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Report to the Colorado General Assembly:

**Sunrise and Sunset Recommendations
For 1986**



**Report of the
Joint Legislative Sunrise and Sunset
Review Committee**

**RESEARCH PUBLICATION NO. 298
December, 1985**

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RECOMMENDATIONS FOR 1986
"

(Colorado General Assembly, Legislative Council.
"JOINT LEGISLATIVE SUNRISE AND SUNSET REVIEW
COMMITTEE.")

REPORT TO THE
COLORADO GENERAL ASSEMBLY

Research Publication No. 298
December, 1985

COLORADO GENERAL ASSEMBLY



JOINT LEGISLATIVE SUNRISE AND SUNSET REVIEW COMMITTEE

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
(303) 866-3521

To Members of the Fifty-fifth Colorado General Assembly:

Submitted herewith is the final report and recommendations of the Joint Sunrise and Sunset Review Committee. The committee was created pursuant to section 2-3-1201, C.R.S., (House Bill 1087, 1985 session), and Rule 35 of the Joint Rules of the Senate and House of Representatives. The purpose of the committee is to review the termination of divisions, boards or agencies pursuant to the statutory sunset provisions (section 24-34-104, C.R.S.) and to review requests for new regulation of occupations and professions pursuant to the statutory sunrise provisions (section 24-3-104.1, C.R.S.).

The Joint Sunrise and Sunset Review Committee submitted its report and recommendations to the Legislative Council at its meeting on October 15. The Joint Sunrise and Sunset Review Committee recommended that five bills be transmitted to the General Assembly for favorable consideration. The Legislative Council reviewed the report and recommendations and voted favorably to forward the report and recommendations to the Fifty-fifth General Assembly.

Respectfully submitted,

/s/ Representative James Moore
Chairman
Joint Sunrise and Sunset Review Committee

JM/eg

TABLE OF CONTENTS

	<u>Page</u>
LETTER OF TRANSMITTAL.....	iii
TABLE OF CONTENTS.....	v
LIST OF BILLS AND RESOLUTIONS.....	vii
JOINT LEGISLATIVE SUNRISE AND SUNSET REVIEW COMMITTEE	
Members of Committee.....	1
Summary of Recommendations.....	3
Sunset Review.....	5
Board of Hearing Aid Dealers.....	5
State Board of Pharmacy.....	7
State Board of Medical Examiners.....	9
State Board of Dental Examiners.....	11
State Board of Physical Therapy.....	13
Sunrise Review.....	15
Midwives.....	15
Private Investigators.....	17
Dietitians.....	18
Marriage and Family Therapists.....	19
Professional Counselors.....	21
Modeling Agencies.....	23
Commercial Health and Fitness Club Managers.....	25
Bills 43 to 47.....	27
Appendix A.....	107

LIST OF BILLS AND RESOLUTIONS

	<u>Page</u>
Bill 43 -- Concerning Protection of Users of Hearing Aids through the "Colorado Consumer Protection Act".....	27
Bill 44 -- Concerning the Practice of Pharmacy, and Providing for Continuance of the State Board of Pharmacy and Relating to the Powers and Duties of Said Board.....	37
Bill 45 -- Concerning the Certification of Physician Assistants And, In Connection Therewith, Providing for the Certification of Child Health Associates as Physician Assistants.....	53
Bill 46 -- Concerning the Practice of Dentistry, and Providing for the Termination and Reestablishment of the State Board of Dental Examiners and Relating to Duties of Said Board.....	59
Bill 47 -- Concerning Termination of the State Board of Physical Therapy, and in Connection Therewith Providing for Registration of Physical Therapists With the Department of Regulatory Agencies.....	75

COMMITTEE ON SUNRISE AND SUNSET REVIEW

Members of the Committee

Rep. James Moore, Chairman	Rep. Gerald Kopel
Sen. John Donley	Rep. Bill Owens
Sen. Steve Durham	
Sen. Jana Mendez	

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SUMMARY OF RECOMMENDATIONS

The Joint Legislative Sunrise and Sunset Review Committee was established in 1985 (House Bill 1087) to perform the functions and duties relating to the termination of specified divisions, boards, or agencies, and to consider proposals for regulation of occupations and professions not presently regulated (Section 2-3-1201, et seq., C.R.S., and Rule 35 of the Joint Rules of the Senate and House of Representatives). House Bill 1087 and Joint Rule 35 are attached as Appendix A.

The committee met nine times during the interim session. Findings and recommendations prepared by the Department of Regulatory Agencies were reviewed and the committee heard public testimony from concerned citizens, interest groups, and where appropriate, representatives of the licensing boards.

Recommendations developed by the committee concern the continuation of three boards, the use of a registration system to replace an existing board, and the abolition of one other board.

Hearing Aid Dealers (Bill 43)	Recommended for termination with consumer protections moved to another act.
State Board of Pharmacy (Bill 44)	Recommended for continuance with amendments to existing statutes.
State Board of Medical Examiners -- Licensing of Physician Assistants (Bill 45)	Continued licensing of physician assistants is recommended with amendments to include child health associates with licensing as physician assistants.
Board of Dental Examiners (Bill 46)	Recommended for continuance with amendments to existing statutes.
State Board of Physical Therapy (Bill 47)	Termination of this board is recommended, with a registration procedure substituted.

The following occupations and professions requested licensure or certification and presented their proposals for legislation to the committee.

The committee recommended that proposed legislation for licensure of the following occupations and professions not be approved:

- Midwives
- Private Investigators

- Dietitians
- Marriage and Family Counselors
- Professional Counselors
- Modeling Agencies
- Commercial Health and
Fitness Club Managers

Proposed bills which related to certain problems encountered by modeling agencies and commercial health and fitness clubs were reviewed but rejected by the committee. Therefore, the bills submitted in this report concern only the five boards subject to sunset review.

SUNSET REVIEW

Concerning Protection of Users of Hearing Aids Through the "Colorado Consumer Protection Act" -- Bill 43

The Board of Hearing Aid Dealers was created in 1975 and has five members including one hearing aid dealer, one audiologist, one otologist (a medical doctor who specializes in the anatomy, physiology, and pathology of the ear), and two public members. Anyone who dispenses, fits or deals in hearing aids, or who represents himself as doing so, must be licensed by the board. Approximately 240 dealers are presently licensed in Colorado.

The committee recommends the termination of the Board of Hearing Aid Dealers for several reasons. Entry requirements for licensure of hearing aid dealers are minimal. An applicant must be at least 18 years old, have the equivalent of a high school education, and successfully complete a written and a practical examination. The practical examination is the only competency related evaluation. Persons may also practice without completing the examination by receiving a temporary permit from the board for over a year as long as they are supervised by a licensed dealer for 40 hours during that entire period. Dealers licensed in another state having licensure requirements equivalent to Colorado's may be licensed without taking the examinations.

In terms of enforcement, the Board of Hearing Aid Dealers has never taken a formal disciplinary action in its ten-year history. This record does not constitute effective discipline of unqualified people in the hearing aid dealer business. The board does receive numerous complaints but the complaints often involve dissatisfaction with the hearing aid a wearer has purchased. Once customers are reimbursed, or otherwise satisfied, they do not pursue the complaint with the board.

Instead of licensure, alternative regulatory approaches would be more effective in terms of consumer protection. Other states have taken an alternative regulatory approach by providing for a 30-day rescission period during which hearing aid purchasers may return a hearing aid for any reason. The staff of the Federal Trade Commission suggested this approach as a means of addressing the problems that would otherwise be brought before a hearing aid dealers board. The buyer's right to cancel will discourage sales abuses and will provide an effective remedy for those abuses that do occur.

Hearing aids have been designated as class II medical devices by the Federal Food and Drug Administration. Regulations governing disclosure of information, medical waivers, medical conditions requiring referral, and other issues have been in effect since 1977. Although they have not yet received a complaint related to the hearing aid rules, the regional FDA office could be called upon to enforce those regulations.

Finally, in reaching its conclusions, the committee noted that the most effective way to minimize problems associated with the sale of these devices is to educate the public who purchase hearing aids.

The committee adopted the recommendation for the addition to Colorado statutes of a 30-day rescission provision. It is further recommended that the consumer protections, now under the board's jurisdiction, be placed under the Colorado Consumer Protection Act (Article 1 of Title 6, C.R.S.). Bill 43 describes deceptive trade practices for hearing aid dealers and provides relief from such practices through the office of the attorney general, through the district attorney, or through individual civil court proceedings. Major provisions of the bill provide protection for the following acts:

- failure to supply the business address of the hearing aid dealer, the make and serial number of the hearing aid furnished, the clearly marked "used" or "reconditioned" on hearing aids, where appropriate;
- failure to inform senior citizens and other potential hearing aid wearers as to the limitations of hearing aids and the benefits of being examined by a physician prior to purchasing hearing aids;
- failure to advise that dispensing, fitting, or dealing in hearing aids shall not be regarded as medical opinion or advice;
- selling a hearing aid to a child less than 16 years without medical examination;
- failure to receive from a licensed physician a written prescription or recommendation prior to dispensing, fitting, or dealing in a hearing aid to any person;
- failure to recommend, in writing, prior to fitting or dispensing a hearing aid, that the best interests of the prospective user would be served by consulting a licensed physician specializing in diseases of the ear;
- failure to provide a 30-day recession period in which a buyer has a right to cancel purchase;
- using terms, abbreviations, or symbols when it would falsely give the impression that service is being provided by persons trained in medicine or that the hearing aid dealer's service has been recommended by the state when such is not the case;
- giving inducements to influence persons to purchase or to refrain from purchasing products of competitors; and
- dispensing of hearing aids without utilizing established procedures and instrumentation in their fitting.

