Inspections

Although the Board has the power to inspect LPT education programs as part of the program approval process, no such inspections have been conducted over the past five fiscal years. Section 12-42-111(2), C.R.S., directs the Board to inspect new education programs as part of the accreditation process, but there have been no applications to start a new program for at least five years. Section 12-42-111(4), C.R.S., directs the Board to inspect accredited programs periodically, but there is no statutory mandate to inspect programs on a specified basis—e.g., every five years—as there is for other education programs the Board approves.

The Board does require all LPT education programs to submit annual reports. If a program's annual report were to reveal any issue warranting investigation, the Board would conduct an inspection of that program. No issues warranting inspection have been identified over the past five years.

Complaints/Disciplinary Actions

Anyone—a hospital, staffing agency, physician, patient, or the Board itself—may file a complaint against an LPT. Board inquiry Panels A and B review complaints at their monthly meetings.

Table 8 shows the number of complaints received for the five fiscal years indicated.

Table 8
Complaints

Fiscal Year	LPT-DD Number of Complaints Received	LPT-MI Number of Complaints Received
02-03	9	2
03-04	16	0
04-05	22	1
05-06	17	11
06-07	13	1

Generally speaking, the number of complaints is extremely low.

Table 9 illustrates the nature of the complaints filed against LPTs for the five fiscal years indicated.

Table 9
Nature of Complaints

LPT-DD					
Nature of Complaints	**FY 02-03**	**FY 03-04**	**FY 04-05**	**FY 05-06**	**FY 06-07**
Standard of Practice	5	14	18	9	9
Criminal Offenses	1	1	4	6	3
Verbal Abuse of Patient	1	0	0	0	0
Sexual Misconduct	1	0	0	0	0
Substance Abuse	0	0	5	5	0
Patient Abandonment	1	0	0	0	0
Recordkeeping	0	1	0	0	0
Failure to Respond to Complaint	0	0	3	0	3
LPT-MI					
Nature of Complaints	**FY 02-03**	**FY 03-04**	**FY 04-05**	**FY 05-06**	**FY 06-07**
Standard of Practice	2	0	1	2	0
Criminal Offenses	0	0	0	5	0
Substance Abuse	0	0	0	2	1
Physical/Mental Disability	0	0	0	2	0

NOTE: The number of the nature of complaints will not equal the total number of complaints reported elsewhere in this report because a complaint may have more than one allegation.

The most common complaint allegations against LPT-DDs involve standard of practice issues, criminal offenses, or substance abuse. The most common complaint allegations against LPT-MIs involve standard of practice issues or criminal offenses.

After investigation of a complaint, the Board may find probable cause that an LPT violated the Act and consequently pursue disciplinary action. There are several ways that a disciplinary settlement may be reached: the more traditional route via the Attorney General's Office (AGO), via mediation, or via the Office of Expedited Settlement (ESP).

Mediation is a process whereby a Board member, accompanied by the Board's counsel, meets face-to-face with the LPT and his or her attorney, if applicable. Over the course of the meeting, both parties try to come to an agreement on a suitable disciplinary action. Cases referred for mediation must meet certain criteria, e.g., the LPT must be willing to consider disciplinary action to resolve the complaint.

ESP is a centralized office within the Division. The purpose of ESP is to expedite the resolution of disciplinary actions without referral to the AGO. Resolving cases within the Division both reduces associated legal costs and allows the AGO to focus on more complex cases that require its legal counsel and expertise.

Table 10 below illustrates the total number of final actions taken by the Board for the five fiscal years indicated.

Table 10
Final Agency Actions

Type of Action	FY 02-03		FY 03-04		FY 04-05		FY 05-06		FY 06-07	
	DD	MI	DD	MI	DD	MI	DD	MI	DD	MI
Revocation/Surrender of License	2	1	2	0	1	0	2	0	1	1
Suspension	1	0	0	0	0	0	1	0	1	
Probation / Practice Limitation	2	0	0	0	0	0	0	0	3	1
Letter of Admonition	1		1		1	1	2	0	7	1
Total Disciplinary Actions	**6**	**1**	**3**		**2**	**1**	**5**	**0**	**12**	**3**
Dismissed**	7	3	7	0	13	0	0	3	7	0

*Dismissals include confidential letters of concern which may be issued by the Board when initiation of formal disciplinary action is not warranted.