Concerning the Practice of Pharmacy, and Providing for Continuation of the State Board of Pharmacy and Relating to the Powers and Duties of Said Board -- Bill 44

The State Board of Pharmacy has been regulating pharmacists and pharmacies since it was established by the General Assembly in 1887. It is a seven-member board composed of five licensed pharmacists and two public members. Continuation of the board is recommended because, although it shares some regulatory responsibilities with the federal government, the principal regulation of drug dispensing to the retail level rests with the state.

It is estimated that Colorado residents use over 20 million prescriptions annually at a cost of nearly \$230 million. According to the United States Drug Enforcement Administration (DEA), the abuse of prescription drugs results in more deaths and injuries to Americans than all illegal drugs combined. The regulation of the practice of pharmacy is essential to ensure responsible dispensing and to prevent misuse of prescription drugs.

The committee recommends Bill 44, to provide a new termination date of July 1, 1996 for the State Board of Pharmacy. Provisions in the bill call for the amendment of the current pharmacy regulation statute.

The current pharmacy statute is amended to provide that, for one time only, one public member of the board would be appointed for a four-year term to correct a situation in which the terms of three board members expire in one year. Because of the complex problems of pharmacy, having three new members beginning their terms at the same time impedes efficiency. With this change, no more than two members' terms would expire in any one year. Appointments shall be made so that there is at least one member from each congressional district on the board.

Authority is given to the Governor to remove a board member for misconduct, incompetence or neglect of duties. The current statutory language is unwieldy and inconsistent with the language in other regulatory statutes.

It is recommended that section 12-22-126 (1) (g), C.R.S., concerning advertising restrictions, be repealed. These restrictions are obsolete, constitute restraint of trade, and are a waste of administrative resources, especially now that nonprescription drug outlets are not under the jurisdiction of the board.

A provision requiring that the board's administrator be a licensed pharmacist is repealed because the requirements impede DORA's management capability. Program administrators in the Division of Registrations serve as administrators for more than one board as it is more cost effective and practical to arrange staff in this manner.

The committee determined that savings on generic drugs should be passed on to the consumer. Section 12-22-124, C.R.S., is amended to read "the prescription shall be priced as if it had been prescribed generically." This provision encourages the enforcement of the 1979 generic drug subsection provision to the pharmacy statute which has as its purpose the offering of lower cost alternatives to consumers.

An amendment to section 12-22-117 (1) (e), C.R.S., eliminates the requirement that out-of-state applicants have a license from a state which grants reciprocal licenses to Colorado applicants. Requiring reciprocity with other states can result in discriminatory treatment between candidates of equivalent qualifications. Decisions as to licensing candidates should be based upon the qualifications of the individual, not the laws passed by other state legislatures.

This same section was also amended to allow a licensee candidate to complete the board's examination on pharmacy jurisprudence through a mail-in process. The board has been requiring people residing in other states to travel to Colorado to take the exam. This procedure would provide a less costly way to ensure that new Colorado pharmacists have some knowledge of Colorado and federal law in pharmacy.

Internship requirements in section 12-22-111, C.R.S., would be repealed effective July 1, 1987 because the board has been unable to develop internship guidelines requiring substantial pharmacy training. Prior to July 1, 1987 the board should attempt to improve the guidelines and shall inform the committee of its progress.

Other statutory revisions include the following:

- delete obsolete references to poisons in section 12-22-102 (22.5) (b), C.R.S.;
- allow registered pharmacies to sell an unlimited amount of drugs to other pharmacies without obtaining a wholesalers license;
- delete the requirement that a licensee's actions must be willful or repeated in order for the board to take disciplinary action; and
- repeal provisions concerning medicine storage units since this regulation has been superceded by the amendment of a statute to provide for registration of other drug outlets.

Several new provisions are added to the current law. Included is an exemption for licensure of pharmacists from another state serving in a board-approved hospital program. Under the present statute it is not possible to establish a residency program for out-of-state hospital pharmacists except through the lengthy and expensive reciprocal licensure procedure. The difficulty of establishing hospital residency programs hampered opportunities for pharmacy education. New section 12-22-116.5 continues protection of the public

since persons in such programs will be required to be licensed in another state and may practice only in the residency program itself.

Qualified foreign graduates may be licensed as pharmacists if they have passed an English competency test and a foreign graduate equivalency test in pharmacy approved by the board. Foreign graduates cannot now obtain a license in Colorado because of the requirement for initial licensure that applicants must have graduated from pharmacy schools approved by the board, but the board is not equipped to evaluate pharmacy schools abroad. The equivalency examination tests foreign graduates on subjects given in American schools. The test is valid for licensure in 23 other states.

The board is authorized to use hearing officers from the Division of Hearing Officers, Department of Administration, to review cases concerning disciplinary actions, denial, suspension, or revocation of a license. Judicial review of final actions of the board are to be heard in the Colorado Court of Appeals. The requirement that appeals of board actions must be heard by the district court makes for an unnecessarily long and expensive legal process.

Insurance companies are now required to report malpractice claims against licensed pharmacists to the pharmacy board as an aid in disciplinary proceedings. Board regulations require licensees to report to the board the start of any legal proceedings alleging violation of the law. However, there is some question concerning the board's enforcement of reporting requirements which are part of the insurance laws and not part of the statute under which the board functions. Section 12-22-125, C.R.S., also authorizes the board to take disciplinary action or deny a license on the basis of plea of guilty or nolo contendere to a felony. As with all statutory grounds for discipline, action by the board is discretionary.

A new subsection is added to require licensees to report the theft of controlled substances to the proper law enforcement authorities and to the board. Inspectors' reports show that when an inspection reveals that a pharmacy cannot account for quantities of controlled substances, the report may allege that there has been a break-in and theft. These statements may be true or may be a convenient excuse. If there were a mandatory requirement to report immediately thefts to the board and law enforcement agencies, greater control may be exerted over the inventory of controlled substances.

Concerning the Certification of Physician Assistants, and, In Connection Therewith, Providing for the Certification of Child Health Associates as Physician Assistants -- Bill 45

The Colorado State Board of Medical Examiners was continued by the General Assembly until July 1, 1995 following the 1984-85 sunset review of the board. During its 1984 interim hearings, the Sunset Review Committee requested that the Department of Regulatory Agencies

complete an evaluation of the Physician Assistant (PA) certification and Child Health Associate (CHA) licensure statutes prior to July 1, 1985.

CHAs have been licensed since enactment of the Child Health Associate Law in 1969. CHAs are essentially PAs who specialize in pediatrics. There are approximately 140 CHAs currently licensed by the medical board. The CHA law was the first PA licensure law to be enacted in the United States and is the only CHA law ever to be enacted. It was written as a relatively restrictive law in 1969 and has not been revised since that time.

The committee recommends Bill 45 to continue certification of physician assistants and to provide for the certification of child health associates as PAs through the State Board of Medical Examiners. The new termination date for the practice of physician assistants is July 1, 1995, the date for sunset of the State Board of Medical Examiners.

Continued certification of physician assistants is recommended because it is in the public interest to require some minimum level of competency for physician assistants. The report of the Department of Regulatory Agencies stated that certification has been effective in reducing physician extender/drug related complaints. Studies have shown that physician assistants have provided more time and individual attention to patients, which has improved the quality of care and access to services. Physician assistants are recognized in law in 49 states and in the District of Columbia.

DORA recommended that a separate license for child health associates is not necessary since the CHA academic program at the University of Colorado Health Sciences Center is an approved PA program. Adoption of the recommended bill would negate the need for a separate state examination for the specialty practice of CHAs, and it would remove the administrative burden of providing separate licensure for the graduates, approximately 20 students annually, from the medical school's CHA program.

CHA graduates who, until now, have been licensed as both CHAs and a PA would no longer have to pay renewal fees for two licenses. Additionally, CHAs who were trained to treat certain ailments in both children and adults could do so. Currently the statute allows a CHA in family practice to treat a child, but not the parent even if the parent and child have the same illness.

Testimony from practicing CHAs and the faculty of the University of Colorado Health Sciences Center supported the committee's decision. The bill conforms the requirements of present CHAs to those of physician assistants. As physician assistants, child health associates may not perform acts which constitute the practice of medicine without authorization and may not write prescriptions unless countersigned by a supervising physician.

The committee bill amends the current co-signature requirement for PA prescriptions that has been confusing and has been given different interpretations by interested parties. PAs' prescriptions are now required to be countersigned, clearly meaning that a physician does not need to sign at the time medications are prescribed.

The Child Health Associate Law is amended to remove the list of approved drugs, with language substituted giving the State Board of Medical Examiners rule-making authority for the prescribing and dispensing of drugs by physician assistants. The bill states that no more than two child health associates are to be employed at one time by a physician. This provision provides physicians with the same supervising privileges for CHAs as they have with physician assistants and physician extenders.

There are qualified persons who may have had military medical training instead of formal academic training and the bill provides for waiver of the requirements for completion of formal, academic study with successful completion of the board examination. The bill also amends the provisions relating to certificate renewal and requires persons applying for a license to report an act which would be a violation of the disciplinary provisions of 12-31-110, C.R.S. Beginning July 1, 1990 any person licensed as a child health associate, upon application to the board, shall be granted certification as a physician assistant. This provision is set for 1990 to allow the CHA program at the University of Colorado Health Sciences Center to incorporate courses with greater emphasis on adult health care in the curriculum.

Concerning the Practice of Dentistry, and Providing for the Termination and Reestablishment of the State Board of Dental Examiners and Relating to the Powers and Duties of Said Board -- Bill 46

The committee recommends that the practice of dentistry continue to be regulated by the State Board of Dental Examiners to ensure that persons entering the practice meet a minimum level of competency and continue to practice in a safe manner. A review of dental board activities reveals that much of their time is spent on disciplinary proceedings relating to patient safety issues. All 50 states and the District of Columbia regulate the practice of dentistry through boards of dental examiners, licensing both dentists and dental hygienists.

The present board is composed of eight members -- five dentists, two dental hygienists, and one public member. Bill 46 provides for the creation of a new board of dental examiners, effective July 1, 1986 consisting of nine members: five dentists, two dental hygienists, one public member, and one dental auxiliary. The latter group does not now have representation on the board and the new board will promulgate rules and regulations to regulate the practice of dentists, dental hygienists, and those tasks that may be delegated to unlicensed dental auxiliaries. Terms of the board members are staggered and there shall be at least one member from each

congressional district on the board at all times.

The board is to promulgate rules and regulations concerning minimum training and equipment requirements for the administration of general anesthesia, conscious sedation, and nitrous oxide/oxygen inhalation sedation. Dental auxiliaries are specifically prohibited from administering anesthesia.

Medical complications and death from use of anesthesia have been the subject of much publicity across the country. As part of the sunset review process, DORA organized a task force to consider issues related to anesthesia. The task force strongly supported authorizing the dental board to establish training and equipment requirements for persons administering the various types of anesthesia. They recommended that the Board of Dental Examiners be responsible for setting standards and granting approval to licensees prior to allowing them to use anesthesia procedures. The bill also provides that the board is to determine the subjects of the examination for dentists and dental hygienists. The extensive and specific list of subjects, presently required in the examination, is repealed because of the continual developments in the practices and education of students.

New provisions in the bill relate to responsibilities of dental hygienists. The definition of the scope of practice of dental hygiene is revised to allow hygienists to gather and assemble information for their own use. The bill clarifies that taking and using X-rays is part of the scope of practice of dental hygienists. The administration of a topical anesthetic is now within the definition of the practice of dental hygiene.

The statute currently allows dental hygienists practicing in certain corporate settings or public institutions to practice without supervision by a dentist. Dental hygienists in other settings must be under the general supervision of a licensed dentist which means the dentist does not have to be in the office when the dental hygienist is practicing. Dental auxiliaries may work only under the direct supervision of a dentist, meaning that they must be located in the office of the dentist with the dentist present.

The bill allows the board to license an applicant as a dental hygienist who is from another state showing proof of equivalent qualifications to Colorado requirements for licensure. The causes for denying, suspending, or revoking a license granted by the board of Dental Examiners are revised to more closely conform with those in the "Colorado Medical Practice Act". Final disciplinary actions of the board are open to the public.

Other provisions of the bill include:

-- the governor has the authority to remove board members;

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The bill allows the board to license an applicant as a dental hygienist who is from another state showing proof of equivalent qualifications to Colorado requirements for licensure. The causes for denying, suspending, or revoking a license granted by the board of Dental Examiners are revised to more closely conform with those in the "Colorado Medical Practice Act". Final disciplinary actions of the board are open to the public.

Other provisions of the bill include:

-- the governor has the authority to remove board members;

- references to the board's authority to hire an executive secretary and investigators are repealed to conform with state constitutional provisions concerning the personnel system;
- applicants for a dental or dental hygienist license are to list any act that would be grounds for disciplinary action on the application;
- authorization is granted to the board's program administrator to issue subpoenas on behalf of the board; and
- the board is to establish renewal fees and schedules for licensees.

Concerning Termination of the State Board of Physical Therapy, and In Connection Therewith Providing for the Registration of Physical Therapists With the Department of Regulatory Agencies -- Bill 47

All 50 states license the practice of physical therapy. Colorado established its State Board of Physical Therapy in 1959. According to the American Physical Therapy Association there are 73,838 licensed physical therapists in the United States. In Colorado, there are 1,927 physical therapists.

The committee concluded that the board is ineffective and recommended termination of the Board of Physical Therapy. The physical therapy board receives the fewest complaints of any licensing board in the division of registrations, and has failed to take any disciplinary action since its creation. In the past five years the investigations section has received only eight complaints from the board and none have resulted in license revocation or suspension. In addition, a survey conducted in 1982 indicated that only eleven percent of licensed physical therapists practice in private offices, and the other 89 percent practice in hospitals, schools, rehabilitation centers, or physician's offices. Therefore, individuals and organizations are fully capable of evaluating the credentials of those they employ, without a state licensing board.

In the place of the board, the committee recommends a registration system for the practice of physical therapy based on the same educational and examination requirements currently mandated for licensure. Under the bill, with termination of the board being recommended, physical therapists will register with the Director of the Division of Registrations in the Department of Regulatory Agencies (DORA). All powers currently given to the board would be transferred to the director.

Therapists are to meet educational requirements by successfully completing at least a twelve month accredited physical therapy education program as determined by the director and an internship. They must also successfully complete an examination approved by the director. The examination may be taken as many times as necessary.

However, the director must register a physical therapist by endorsement, without examination, if a licensed physical therapist from another state or foreign country possesses proof of credentials and qualifications equivalent to requirements in Colorado.

Physical therapists do not administer drugs, perform surgical procedures, and they cannot provide treatment without referral from a physician. The requirement for referral from a physician is removed in the committee bill. Permanent injury is unlikely to result from improper physical therapy treatment and none of the complaints received by the board dealt with instances of physical harm. For these reasons medical referral is not considered necessary.

A supervisor of a physical therapist must report to the Director of the Division of Registrations when a physical therapist is dismissed for incompetence or fails to comply with standards of practice. A physical therapist is required to report such violations by another physical therapist. Failure to refer patients to a physician or other health care practitioner when the problem is beyond a physical therapist's competency is grounds for disciplinary action. A physical therapist may be required to submit to a mental or physical examination upon reasonable cause. The director may deny, revoke or suspend registration following a hearing by the director or a hearing officer. Judicial review of the director's decision would be subject to review in the Court of Appeals.

One other provision in the bill concerns malpractice. Insurance companies engaged in writing malpractice insurance for physical therapists or any health care person or facility are required to send to the director any information relating to any malpractice claim which involves physical therapy or a physical therapist.

Any physical therapist holding a license from the State Board of Physical Therapy as of July 1, 1986 shall be registered with the Director of the Division of Registrations as of July 1, 1986.

SUNRISE REVIEW

Sunrise Review of Midwives

During the sunrise hearings for licensure of lay-midwives, Representative Ruth Wright said that the primary goal of the regulation is to make home births as safe as possible. A low-risk mother, good pre-natal care, a qualified attendant, and physician and hospital backup are elements that are important in assuring safety. It is estimated that 700 couples in Colorado had home births in 1984. Factors in the decision to have a home birth may include consideration of cost, the belief that birth is a natural process, the concern about medical intervention (Cesarean sections), and the fear that hospitals are a more hazardous environment because of danger of infection.

Although there are no prohibitions for a couple to have the baby at home, it is almost impossible to obtain the necessary combination for a safe birth -- a qualified attendant with physician backup, and a hospital ready and willing to accept the mother and baby in an emergency situation. Physicians who may be willing to deliver babies in the home are precluded by their liability insurance which states that physicians shall not participate in a scheduled home delivery. Certified nurse-midwives are registered nurses who have been trained in midwifery.

The Medical Practice Act and the malpractice insurance limitations also prevent nurse-midwives from participation in home births because they must practice under the supervision of a physician. Many Colorado nurse-midwives have recently had their malpractice insurance policies cancelled as part of the current insurance liability problems. Therefore, a vacuum exists for those couples who want to have a home birth because of inadequate numbers of physicians or nurse-midwives to attend the births. The lay-midwife profession has evolved to fill this void, but lay-midwives' qualifications are not consistent since there is no licensure program for them.

The Colorado Midwives Association (CMA), which has approximately 100 members, has a voluntary certification process that was established in lieu of a law. The CMA believes, however, that by licensing the lay-midwifery profession, the method of certification could be refined by regulating lay-midwives through the State Nursing Board and by establishing educational training requirements to guarantee a minimum level of expertise.

As stated previously, a major obstacle to the practice of midwifery is acquiring adequate back-up medical care and physician assistance. The wording in the midwife licensure proposal was developed with assistance from medical insurance representatives to establish a different working relationship between the physician and the midwife. Physicians, who choose to do so, could be insured to work on a consultation basis with licensed midwives. The agreement by the physician to provide certain medical services would not be deemed

to be supervision of the licensed midwife nor considered to be participation by the physician in a scheduled home delivery. This licensure proposal could make it easier to obtain the necessary physician and hospital resources should complications arise. Physicians would no longer be confronted with problems in liability insurance coverage and midwives would no longer be functioning outside of the law.

After considerable public testimony and committee discussion, the committee voted against recommending the licensure of lay-midwives. This decision was based on various factors. Representatives from the State Nursing Board stated that the board currently has 40,000 licensees under its supervision which is an adequate workload, and the board was divided on whether they wanted to be responsible for the regulation of another group. In addition, the examination development costs alone to the board for start-up of the program would be between \$5,000 and \$10,000.

Several registered nurse-midwives and physicians spoke in opposition to the proposal because they questioned the safety of home birth. According to these medical practitioners, it is difficult to predetermine low-risk births and impossible to predict bad outcomes. Problems occur in the hospital too, but they present a less serious outcome because medical assistance is immediate. One out of 1,000 babies has problems at birth and lay-midwives cannot handle all of these problems adequately. Lay-midwives may be trained in CPR and emergency techniques but they do not have access to sophisticated medical equipment at a home birth which may be needed to save an infant's life. If an infant stops breathing, it takes only a matter of minutes for substantial brain damage to result. Committee members pointed out that they must consider the cost of providing state support for a lifetime of care at a home for the developmentally disabled in their decision on licensure.

Licensure may lead to a public perception that home births is an acceptable procedure and that the state approves of the practice. Although the state could not prohibit home births, the committee does not want to dramatically increase the number of people who choose to have home births by appearing to advocate the process.

The physicians and nurse-midwives emphasized that many alternative birthing methods have been developed and a low-risk mother no longer needs to give birth in a standard hospital setting. There are now free-standing birthing centers near hospitals and birthing rooms within hospitals which stress family-centered care.