A review of the disciplinary documents the Board has issued since 2003 reveals that the most common grounds for discipline are substandard care, followed by criminal offenses and failure to respond to the Board in a timely manner after a complaint has been filed.

Analysis and Recommendations

Recommendation 1 – Continue the regulation of licensed psychiatric technicians for five years, until 2014, then allow the regulation to repeal by operation of law.

The laws relating to licensed psychiatric technician (LPT) regulation are encompassed in Article 42 of Title 12, Colorado Revised Statutes (C.R.S.), known as the Licensed Psychiatric Technician Practice Act (Act). Section 12-38-108(k), C.R.S., vests the Colorado Board of Nursing (Board) with the authority to regulate LPTs, and establishes that the primary regulatory duties of the Board are to license qualified applicants and approve education programs preparing psychiatric technicians for licensure.

For the purposes of this discussion, the term "psychiatric technician" is used as a generic term to refer to an occupational title. Those holding LPT licensure will be referred to as LPTs or *licensed* psychiatric technicians. In Colorado, the important distinction between psychiatric technicians and LPTs is that LPTs may administer medications.

The central question of a sunset review is whether these regulatory activities are necessary to protect the public health, safety, and welfare.

As established by law, there are two distinct LPT license types: those who work with the developmentally disabled are issued LPT-DD licenses, and those who work with the mentally ill are issued LPT-MI licenses. LPT practice varies considerably between these populations, but both LPT-DDs and LPT-MIs work in environments requiring specialized skills and training and are authorized to administer medications under the supervision of a professional nurse.

Feedback gleaned from stakeholders over the course of this review emphasized the complex skill set LPTs must use in their daily practice. All LPTs need sophisticated communication skills to allow them to communicate effectively with people who may have cognitive impairments, mental disabilities, or psychiatric disorders. LPTs use milieu management skills to create and maintain a safe, stable, highly structured environment for patients.

LPT-DDs help developmentally disabled people, some of whom pose a community safety risk, become contributing members of society by cultivating patients' strengths and promoting their independence. LPT-DDs may assist people with activities of daily living, such as bathing and dressing.

LPT-MIs work with mentally ill adolescents and adults, including defendants found to be not guilty by reason of insanity, or those deemed incompetent to stand trial. LPT-MIs play a role in preparing patients for restoration to competency hearings held pursuant to section 16-8-113, C.R.S.: because they are the front line care providers, LPT-MIs can provide vital information on patients' progress to evaluating psychiatrists. LPT-MIs are trained to address behavioral issues before they escalate, and appropriately de-escalate dangerous situations.

LPTs are unique among health care professionals in that they work almost exclusively in facilities run by the Colorado Department of Human Services (DHS). LPT-DDs are employed primarily by the regional centers established pursuant to section 27-10.5-301, C.R.S. These facilities, located in Wheat Ridge, Pueblo, and Grand Junction, were established to provide services and support to the developmentally disabled. Most LPT-MIs are employed by the Colorado Mental Health Institute at Pueblo (CMHIP) established pursuant to section 27-13-101, C.R.S. There would be nothing preventing the private sector from employing LPTs, and several stakeholders interviewed for this report stated that some private hospitals were in fact doing so, but the Department of Regulatory Agencies (DORA) was unable to confirm this. Even if some private facilities are hiring LPTs, it is not immediately evident whether an LPT license is required for such employment, and whether these LPTs are currently practicing as LPTs. Because some private-sector employers prefer that applicants for psychiatric technician positions hold bachelor's degrees, LPTs would not necessarily automatically qualify for these positions.

Not only is there a limited number of employers, there is a limited number of places where students can be educated to become LPTs. In the case of the LPT-DDs, the training and education typically occurs within the facility itself. In the case of LPT-MIs, a single education program—offered by Pueblo Community College—educates all new LPT-MIs employed by CMHIP.

The employment opportunities for LPTs are further limited by the way that Colorado's licensure program is designed. Although numerous stakeholders commented that the patients LPTs serve often have dual diagnoses—meaning that some patients are both developmentally disabled and mentally ill—the fact that different licensure is required for each population means that an LPT-DD working in a regional center could not go work at CMHIP without undergoing additional training and securing licensure as an LPT-MI. This regulatory structure, which essentially licenses LPTs based on their area of specialty, runs counter to Colorado's regulatory philosophy of regulating for minimal competency.