Nurse-midwives also testified that they were having difficulty obtaining medical malpractice insurance because of excessive rates for their practice, even though they are under the supervision of a physician. It is also impossible for nurse-midwives to obtain malpractice insurance for home births. Although the licensure proposal attempts to circumvent the insurance issue with regard to physician supervision, lay-midwives, if licensed, would not be able to

procure malpractice insurance for home births. A representative from a Colorado Physicians Insurance Company (COPIC), affirmed that the company will not insure physicians or midwives for home births.

Sunrise Review of Private Investigators

The Professional Private Investigators Association of Colorado (PPIAC) proposed that private investigators and private investigative agencies in Colorado be licensed by the Executive Director of the Department of Public Safety as a means of obtaining the highest level in professional work standards and ethics among individuals who engage in the work of private investigation. According to PPIAC, citizens in Colorado are being victimized by the practices of unethical private investigators. There is no recourse available to prevent crimes such as embezzlement or extortion until a criminal act has been committed. Cases were cited in which investigators, who had licenses revoked in other states for fraudulent practices, have moved to Colorado because of the lack of licensing requirements. These individuals continued their fraudulent practices in this state.

Colorado private investigators were said to lose substantial revenues because there is no licensing or regulation of the profession. Other states will not allow unlicensed investigators to obtain records, or have access to jail facilities without state issued identification. Many states that have licensing laws have a reciprocal agreement with other states requiring licensing. It was stated that there are only five other states that do not license this profession.

The committee was told of support from the law enforcement community for licensure because private investigators frequently perform many functions of value to the criminal justice system. Law enforcement agencies would have some assurance that the private investigators' work is of a professional quality. Also, criminal cases would not be adversely affected by the practice of private investigators who, without proper training, may damage evidence or make other mistakes that result in greater difficulties for local law enforcement agencies. Licensure would enable private investigators to monitor their profession by not licensing private investigators who are not qualified to practice and to revoke licenses of fraudulent and incompetent individuals in the field.

The committee voted not to recommend the licensing of private investigators. The most important question to be answered prior to enacting a new licensure law is, whether there exists a clear harm to the public due to the lack of regulation. In the case of this profession, it appears that the answer to that question is no. With the exception of periodic news articles discussing private investigators described as unethical, there is not documented evidence of a significant increase in public harm as a result of deregulation in 1977.

Public demand for licensure was not seen and the Office of the Attorney General, for example, has not received complaints from the public. Instances of misrepresentation or criminal action may be remedied through existing laws. Criminal actions cannot be prevented by licensure. Civil damages for improper conduct as described in news articles provided by the PPIAC, could be provided only through the court system, not through a licensing agency. During a seven year period of licensure for private investigators in the 1970's, only one license was revoked, and it was later reinstated. Either that licensing board was ineffective or there was not a need for licensure.

The proposal presented did not address problems of ethical standards in this profession. Improper conduct was not defined and due process hearings on licensure revocation was not provided in the proposed bill. In addition it was noted by the committee that licensure does not set standards of excellence.

This proposal would also have required people who perform consulting work or forms of investigation work, aside from private investigators, to conform to the requirements of private investigators. This problem with the proposal was suggested to place an unnecessary burden on persons for whom licensure was unnecessary.

Sunrise Review of Dietitians

The Colorado Dietetic Association is an organization of dietitians/nutritionists having approximately 800 members. Its primary purposes are to improve nutrition, to promote the profession of dietitians and science of nutrition, and to educate the public on the importance of nutrition. Representatives from the Colorado Dietetic Association (CDA) requested licensure for qualified dietitians and nutritionists. The association's licensure bill would define the qualifications and educational requirements for individuals providing nutrition services to the general public and would keep persons who do not complete accredited programs and pass the American Dietetic Association's (ADA) examination from using the terms "dietitian", "licensed dietitian", and "nutritionists". Only individuals who are professionally qualified could use these terms to describe their fields of expertise. The CDA asked that regulation be carried out by the Colorado Board of Medical Examiners.

Colorado has no statutory definitions for the qualifications of dietitian or nutritionists. With the increased interest of consumers in nutrition and diet, it is important that information and services in these areas come from qualified people. The CDA contends that the public has been harmed by unqualified nutritionists, who often give false and harmful information. For example, persons may give advice on weight loss techniques or dietary supplement consumption that can result in major medical problems and even death. These unqualified persons may have products to sell and may promote unnecessary or harmful dietary supplements and products. Regulation would provide the public a means of determining who are the qualified practitioners.

According to Dr. Richard Jensen, a professor of food science at Colorado State University, nutrition is considered a branch of medical science under rigorous academic review. Accredited programs in nutrition are easily accessible to students through Colorado State University and the University of Northern Colorado. Under the licensure proposal, an internship would also be required.

The committee voted not to recommend licensure of nutritionists and dietitians. The Colorado Consumer Protection Act and the Deceptive Trade Practices Act could be used as alternatives to licensure to help reduce the fraudulent and deceptive practices. Misrepresentation of health products and their purported benefits, as well as misrepresentation of a person's qualifications to advise in the areas of diet and health, are currently covered.

While licensure would restrict the use of the titles, the committee doubted that regulation would have significant impact on practices that endanger public health and safety. One area of practice is the weight loss clinic in which consumers may encounter practices having serious health consequences. Licensure would not prevent these establishments from operating. The best consumer protection in these cases is by laws dealing with misrepresentation, deceptive trade practices, and practicing medicine without a license. The consumer protection section of the Office of the Attorney General received numerous complaints concerning the practice of weight loss clinics. Under the Consumer Protection Act, the operation of metabolic weight loss clinics have been discontinued in Colorado. Having more information available about fraudulent and deceptive practices through the American Dietetic Association could be more helpful than licensing in addressing these problems.

The majority of dietitians/nutritionists work in three occupational settings -- clinical, community, or administrative dietetic capacities. In these settings they are hired and supervised by a physician, hospital administrator, or a city and county health department. The organizations which employ dietitians/nutritionists are adequately sophisticated and are accountable for hiring professionals that licensing would not enhance.

Committee members pointed out an alternative to licensure of nutritionists would be to obtain title protection through a trademark. The term "registered dietitian" (R.D.) is protected by trademark, but the term "nutritionist" may be used by practitioners in a variety of occupations. It was suggested that the CDA seek a tradename and trademark for the exclusive use by registered nutritionists.

Sunrise Review of Marriage and Family Therapists

The Colorado Association for Marriage and Family Therapy (CAMFT) applied for licensure of the therapists in their scope of professional activity. CAMFT is composed of approximately 150 members and is a division of the American Association for Marriage and Family Therapy. Rigorous qualifications for education and training are necessary for

membership, but not all individuals practicing or claiming to be marriage and family therapists are members of the association. Therefore, anyone can claim to be a marriage and family therapist because there are no educational or training requirements.

Marriage and family therapy, as supported by the CAMFT, focuses primarily on the interactions between people in family situations including, but not limited to, premarital, marital, sexual, parenting, family, and divorce issues. It differs from other forms of therapy in that it is a systems approach examining the person in his environment, rather than an individual approach, to therapy.

CAMFT proposed that licensed marriage and family therapists have a master's degree in this field or a related area, including an internship requirement. They would be required to have three years or 3,000 hours of board approved clinical experience. A person holding a doctoral degree would be required to have two years or 2,000 hours of approved client contact. Finally, an examination would be successfully completed to prove competence in the field.

Representatives of CAMFT stated that licensing marriage and family counselors would provide protection against exploitation. Their data indicated that unlicensed professionals have a higher rate of exploiting clients through sexual abuse or incompetent counseling. In a crisis situation people are often unable to make logical decisions about therapists because they are in an unstable emotional state. State identification of licensed or certified practitioners gives the consumer more information on which to base a decision about the qualifications of practitioners. Licensure would also give the public a means of filing grievances for incompetence or unprofessional conduct with the possible result of suspension or revocation of the license.

The CAMFT noted that lower health care costs are associated with the use of the marriage and family therapist. These therapists generally offer services at rates averaging \$50 an hour, as opposed to the average rate of \$100 an hour for psychiatrists. The same logic that led to legislation to protect the public from incompetent and inadequately trained psychologists or social workers by licensing justifies the extension of the same protection to the services of marriage and family therapists.

The committee recommends that marriage and family therapists not be licensed. The committee did not conclude that marriage and family counselors had more ability than other mental health professionals, some of which are not licensed, to work in this area. Licensing of this specialized group would be unfair because it screens out certain people that are capable of working in this field.

Marriage and family therapy is just one part of the mental health profession, which is presently subject to varying degrees of regulations. In determining public need for regulation and whether the system is equitable, a broader evaluation is necessary. The

Sunrise and Sunset Review Committee and the Department of Regulatory Agencies will consider currently unregulated groups as part of the sunset reviews of the Board of Psychology Examiners and the Board of Social Work Examiners in 1986.

Sunrise Review of Professional Counselors

Professional counselors are represented in Colorado by the Colorado Association for Counseling and Development (CACD), an organization of approximately 800 members, which is a branch of the American Association for Counseling and Development. CACD defines counseling as "rendering services that facilitate effective personal, interpersonal, emotional, social, educational, and vocational development in individuals, couples, groups, and organizations, with an emphasis on human development and mental health. These services are rendered through means of assessment, consultation, referral, and psychotherapy." It does not include the diagnosis and treatment of mental and emotional disorders nor does it include medical intervention, e.g. prescribing drugs.

Counseling is unique as a mental health profession because of its emphasis on human lifelong developmental processes and on the whole person. The functions of the counselor are also different from those of the psychologist. The psychologist focuses on mental illness and functional problems, while the counselor focuses on transitional problems that affect behavior. Professional counselors are also involved in educational, career, and decision-making guidance, frequently as employees of schools.

Representatives from CACD testified that licensure would bring credibility to professional counselors and enable them to compete with others who offer mental health care. Unlicensed counselors are presently limited in the care they can provide, because they are often forced to make referrals to licensed professionals whose services are covered by health insurance.

Professional counselors have difficulty in obtaining malpractice insurance. Because there has been no regulation to define the practices of the profession, insurance companies will not assume such risks. The cost of premiums provided by high-risk insurers is prohibitive, making professional counselors effectively uninsurable. Hospitals, clinics, and other health care facilities may not refer clients to professional counselors because they are not licensed or insured.

With respect to third party reimbursement from group health insurance, counseling services are eligible for reimbursement but claims must be countersigned by licensed health care professionals prescribing counseling services. Mental health services eligible for reimbursement through the United States Department of Health and Human Services (HHS), including Medicaid, must be provided through licensed health care professionals. Services of professional counselors will

be reimbursed under Medicaid if there is direct and personal supervision by a physician on the premises.

In their application for licensure, the professional counselors cited a recent survey of members of the Association of Counselor Educators and Supervisors which found that 70 members, despite training in counseling at the doctoral level, had been denied employment as professional counselors in a clinic or agency because of Medicaid or other insurance coverage requirements for licensed service providers. CACD advocated licensing in order to promote similar treatment of all mental health professionals with similar backgrounds and training.

Requirements for licensure, as proposed, include a master's degree from an accredited institution in a program that is primarily in mental health, counseling and guidance, human services, or human relations. Also required is three years of supervised experience.

While counseling as a profession does exist, it has no legal recognition or definition. Anyone can use the title "counselor" and hold himself/herself out to the public as providing counseling services. The public was said to need clarification as to the identity and function of professional counselors with a graduate degree and extensive training in the field.

The CACD also said that certifying counselors could help to reduce health care costs. Counseling is generally available at rates of \$25 to \$35 an hour, much lower than rates of other mental health professions. It could enable low-income rural areas to procure mental health care at lower cost. Certification would allow the consumer a greater freedom of choice in health care professionals.

The committee recommends that professional counselors not be licensed. There was little documentation as to the harm to the public that occurs without licensure. Sexual assault by practitioners is a problem among licensed and unlicensed practitioners. Regulation, does not prevent crime nor would it prevent some of those who may have tendencies to engage in criminal behavior from being licensed or certified. Another factor in assessing danger to the public is that clients do not always see professional counselors because they are in a crisis situation. Clients may need testing services or advice in career decisions. Documentation as to the danger to the public from improper practice in these areas is also lacking.

The CACD has suggested that regulation would enable rural areas to have more access to mental health care at affordable prices. While it is true that many rural areas are lacking needed health care services, that problem has not been alleviated by regulating other health care professionals.

Professional counselors, similar to marriage and family therapists, are one part of the mental health profession which is

presently subject to varying degrees of regulation. In determining public need for regulation and whether the system is equitable, a broader evaluation of the profession is necessary. The Sunrise and Sunset Review Committee will consider currently unregulated groups during the sunset reviews of the Board of Psychology Examiners and the Board of Social Work Examiners.

Sunrise Review of Modeling Agencies

A proposal submitted to the committee requested the regulation of modeling agencies. The extent of this regulation would require a modeling agency to apply for a certificate of approval to operate, require owners of an agency to obtain a surety bond, and require agents and others who work with models, such as portfolio photographers, to be licensed.

The person presenting this request said that many problems plague the modeling industry in Colorado. Prostitution and pornographic operations have assumed the identity of modeling agencies to recruit prostitutes and to avoid prosecution. This cover has been very effective according to many law enforcement agencies, because the operation as a modeling agency makes it more difficult to close down the illegal activities. Many hours of surveillance must be undertaken to prove prostitution, most often resulting only in the arrest of the prostitutes. The owners of these establishments are rarely prosecuted. In some cases, after considerable law enforcement activity, the owners have simply moved operations to another county.

In addition, there are modeling agencies that are taking advantage of people through high priced portfolios and modeling agency fees. Portfolio photographers are connected with modeling agencies and may charge up to \$800 or \$900 for photo sessions. Results are often poor and portfolio photographs must be continually updated.

The agreements between models and photographers and between photographers and modeling agencies are often verbal. Models who do not demand a written contract are left without legal recourse. There have been complaints concerning modeling schools that charge high rates and provide substandard services, or which close after collecting student tuition, very likely moving to another state.

Licensure would establish a means to regulate modeling agencies to prevent the abuses mentioned above, to help police identify the legitimate modeling agencies, and to more easily close down the fraudulent agencies. It would also give the public legal recourse in cases of fraud. Licensure is believed to be necessary because of the ineffectiveness of existing mechanisms to solve the problems of the modeling profession.

The committee recommends that modeling agencies not be licensed. It became apparent to the committee that the modeling industry itself is divided over the best approach to use in solving its problems. The

owners of the established modeling agencies in Colorado did not appear to testify in support of licensure.

In a report issued by DORA, it was stated that licensure cannot prevent prostitution and pornography. It could cause prostitution and pornography establishments to operate under a name other than "modeling agency". Modeling agencies previously were regulated by the Department of Labor and Employment. The department said there was little need for enforcement in that area. A law enforcement representative testified that the old law was not effective in controlling prostitution. Increased law enforcement would seem to be the best solution to this problem.

The DORA report pointed out that the proposal is unlikely to impact on trade practices in the modeling industry since licensure does not include price regulation for services rendered. Models would still be facing the same expenditures as before. If persons are willing to take the substantial risks inherent in attempting a career in modeling, licensure will not have a positive impact. Any actual misrepresentation by an agency or by agents is already a violation of the Colorado Consumer Protection Act.

Not only does it appear that licensure and registration would not achieve the results sought by the applicant, a state board could have difficulty in processing complaints. In the case of photography, for example, decisions would have to be made on the quality of photographs based on criteria as to make-up, hair styling, lighting, and background effects. Models being promised prominent connections in the business could continue to complain that licensed agents had not made good on these promises.

Modeling schools are currently regulated by the State Board for Community Colleges and Occupational Education (SBCCOE). Representatives of the SBCCOE told the committee that all modeling schools listed in the yellow pages of the telephone book or advertised publicly are investigated and regulated. Concerning a case in which a modeling school closed and left students without tuition refunds, the SBCCOE followed administrative procedures and was able to effectuate tuition refunds to the students involved.

The committee suggested alternatives to licensure to help solve some of the problems in the modeling industry, such as a statutory definition of modeling agencies, a requirement for written contracts, and a rescission period parallel to requirements in the statutes for employment agencies. A draft bill was prepared to address these suggestions but questions arose concerning refunds of payments for work performed during the rescission period due to the subjective nature of the products sold. Also the committee could not agree on the time period for rescission and the bill was not approved.

Sunrise Review of Commercial Health and Fitness Club Managers

Representatives of Professionals Against Fitness Fraud (PAFF) requested regulation of fitness centers to require that these centers hire only state licensed managers. Managers would be licensed if they completed a program equivalent to a two-year associate degree in the human movement sciences and maintained basic cardiopulmonary resuscitation (CPR) and first aid training.

No agency develops and supervises universal certification standards for fitness and health club employees in Colorado. According to PAFF, over 100 aerobic and fitness certification programs are available nationally, but these programs offer workshops with little in-depth instruction and lack practical application for health and fitness club managers.

PAFF encourages the creation of an organization within the fitness industry to develop, implement, and monitor fitness standards to provide statewide excellence in fitness and health clubs. They maintain that licensure would insure a minimum level of competence by fitness and health club managers. Currently, the fitness industry lacks skilled personnel who can provide and direct proper instruction in fitness and health concerns and the use of equipment and facilities. According to PAFF, this lack of expertise has resulted in an increasing incidence of injury to both instructors and members.

The committee recommends that commercial health and fitness club managers not be licensed. Due to the competitive nature of the fitness industry and the high level of demand in Colorado, many improvements in the number and quality of fitness programs should result through marketplace mechanisms. The DORA review noted that, according to persons interviewed, most large fitness clubs already have people available who are trained in CPR and first aid. There is no way of knowing the likelihood of preventing injuries that could result by requiring that fitness centers have a trained person available at all times. Statistics were not provided on the need for or use of CPR at fitness centers.

The DORA report also noted the following reasons for not recommending licensure and the committee agreed with these conclusions.

- Though some benefits would no doubt result from credentialing of fitness club staff at many levels, voluntary private credentialing seems to be a far better solution than piecemeal government regulation of fitness club managers.
- Although many of the benefits to the public listed in the PAFF application are worthy goals, state licensure of fitness club managers is not a reasonable way to reach them. It would be similar to the current situation of licensing nursing home administrators, a requirement imposed by federal law. It is difficult to prove that administrators are responsible for

problems if, in fact, they are the result of inadequate funding from owners or negligence on the part of individual staff. If a manager's license were revoked, then the club could merely hire another person without making any improvements.

- Again, it is difficult to expect that licensing one person in each club could effect improved programs, better trained instructors, and a reduction in injuries and deaths. With respect to other benefits, such as increasing the public's awareness of fitness issues, they are not generally purposes for which licensure laws are enacted.

As noted, the committee agreed with these ideas and suggested that PAFF work to educate the public so that inquiries will be made as to the personnel before joining the center. It was also mentioned that a law was enacted recently which allows for a consumer to rescind a membership contract with a health club if the consumer is not satisfied.

The committee considered a bill prepared at committee direction to require that a person trained in CPR and first aid be on the premises at all times. This bill was not approved because it was not demonstrated that a lack of such training has caused problems in health clubs. Also, the definition of health club was so broad as to include every type of athletic facility, for example, a weight room in a motel or a tennis court.