This population-specific licensure is incongruent with the psychiatric technician licensure in other states, which further limits LPTs' mobility. The three other states that license LPTs—California, Arkansas, and Kansas –structure their LPT licenses as one integrated license, allowing them to work with both the developmentally disabled and mentally ill populations. This means that LPTs in these states undergo substantially more education.

Table 10 shows the number of clock hours of instruction required for LPT licensure in the four states that license LPTs.

Table 10
Required Hours of Psychiatric Technician Training

	Classroom Theory	Clinical	Total
Arkansas	N/A	N/A	1,300
California	576	954	1530
Colorado	200	200	400
Kansas	450	450	900

Colorado LPTs do not have sufficient education to qualify for licensure by endorsement in these states.

With the exception of California, which has a robust LPT program with over 14,000 licensees, LPT licensing programs have seen a slow decline. At the time of the last sunset review in 1994, four states licensed psychiatric technicians; that number has now been effectively reduced to two—Colorado and California.

Arkansas stopped licensing new licensed psychiatric technical nurses (LPTNs, Arkansas' equivalent of LPTs) in 1995 when the last of its LPTN education programs closed. There are currently no approved schools for preparing psychiatric technicians for licensure in Arkansas.[59] Arkansas still accepts endorsement candidates from California and Kansas only.[60] The number of Arkansas licensees has decreased from 311 LPTs in June 2005 to 244 in June 2007.[61]

Kansas stopped issuing new licensed mental health technicians (LMHTs, Kansas' equivalent of LPTs) when the last education program closed. Kansas still accepts endorsement candidates for applicants who have met requirements substantially similar to those of Kansas, but since Colorado requires about half the number of hours that Kansas does, Colorado LPTs are not eligible for endorsement. The number of Kansas licensees has decreased from 286 in 2003 to 185 in 2007. Since 2004, Kansas has issued just one new LMHT license.[62]

To be clear: it is not the profession of psychiatric technician that is in decline, but rather the *licensing* of psychiatric technicians. The fact that most states do not license psychiatric technicians does not mean that the job description of "psychiatric technician" does not exist in those states. In fact, according to the Bureau of Labor Statistics, the jurisdictions with the highest concentration of psychiatric technicians are Missouri, New Mexico, Virginia, the District of Columbia, and Connecticut.[63] None of these require licensure.

[59] Arkansas State Board of Nursing, Annual Report July 1, 2006 through June 30, 2007, p. 23.
[60] Arkansas State Board of Nursing, *Licensure by Endorsement*. Retrieved on July 15, 2008, from http://www.arsbn.org/lic_by_end.html
[61] Arkansas State Board of Nursing, Annual Report July 1, 2006 through June 30, 2007, p. 33.
[62] Kansas Board of Nursing, *Annual Report Fiscal Year 2007*, p. 18.
[63] U.S. Department of Labor, Bureau of Labor Statistics. *Occupational Employment and Wages, May 2007, 29-2053 Psychiatric Technicians.* Retrieved on July 10, 2008 from http://www.bls.gov/OES/current/oes292053.htm#nat

A review of psychiatric technician job postings nationwide revealed that employers have a diverse array of requirements for their positions. Some employers require an undergraduate degree in psychology or behavioral sciences. Others require a certain number of years of experience as a psychiatric technician. Others require national certification by the Association of Psychiatric Technicians, which indicates that a candidate has completed a certain amount of college coursework and has work experience in the mental health field. Some require licensed practical nurse (LPN) licensure or nurse aide certification. Despite these varying qualifications, the core job duties of psychiatric technicians defined in these job postings are the same as those of Colorado LPTs. Further, private hospitals in Colorado employ psychiatric technicians. They may have received their training in an undergraduate psychology program, but the same essential skills are required to perform the job.

LPTs are not able to move easily from one facility to another within Colorado, and are not eligible for endorsement into other states that license LPTs. There is no evidence base documenting that the quality of mental health care provided in Colorado and California—the only two states with fully functional licensing programs—is superior to the mental health care provided in the rest of the United States. There is no evidence base documenting that the quality of mental health care provided in Colorado DHS-run facilities, which are partially staffed by LPTs, is superior to the care provided in private hospitals, which do not typically hire LPTs.

The practice of psychiatric technicians in the United States is largely unregulated. Even in Colorado, private facilities employ individuals who are not licensed as LPTs to work as psychiatric technicians. There is no evidence that these psychiatric technicians are harming the public. Even among LPTs, the number of complaints and disciplinary actions is extremely low. It is reasonable to conclude that most aspects of psychiatric technician practice do not require oversight by the Board.

Because there is no LPT representation on the Board, and there are very few complaints filed against LPTs, it is reasonable to question whether the Board even has the necessary expertise to regulate them effectively. Employers understand their workforce needs and psychiatric technician practice better than the Board.

The only portion of psychiatric technician practice that unequivocally requires licensure or certification is the medication administration portion.

The second sunset criterion asks whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms.

There are two existing, alternative regulatory mechanisms that would allow psychiatric technicians to legally administer medications: certification as a nurse aide with medication aide authority (CNA-MAA), or licensure as an LPN. Given the fact that LPNs require significantly more education than LPTs, requiring psychiatric technicians to obtain LPN licensure could be construed as overly restrictive. That leaves CNA-MAA as a possible alternative.

The CNA-MAA, as currently structured, would not meet the needs of DHS. However, the 2008 sunset review of the nurse aide certification program, which is being published concurrently with this review, recommends substantial changes to the Nurse Aide Practice Act, specifically empowering the Board to promulgate rules to widen the scope of practice and adjust the education and training requirements for the CNA-MAA. These changes will be done via the public rulemaking process. To allow enough time for transition, and to ensure that DHS workforce needs would be met, this phasing out of psychiatric technician licensure could be completed over a period of five years. During that time, existing LPTs could continue to renew their licenses. At that end of that time, the LPT license type would cease to exist. All current LPTs would immediately qualify to be grandfathered in as CNA-MAAs without any additional training. This would allow them to administer medications from that point forward.

The Board would maintain regulatory authority over psychiatric technicians holding CNA-MAA certification, and would be able to take disciplinary action against those who violated the Nurse Aide Practice Act. Employers would bear responsibility for handling disciplinary matters related to an employee's practice as a psychiatric technician.

Recall, however, that medication administration is but a small part of psychiatric technician practice. LPTs themselves, as well as the other health care workers that work alongside them, acknowledge that medication administration is not the primary focus of their jobs.

At CMHIP, it is clear that LPT-MIs lead the way in creating and maintaining a safe and secure environment for patients and employees. Although LPTs receive roughly half the training LPNs do—Board rules require LPT programs to be at least 400 clock hours of instruction, while LPN programs must include at least 700 clock hours—LPTs receive more training in psychiatric nursing than LPNs. Registered nurses (RNs), LPNs, and physicians recognize that while they may have more medical training, LPTs have superior skills in communication and milieu management. The stakeholders agree that LPT training as it exists now is critical in preparing individuals for practice as psychiatric technicians.

Who will assure that a new hire is properly trained to practice as a psychiatric technician?

The answer is simple: the employer.

Under the current LPT licensing program, one state agency—the Board—issues licenses to individuals who are primarily employed by another state agency, DHS. While DHS, not the Board, has always been responsible for deciding who is qualified for employment in its facilities, eliminating the LPT license type would give DHS increased flexibility in meeting its workforce needs.

With elimination of the LPT license type, DHS could require its prospective psychiatric technicians to complete any education or training it sees fit, without having to secure Board approval. DHS could require applicants seeking employment at CMHIP to complete the existing 400-hour program at Pueblo Community College (PCC), or work with PCC to develop a more extensive program, or one with more focus on specific subject areas. The regional centers could continue to provide the same training to their LPT-DDs as they have been, or could lengthen or redesign the training to suit their needs. DHS, and DHS alone, would have authority to determine what it needs from its workforce, and could work directly with the regional centers and PCC to ensure those needs are met without ever involving the Board.

Stakeholders have emphasized that CNA-MAAs would be in no way qualified to practice as psychiatric technicians. This is true. The CNA-MAA training would provide applicants with basic nursing and medication administration skills. The additional education and training DHS would mandate as a condition of hire would be what prepares candidates for employment as a psychiatric technician.

The LPTs at CHMIP have already developed a robust in-house training program that allows them to share psychiatric technician skills with other health care professionals, as well as newly hired LPTs, on staff. This underscores the fact that CMHIP, not the Board, is more capable of determining its workforce needs.

Representatives of DHS have commented that that some of their patients have dual diagnoses, meaning these patients have a diagnosis of both a mental illness and a developmental disability. Under the current licensing scheme, LPTs working with these individuals would have to hold dual licensure. Under the proposed scheme, DHS, not the Board, would have the freedom to determine what education and training its psychiatric technicians would need to care for these patients effectively.