BILL 43

A BILL FOR AN ACT

1 CONCERNING PROTECTION OF USERS OF HEARING AIDS THROUGH THE
2 "COLORADO CONSUMER PROTECTION ACT" INSTEAD OF THE BOARD
3 OF HEARING AID DEALERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Allows the board of hearing aid dealers to terminate and repeals the article relating to the powers and duties of the board. Makes it a deceptive trade practice under the "Colorado Consumer Protection Act" for a hearing aid dealer to engage in certain practices with respect to dispensing, fitting, or dealing in a hearing aid. Requires a hearing aid dealer to allow a rescission period after the sale of a hearing aid.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. Article 1 of title 6, Colorado Revised
6 Statutes, as amended, is amended BY THE ADDITION OF A NEW
7 SECTION to read:

8 6-1-105.5. Hearing aid dealers - deceptive trade
9 practices. (1) As used in this section, unless the context
10 otherwise requires:

1 (a) "Dispense" means any transfer of title, possession,
2 or the right to use by lease, bailment, or any other method,
3 but excludes transactions with distributors or dealers.

4 (b) "Hearing aid" means any wearable instrument or
5 device designed or offered for the purpose of aiding or
6 compensating for impaired human hearing and any parts,
7 attachments, or accessories thereto, including ear molds but
8 excluding batteries and cords.

9 (c) "Hearing aid dealer" means any person engaged in the
10 practice of dispensing, fitting, or dealing in hearing aids.

11 (d) "Practice of dispensing, fitting, or dealing in
12 hearing aids" includes the selection and adaptation for the
13 sale of hearing aids and includes the testing of hearing for
14 these purposes. The practice also includes the making of
15 impressions for ear molds, plus counseling and instruction
16 pertaining to the selection, fitting, adaptation, or sale of
17 hearing aids.

18 (2) In addition to any other deceptive trade practices
19 under section 6-1-105, a hearing aid dealer engages in a
20 deceptive trade practice when he:

21 (a) Fails to deliver to each person supplied with a
22 hearing aid a receipt which:

23 (1) Bears the business address of the hearing aid dealer
24 together with specifications as to the make and serial number
25 of the hearing aid furnished and the full terms of the sale
26 clearly stated. If a hearing aid which is not new is sold,
27 the container thereof and the receipt shall be clearly marked

1 as "used" or "reconditioned", whichever is applicable, within
2 the terms of the guarantee, if any.

3 (II) Bears, in no smaller type than the largest used in
4 the body portion, in substance, a provision that the purchaser
5 has been advised at the outset of his relationship with the
6 hearing aid dealer that any examination or representation made
7 by a hearing aid dealer in connection with the practice of
8 dispensing, fitting, or dealing in hearing aids is not an
9 examination, diagnosis, or prescription by a person licensed
10 to practice medicine in this state and, therefore, must not be
11 regarded as medical opinion or advice.

12 (b) Sells a hearing aid to a child sixteen years of age
13 or younger without ascertaining whether the child has been
14 examined by an otologist and audiologist within six months
15 prior to the fitting. This paragraph (b) shall not apply to
16 children whose parent or guardian objects in his own
17 handwriting to such procedure based upon bona fide religious
18 grounds.

19 (c) Fails to receive from a licensed physician, prior to
20 dispensing, fitting, or dealing in a hearing aid to any
21 person, a written prescription or recommendation which
22 specifies that the person is in fact in need of a hearing aid;
23 except that any person eighteen years of age or older who
24 objects to medical evaluation for religious or personal
25 reasons may waive the requirement in his own handwriting.

26 (d) Fails to recommend in writing prior to fitting or
27 dispensing a hearing aid that the best interests of the

1 prospective user would be served by consulting a licensed
2 physician specializing in diseases of the ear or, if no such
3 licensed physician is available in the community, any licensed
4 physician, if any of the following conditions exists:

5 (I) Visible congenital or traumatic deformity of the
6 ear;

7 (II) History of or active drainage of the ear within the
8 previous ninety days;

9 (III) History of sudden or rapidly progressive hearing
10 loss;

11 (IV) Acute or chronic dizziness;

12 (V) Unilateral hearing loss of sudden onset within the
13 previous ninety days;

14 (VI) Audiometric air-bone gap equal to or greater than
15 fifteen decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;

16 (VII) Visible evidence of cerumen accumulation on or a
17 foreign body in the ear canal;

18 (VIII) Pain or discomfort in the ear.

19 (e) Fails to provide a thirty-day rescission period with
20 the following terms:

21 (I) The buyer shall have the right to cancel the
22 purchase for any reason within thirty days after receiving the
23 hearing aid by giving or mailing written notice of
24 cancellation to the seller.

25 (II) The buyer, upon cancellation, is entitled to
26 receive a full refund of his payment within thirty days of
27 return of the hearing aid to the seller; except that the

1 seller may retain as a cancellation fee the actual cost of any
2 custom ear molds made for the hearing aid so long as this
3 cancellation fee does not exceed ten percent of the buyer's
4 total payment for the hearing aid.

5 (III) The seller shall provide a written receipt or
6 contract to the buyer which includes, in immediate proximity
7 to the space reserved for the signature of the buyer or on the
8 first page if there is no space reserved for the signature of
9 the buyer, the following specific statement in all capital
10 letters of no less than ten-point bold-faced type: "THE BUYER
11 HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY
12 TIME PRIOR TO 12 MIDNIGHT OF THE 30th CALENDAR DAY AFTER
13 RECEIPT OF THE HEARING AID."

14 (f) Represents that the service or advice of a person
15 licensed to practice medicine will be used or made available
16 in the selection, fitting, adjustment, maintenance, or repair
17 of hearing aids when that is not true or using the terms
18 "doctor", "clinic", "state licensed clinic", "state
19 registered", "state certified", or "state approved" or any
20 other term, abbreviation, or symbol when it would falsely give
21 the impression that service is being provided by persons
22 trained in medicine or that the hearing aid dealer's service
23 has been recommended by the state when such is not the case;

24 (g) Directly or indirectly gives or offers to give or
25 permits or causes to be given money or anything of value to
26 any person who advises another in a professional capacity as
27 an inducement to influence him or have him influence others to

1 purchase or contract to purchase products sold or offered for
2 sale by a hearing aid dealer or influences persons to refrain
3 from dealing in the products of competitors;

4 (h) Dispenses a hearing aid to a person who has not been
5 given tests utilizing appropriate established procedures and
6 instrumentation in the fitting of hearing aids, except in
7 cases of selling replacement hearing aids within one year
8 after the date of the original purchase.

9 SECTION 2. 6-1-104, Colorado Revised Statutes, as
10 amended, is amended to read:

11 6-1-104. Cooperative reporting. The district attorneys
12 may cooperate in a statewide reporting system by receiving, on
13 forms provided by the attorney general, complaints from
14 persons concerning deceptive trade practices listed in ~~section~~
15 SECTIONS 6-1-105 AND 6-1-105.5 and transmitting such
16 complaints to the attorney general.

17 SECTION 3. The introductory portion to 6-1-107 (1),
18 Colorado Revised Statutes, as amended, is amended to read:

19 6-1-107. Powers of attorney general and district
20 attorneys. (1) When the attorney general or a district
21 attorney has cause to believe that any person has engaged in
22 or is engaging in any deceptive trade practice listed in
23 section 6-1-105 OR 6-1-105.5, he may:

24 SECTION 4. 6-1-110, Colorado Revised Statutes, as
25 amended, is amended to read:

26 6-1-110. Restraining orders - injunctions - assurances
27 of discontinuance. (1) Whenever the attorney general or a

1 purchase or contract to purchase products sold or offered for
2 sale by a hearing aid dealer or influences persons to refrain
3 from dealing in the products of competitors;

4 (h) Dispenses a hearing aid to a person who has not been
5 given tests utilizing appropriate established procedures and
6 instrumentation in the fitting of hearing aids, except in
7 cases of selling replacement hearing aids within one year
8 after the date of the original purchase.

9 SECTION 2. 6-1-104, Colorado Revised Statutes, as
10 amended, is amended to read:

11 6-1-104. Cooperative reporting. The district attorneys
12 may cooperate in a statewide reporting system by receiving, on
13 forms provided by the attorney general, complaints from
14 persons concerning deceptive trade practices listed in ~~section~~
15 SECTIONS 6-1-105 AND 6-1-105.5 and transmitting such
16 complaints to the attorney general.

17 SECTION 3. The introductory portion to 6-1-107 (1),
18 Colorado Revised Statutes, as amended, is amended to read:

19 6-1-107. Powers of attorney general and district
20 attorneys. (1) When the attorney general or a district
21 attorney has cause to believe that any person has engaged in
22 or is engaging in any deceptive trade practice listed in
23 section 6-1-105 OR 6-1-105.5, he may:

24 SECTION 4. 6-1-110, Colorado Revised Statutes, as
25 amended, is amended to read:

26 6-1-110. Restraining orders - injunctions - assurances
27 of discontinuance. (1) Whenever the attorney general or a

1 district attorney has cause to believe that a person has
2 engaged in or is engaging in any deceptive trade practice
3 listed in section 6-1-105 OR 6-1-105.5, he may apply for and
4 obtain, in an action in the appropriate district court of this
5 state, a temporary restraining order, or injunction, or both,
6 pursuant to the Colorado rules of civil procedure, prohibiting
7 such person from continuing such practices, or engaging
8 therein, or doing any act in furtherance thereof. The court
9 may make such orders or judgments as may be necessary to
10 prevent the use or employment by such person of any such
11 deceptive trade practice or which may be necessary to restore
12 to any other person any money or real or personal property
13 which may have been acquired by means of any such practice.