Numerous stakeholders have mentioned that LPTs currently perform a variety of tasks without RN supervision, and that elimination of the LPT license type would prevent psychiatric technicians from performing these tasks. The fact is that LPTs have never been independent practitioners. Pursuant to section 12-42-102(4), C.R.S., LPTs may only practice under the direction of a licensed physician *and* the supervision of an RN. Any tasks performed without RN supervision are outside the LPT's scope of practice. Any tasks requiring the specialized skill, judgment, and knowledge of a professional nurse are outside the LPT's scope of practice. If LPTs have truly been performing tasks independently, this was done in violation of the law.

Nursing supervisors and administrators have legitimate concerns regarding the delegation law and rules, and whether CNA-MAAs will place undue burdens on RNs as supervisory personnel. In order for the CNA-MAA to be effective in DHS settings, the delegation rules would need to be revised. Currently, section 4.1.F of Board Rule XIII establishes that any nursing task delegated by a professional nurse must be limited to a specific client within a specific time frame, unless such delegation occurs in a school or licensed child care center. Sections 7 and 9 of the Rule establish specific delegation rules for these settings. The Board should create an exemption and develop setting-specific delegation rules for DHS facilities as appropriate.

Some stakeholders have expressed concern that if the state eliminates LPT licensure, PCC will stop offering its psychiatric technician certificate program. In reality, requiring state licensure is no guarantee this program will remain open. PCC could stop providing the training at any time, just as other Colorado LPT programs have. Note that the licensure of new psychiatric technicians in Kansas and Arkansas effectively ended when the last training programs closed. Training programs in Kansas and Arkansas saw decreased demand, so the programs closed. As long as there is a demand for LPT courses, PCC is likely to offer them.

Current LPTs report a high level of job satisfaction due to the positive impact they can have on patients' lives: helping patients to become independent and learn to manage the symptoms of their mental illness. The nature of the work of a psychiatric technician will not change with the elimination of licensure: the approximately 44,000[64] psychiatric technicians working across the nation have substantially the same job duties as Colorado LPTs.

Stakeholders have expressed concern that eliminating the LPT license type would hurt recruitment efforts, arguing that candidates might not choose to be trained as a psychiatric technician if such training does not culminate in an LPT license. Although it is impossible to predict exactly how elimination of the license type would affect recruitment, a professional license typically functions as a means to an end. A person does not seek licensure as a teacher or a physician for the sake of receiving a paper wallet card; rather, he or she does so in order to teach children or treat patients. The license permits the person to hold a specific job. It is not an end in itself.

The fact that both CNA-MAAs and LPNs may easily move from employer to employer and state to state may make recruitment easier.

Some worry about the loss of status that elimination of the license could cause. Wishing to confer status is a common reason for professionals to seek regulation; however, status alone does not justify such regulation. Section 24-34-104.1, C.R.S., the sunrise law, establishes that regulation is justified only when necessary to protect the public interest.

[64] According to the U.S. Department of Labor, Bureau of Labor Statistics, there are approximately 60,000 psychiatric technicians employed in the United States. Of these, approximately 14,000 are licensed in California, 244 in Arkansas, 185 in Kansas, and 1,200 in Colorado. That leaves approximately 44,000 psychiatric technicians. Reference: U.S. Department of Labor, Bureau of Labor Statistics *Occupational Employment and Wages, May 2007, 29-2053 Psychiatric Technicians.* Retrieved on July 10, 2008 from http://www.bls.gov/OES/current/oes292053.htm#nat

Because most current LPTs are employed in the state classified system, there is considerable concern among LPTs that their positions will be downgraded, and their salaries or retirement affected. Although any decisions regarding reclassification of positions are ultimately up to the Department of Personnel and Administration (DPA), a review of the two most common employment classifications for current LPTs makes such reclassification seem unlikely. Most psychiatric technicians are currently classified in one of these two categories:

- **Health Care Technician, levels one to four**. The minimum qualifications for this class state that "medication aides must possess appropriate certifications or licensure." An LPT license is not specifically required to qualify for this classification, and the CNA-MAA would satisfy this requirement.
- **Clinical Safety Security Officer, levels one to four**. The minimum qualifications for this class state that "some positions require licensure as a Licensed Psychiatric Technician by the Colorado State Board of Nursing." The fact that some, not all, of the positions in this category require LPT licensure underscores that removal of the license type would in no way endanger the classification. Further, since this category was expressly created for CMHIP employees, DPA would be able to change the minimum qualifications for this class to accommodate DHS' needs. Interestingly, although this classification requires LPT licensure, the occupational group is not classified with the health care professions, but rather with enforcement and protective services.