14 (2) Where the attorney general or a district attorney
15 has authority to institute a civil action or other proceeding
16 pursuant to the provisions of this article, he may accept, in
17 lieu thereof or as a part thereof, an assurance of
18 discontinuance of any deceptive trade practice listed in
19 section 6-1-105 OR 6-1-105.5. Such assurance may include a
20 stipulation for the voluntary payment by the alleged violator
21 of the costs of investigation and any action or proceeding by
22 the attorney general or a district attorney and any amount
23 necessary to restore to any person any money or property which
24 may have been acquired by such alleged violator by means of
25 any such deceptive trade practice. Any such assurance of
26 discontinuance accepted by the attorney general or a district
27 attorney and any such stipulation filed with the court as a

1 part of any such action or proceeding shall be confidential to
2 the parties to the action or proceeding and to the court and
3 its employees; but, upon final judgment by the court that a
4 temporary restraining order or injunction obtained pursuant to
5 subsection (1) of this section has been violated, or an
6 assurance of discontinuance accepted pursuant to this
7 subsection (2) has been violated, or a person has engaged in
8 the same deceptive trade practice as had previously been
9 enjoined pursuant to a final permanent injunction obtained
10 pursuant to subsection (1) of this section, or a person has
11 engaged in the same deceptive trade practice which he
12 previously had agreed to discontinue by acceptance of an
13 assurance of discontinuance under this subsection (2), said
14 assurance of discontinuance or stipulation shall thereupon be
15 deemed a public record and open to inspection by any person.
16 Proof by a preponderance of the evidence of a violation of
17 such an assurance shall constitute prima facie evidence of a
18 deceptive trade practice for the purposes of any civil action
19 or proceeding brought thereafter by the attorney general or a
20 district attorney, whether a new action or a subsequent motion
21 or petition in any pending action or proceeding.

22 SECTION 5. 6-1-113, Colorado Revised Statutes, is
23 amended to read:

24 6-1-113. Damages. The provisions of this article shall
25 be available to any person in a civil action for any claim
26 against any person who has acquired any money or real or
27 personal property by means of any deceptive trade practice

1 listed in section 6-1-105 OR SECTION 6-1-105.5. Costs shall
2 be allowed to the prevailing party unless the court otherwise
3 directs. The court may award ~~attorneys'~~ ATTORNEY fees to the
4 prevailing party.

5 SECTION 6. Repeal. Article 65 of title 12, Colorado
6 Revised Statutes, 1985 Repl. Vol., and sections 24-1-122 (4)
7 (d) and 24-34-104 (15) (b), Colorado Revised Statutes, 1982
8 Repl. Vol., as amended, are repealed.

9 SECTION 7. Safety clause. The general assembly hereby
10 finds, determines, and declares that this act is necessary
11 for the immediate preservation of the public peace, health,
12 and safety.

BILL 44

A BILL FOR AN ACT

1 CONCERNING THE PRACTICE OF PHARMACY, AND PROVIDING FOR THE
2 CONTINUATION OF THE STATE BOARD OF PHARMACY AND RELATING
3 TO THE POWERS AND DUTIES OF SAID BOARD.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires that the state board of pharmacy shall have at least one member from each congressional district. Repeals and reenacts the provisions concerning the removal of board members to make them consistent with similar provisions for other boards. Requires insurance companies to report malpractice claims against licensed pharmacists. Provides for licensure by endorsement. Exempts persons in hospital residency programs from the licensure requirements.

Provides for licensure of foreign graduates. Repeals provisions concerning medicine storage units. Conforms provisions relating to disciplinary proceedings to similar provisions for other boards. Authorizes the board to employ hearing officers. Establishes initial judicial review of final actions of the board in the court of appeals.

4 Be it enacted by the General Assembly of the State of Colorado:
5 SECTION 1. 12-22-102 (2), (8) (a), (8) (b), (15), and
6 (22.5) (b), Colorado Revised Statutes, 1985 Repl. Vol., are
7 amended, and the said 12-22-102 (8) is further amended BY THE

1 ADDITION OF A NEW PARAGRAPH, to read:

2 12-22-102. Definitions. (2) "Advertise" means to
3 publish or display information about prescription prices or
4 drugs in any newspaper--of--general--circulation--or--in--any
5 supplement--thereto;--in--any--magazine;--handbill;--or--poster;--or
6 by--radio--or--television MEDIUM.

7 (8) (a) Recognized in the official compendia or any
8 supplement thereto; and

9 (b) Intended for use in the diagnosis, treatment, or
10 prevention of disease or other conditions in humans and
11 animals; AND

12 (c) Required under federal or state law to be prescribed
13 by a practitioner and dispensed by a pharmacist.

14 (15) "Intern" means a person who is attending, OR WHO IS
15 IN GOOD STANDING WITH, an accredited school of pharmacy or who
16 has graduated from an accredited school of pharmacy and is
17 completing an internship to satisfy board requirements for
18 licensure.

19 (22.5) (b) A chart order which is an order for inpatient
20 drugs;--medications;--or--poisons--entered--on--a--patient's--chart--or
21 medical--record; DRUGS OR MEDICATIONS to be dispensed by a
22 pharmacist, or pharmacy intern under the direct supervision of
23 a pharmacist, or--withdrawn--from--a--medicine--storage--unit--by--or
24 on--the--order--of--a--practitioner; which is to be administered by
25 an authorized person only during the patient's stay in a
26 hospital facility. It shall contain the name of the patient
27 and of the medicine ordered and such directions as the

1 practitioner may prescribe concerning strength, dosage,
2 frequency, and route of administration.

3 SECTION 2. 12-22-104, Colorado Revised Statutes, 1985
4 Repl. Vol., is amended to read:

5 12-22-104. Membership. The board shall be composed of
6 five licensed pharmacists, each having at least five years'
7 experience in this state and actively engaged in the practice
8 of pharmacy in this state, and two nonpharmacists who have no
9 financial interest in the practice of pharmacy. All
10 appointments shall be made by the governor. The term of
11 office of each member shall be five years. In the case of any
12 appointment to fill a vacancy, the appointee shall complete
13 the unexpired term of the former board member. No person
14 shall succeed himself as a member. Appointments shall be made
15 so that ~~no--two--pharmacist--members--at--the--time--of--their~~
16 ~~appointment--or--at--any--time--during--their--term--of--office--shall~~
17 ~~reside--in--the--same~~ AT LEAST ONE MEMBER SHALL RESIDE IN EACH
18 congressional district. A vacancy on the board occurs
19 whenever any pharmacist member moves out of the congressional
20 district from which he was appointed. A member who moves out
21 of such congressional district shall promptly notify the
22 governor of the date of such move, but such notice is not a
23 condition precedent to the occurrence of the vacancy. The
24 governor shall fill the vacancy as provided in this section.
25 No more than four members of the board shall be members of the
26 same major political party. Appointments made to take effect
27 on January 1, 1983, shall be made in accordance with section

1 24-1-135, C.R.S. The pharmacist members shall be appointed so
2 that the term of one member shall expire July 1 each year, and
3 board members serving on January 1, 1980, shall serve until
4 the July 1 next following the date on which their terms would
5 otherwise expire. OF THE TWO NONPHARMACIST MEMBERS WHOSE
6 TERMS ARE SCHEDULED TO EXPIRE ON JULY 1, 1986, THE GOVERNOR
7 SHALL SELECT ONE AND EXTEND THE TERM OF THAT MEMBER TO JULY 1,
8 1987.

9 SECTION 3. 12-22-105, Colorado Revised Statutes, 1985
10 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
11 read:

12 12-22-105. Removal of board members. The governor may
13 remove any board member for misconduct, incompetence, or
14 neglect of duty.

15 SECTION 4. 12-22-111, Colorado Revised Statutes, 1985
16 Repl. Vol., is amended to read:

17 12-22-111. Internship. All applicants for licensure by
18 examination shall obtain practical experience in the practice
19 of pharmacy. The board shall establish standards necessary to
20 qualify an applicant for the licensure examination and shall
21 determine the necessary qualifications for a preceptor. THIS
22 SECTION IS REPEALED, EFFECTIVE JULY 1, 1987.

23 SECTION 5. 12-22-112, Colorado Revised Statutes, 1985
24 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
25 read:

26 12-22-112. Drugs, devices, and other materials.
27 (1) The board shall be responsible for the control and

1 regulation of drugs, including the following:

2 (a) The regulation of the sale at retail and the
3 dispensing of drugs;

4 (b) The specification of minimum professional and
5 technical equipment, environment, supplies, and procedures for
6 the compounding or dispensing of medications and drugs;

7 (c) The control of the purity and quality of drugs.

8 (2) The board shall be responsible for the control and
9 regulation of the sale of devices at retail.

10 SECTION 6. Part 1 of article 22 of title 12, Colorado
11 Revised Statutes, 1985 Repl. Vol., is amended BY THE ADDITION
12 OF A NEW SECTION to read:

13 12-22-113.5. Reporting - malpractice claims. (1) Each
14 insurance company licensed to do business in this state and
15 engaged in the writing of malpractice insurance for licensed
16 pharmacists shall send to the board, in the form prescribed by
17 the board, information relating to each malpractice claim
18 against a licensed pharmacist which is settled or in which
19 judgment is rendered against the insured.

20 (2) The insurance company shall provide such information
21 as is deemed necessary by the board to conduct a further
22 investigation and hearing.

23 SECTION 7. 12-22-116, Colorado Revised Statutes, 1985
24 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
25 read:

26 12-22-116. Licensure or registrations - applicability -
27 applications. (7) A person licensed by examination and in

1 good standing in another state may apply directly to the board
2 for licensure by endorsement. The board shall provide
3 procedures for direct application and may designate a
4 clearinghouse for those applicants who choose not to apply
5 directly.

6 SECTION 8. Part 1 of article 22 of title 12, Colorado
7 Revised Statutes, 1985 Repl. Vol., is amended BY THE ADDITION
8 OF A NEW SECTION to read:

9 12-22-116.5. Exemption from licensure - hospital
10 residency programs. The board shall have the authority to
11 approve hospital residency programs in the practice of
12 pharmacy. Persons accepted into an approved hospital
13 residency program who are licensed to practice pharmacy in
14 another state shall be exempt from the licensing requirements
15 of this part 1 so long as their practice is limited to
16 participation in the residency program.