Administrators at CMHIP expressed concern that a transition away from licensing psychiatric technicians might necessitate staffing changes at DHS facilities—CMHIP in particular—in order for them to maintain Joint Commission[65] accreditation, which is how CMHIP demonstrates that it meets the certification requirements of the Centers for Medicare and Medicaid Services (CMS). This may be the case, but similar facilities in other states—which do not license psychiatric technicians, and undoubtedly face the same staffing challenges CMHIP does—are still able to qualify for reimbursement from CMS.

The skills LPTs have and the services they provide are extremely important. However, DHS, as the sole employer of LPTs in Colorado, is better equipped than the Board to determine the needs of its patients, and the appropriate skills and training for its staff. Psychiatric technicians would still be able to administer medications, just under a CNA-MAA certificate instead of an LPT license, and other areas of their practice would be unaffected.

In order for the phasing out of the LPT license to be effective, the laws and rules governing CNA-MAA need to undergo significant changes. Further, the Board should revise the RN delegation rules to accommodate the setting-specific needs of DHS-run facilities. This is why the LPT program should remain in place for a transition period of five years. After the changes have been made, the licensing program for LPTs should be repealed.

[65] The Joint Commission is an independent, not-for-profit entity offering optional accreditation for health organizations and programs based on national standards.

If the General Assembly elects to continue the LPT licensing program, it should consider these two alternatives:

1) **Incorporate the laws regarding LPT regulation into the Nurse Practice Act, and direct the Board to conduct a systematic review of LPT practice to assure LPTs are not exceeding their scope of practice.** Since LPTs are under the regulatory authority of the Board, and the licensing and enforcement procedures for LPTs are substantially similar to those for RNs and LPNs, it makes sense for the laws regarding LPT regulation to be part of the NPA rather than in a separate part of the statute. Anecdotal evidence gathered over the course of this review suggests that LPTs may be acting independently, which is beyond their scope of practice. As the regulatory authority, the Board has a responsibility to conduct an investigation into LPT scope of practice to determine whether action is warranted.

OR

2) **Transfer the LPT licensing program in its entirety to DHS.** Because DHS is the primary employer of LPTs, it would make sense to move the licensing program under DHS' regulatory authority. This would permit DHS to set the standards for LPT education and licensure.

Option 1 would at least partially streamline the LPT licensing program. Option 2 would also accomplish this, while permitting DHS to more directly control the education and training of its employees, and eliminating the administrative inefficiency caused by one state agency (the Board) licensing the employees of another state agency (DHS).

Eliminating the LPT license type, however, would address all of these issues without compromising the level of patient care provided in DHS facilities. This option would offer the further advantage of giving psychiatric technicians a credential—CNA-MAA—that would allow them greater mobility, and maintaining the Board's ability to restrict, suspend, or revoke a psychiatric technician's CNA-MAA certificate.

For these reasons, the General Assembly should terminate, by operation of law, the regulation of LPTs at the conclusion of a five-year transition period.

Recommendation 2 – Repeal the section of the Colorado Nurse Practice Act regarding delegating the selection of medications.

Section 12-38-132, C.R.S., addresses the delegation of nursing tasks. Section 12-38-132(1), C.R.S., contains the following statement:

> In no event may a registered nurse delegate to another person the authority to select medications if such person is not, independent of such delegation, authorized by law to select medications.

The use of the word "select" in this context is confusing. It is unclear whether selecting is distinct from administering, and if so, how. Further, the statement is unnecessary, given that the rest of the section clearly delineates the circumstances under which a task may be delegated.

The sentence above also could be construed to restrict the ability of CNA-MAAs—including those working as psychiatric technicians—to administer medications. Removing this sentence will permit the Board to proceed with the revision of *Chapter XIII, Rules and Regulations Regarding the Delegation of Nursing Tasks* in order to accommodate changes to the CNA-MAA program. Because CNA-MAA is the least restrictive credential whereby psychiatric technicians could administer medications, these changes are critical to the success of Recommendation 1, above, to phase out the regulation of LPTs after a five-year period.