17 SECTION 9. 12-22-117 (1) (d) and (1) (e), Colorado
18 Revised Statutes, 1985 Repl. Vol., are amended, and the said
19 12-22-117 (1) is further amended BY THE ADDITION OF A NEW
20 PARAGRAPH, to read:

21 12-22-117. Classes of pharmacists. (1) (d) Class IV.
22 Any person who has graduated from a school or college of
23 pharmacy approved by the board, who satisfactorily passes an
24 examination before the board, which examination shall be
25 partly in writing and ~~partly-by-demonstration-and~~ shall be
26 fairly designed to test the applicant's knowledge ~~and--ability~~
27 ~~of--pharmacy;-theoretical-and-practical;~~ OF PHARMACY and other

1 related subjects, and who has completed an internship as
2 prescribed by the board;

3 (e) Class V. Upon the payment of a fee as established
4 pursuant to section 24-34-105, C.R.S., any person who is
5 licensed by the board ~~without-examination~~ by reason of his
6 licensure in some other state by examination substantially
7 equivalent to the examination given to applicants for
8 licensure by examination in this state. The person so
9 applying for licensure shall produce satisfactory evidence of
10 having had the required secondary and professional education
11 demanded of applicants for licensure as pharmacists under the
12 provisions of this part 1. THE BOARD SHALL REQUIRE SUCH
13 PERSON TO PASS A MAIL-IN JURISPRUDENCE EXAMINATION
14 ADMINISTERED BY THE BOARD.

15 (g) Class VI. Any person who has graduated from a
16 school or college of pharmacy outside the United States and
17 who has satisfactorily passed a test of English competency and
18 a foreign graduate equivalency test approved by the board.

19 SECTION 10. 12-22-118 (1), Colorado Revised Statutes,
20 1985 Repl. Vol., is amended to read:

21 12-22-118. Expiration and renewal of licenses or
22 registrations. (1) A license or registration ~~shall-expire-on~~
23 ~~June-30-following-its-date-of-issue---~~The license of a
24 PHARMACIST, pharmacy intern, OR PRESCRIPTION DRUG OUTLET shall
25 expire ~~on-April-30-following-its-date-of-issue:~~ IN ACCORDANCE
26 WITH THE PROVISIONS OF SECTION 24-34-102 (8), C.R.S. •

27 SECTION 11. 12-22-119 (3) (a), Colorado Revised

1 Statutes, 1985 Repl. Vol., is amended to read:

2 12-22-119. Prescription drug outlet under charge of
3 pharmacist. (3) (a) A prescription drug outlet operated by
4 the state of Colorado, or any political subdivision thereof,
5 is not required to be registered but, in lieu thereof, shall
6 apply to the board, on a form approved by the board, for a
7 certificate of compliance. The board shall determine whether
8 said prescription drug outlet is operated in accordance with
9 the laws of this state and the rules and regulations of the
10 board; and, if it determines that the prescription drug outlet
11 is so operated except for the holding of a prescription drug
12 outlet registration, it shall issue a certificate of
13 compliance, which shall expire ~~each-September-30-following-its~~
14 ~~date--of--issuance~~ and may be renewed ~~annually~~ IN ACCORDANCE
15 WITH THE PROVISIONS OF SECTION 24-34-102 (8), C.R.S.; and,
16 thereafter, said prescription drug outlet shall have the
17 rights and privileges of and shall be treated in all respects
18 as a registered prescription drug outlet. The provisions of
19 this part 1 with respect to the denial, suspension, or
20 revocation of a prescription drug outlet registration shall
21 apply to a certificate of compliance.

22 SECTION 12. 12-22-120, Colorado Revised Statutes, 1985
23 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
24 read:

25 12-22-120. Registration of facilities. (6) The board
26 may accept the registration of convalescent homes and extended
27 care facilities required by the department of health as

1 sufficient registration under this section.

2 SECTION 13. 12-22-121 (5), Colorado Revised Statutes,
3 1985 Repl. Vol., is amended to read:

4 12-22-121. Compounding, dispensing, and sale of drugs
5 and devices. (5) A registered prescription drug outlet may
6 make a ~~casual-safe~~ TRANSFER of or may give a drug to another
7 registered prescription drug outlet or to a wholesaler of
8 drugs, or it may sell or give a drug to a practitioner
9 authorized by law to prescribe the same, ~~or--it--may--dispense~~
10 ~~drugs--and--devices--for--placement--in--a--medicine--storage--unit--in~~
11 ~~compliance--with--subsection--(11)--of--this--section;~~ or it may
12 supply an emergency kit to a nursing care facility, an
13 intermediate health care facility, or a residential care
14 facility in compliance with subsection (13) of this section.

15 SECTION 14. 12-22-121 (11), Colorado Revised Statutes,
16 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
17 to read:

18 12-22-121. Compounding, dispensing, and sale of drugs
19 and devices. (11) A hospital may dispense a twenty-four-hour
20 supply of drugs on the specific order of a practitioner to a
21 registered emergency room patient.

22 SECTION 15. 12-22-124 (4), Colorado Revised Statutes,
23 1985 Repl. Vol., is amended to read:

24 12-22-124. Substitution of prescribed drugs authorized -
25 when - conditions. (4) Except as provided in subsection (5)
26 of this section, in no case shall the pharmacist substitute a
27 drug product as provided in this section unless the drug

1 product substituted costs the purchaser less than the drug
2 product prescribed. ~~Any-difference-in-cost-between-the-drug~~
3 ~~prescribed-and-the-drug-product-actually--dispensed--shall--be~~
4 ~~passed--on;--in-total;--to-the-consumer.~~ THE PRESCRIPTION SHALL
5 BE PRICED AS IF IT HAD BEEN PRESCRIBED GENERICALLY. In no
6 event shall the pharmacist charge a different professional fee
7 for dispensing such drug product than for the drug product
8 originally prescribed.

9 SECTION 16. 12-22-125 (1) (b) and (1) (c), Colorado
10 Revised Statutes, 1985 Repl. Vol., are amended, and the said
11 12-22-125 is further amended BY THE ADDITION OF A NEW
12 SUBSECTION, to read:

13 12-22-125. Licenses or registrations may be denied,
14 suspended, or revoked. (1) (b) Is guilty of the commission
15 of a felony OR HAS HAD ACCEPTED BY A COURT A PLEA OF GUILTY OR
16 NOLO CONTENDERE TO A FELONY;

17 (c) Has ~~wilfully--or--repeatedly~~ violated any of the
18 provisions of this part 1, the lawful rules and regulations of
19 the board, or any state or federal law pertaining to drugs.

20 (6) When a complaint or an investigation discloses an
21 instance of misconduct which, in the opinion of the board,
22 does not warrant formal action by the board but which should
23 not be dismissed as being without merit, a letter of
24 admonition may be sent by certified mail to the pharmacist
25 against whom a complaint was made and a copy thereof to the
26 person making the complaint, but, when a letter of admonition
27 is sent by certified mail by the board to a pharmacist

1 complained against, such pharmacist shall be advised that he
2 has the right to request in writing, within twenty days after
3 proven receipt of the letter, that formal disciplinary
4 proceedings be initiated against him to adjudicate the
5 propriety of the conduct upon which the letter of admonition
6 is based. If such request is timely made, the letter of
7 admonition shall be deemed vacated, and the matter shall be
8 processed by means of formal disciplinary proceedings.

9 SECTION 17. 12-22-125 (2) (a), Colorado Revised
10 Statutes, 1985 Repl. Vol., is amended BY THE ADDITION OF THE
11 FOLLOWING NEW SUBPARAGRAPHS to read:

12 12-22-125. Licenses or registrations may be denied,
13 suspended, or revoked. (2) (a) (IV) Has had his license to
14 practice pharmacy in another state revoked or suspended for
15 disciplinary reasons or has committed acts in any other state
16 which would subject him to disciplinary action in this state;
17 (V) Advertising which is misleading, deceptive, or
18 false.

19 SECTION 18. 12-22-125 (3), Colorado Revised Statutes,
20 1985 Repl. Vol., is amended to read:

21 12-22-125. Licenses or registrations may be denied,
22 suspended, or revoked. (3) Proceedings for the denial,
23 suspension, or revocation of a license or registration and
24 judicial review shall be in accordance with the provisions of
25 article 4 of title 24, C.R.S., AND THE HEARING AND OPPORTUNITY
26 FOR REVIEW SHALL BE CONDUCTED PURSUANT TO SAID ARTICLE BY THE
27 BOARD OR A HEARING OFFICER AT THE BOARD'S DISCRETION.

1 SECTION 19. Part 1 of article 22 of title 12, Colorado
2 Revised Statutes, 1985 Repl. Vol., is amended BY THE ADDITION
3 OF A NEW SECTION to read:

4 12-22-125.5. Judicial review. The court of appeals
5 shall have initial jurisdiction to review all final actions
6 and orders that are subject to judicial review of the board.
7 Such proceedings shall be conducted in accordance with section
8 24-4-106 (11), C.R.S.

9 SECTION 20. 12-22-128, Colorado Revised Statutes, 1985
10 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
11 read:

12 12-22-128. New drugs - when sales permissible. (1) No
13 person shall sell, deliver, offer for sale, hold for sale, or
14 give away any new drug not authorized to move in interstate
15 commerce under appropriate federal law.

16 (2) This section shall not apply to a drug intended
17 solely for investigational use by experts, qualified by
18 scientific training and experience, to investigate the safety
19 and effectiveness of drugs if the drug is plainly labeled to
20 be for investigational use only.

21 SECTION 21. 12-22-308 (1) (b), Colorado Revised
22 Statutes, 1985 Repl. Vol., is amended to read:

23 12-22-308. Denial, revocation, or suspension of license.
24 (1) (b) Has been convicted of, OR HAS HAD ACCEPTED BY A COURT
25 A PLEA OF GUILTY OR NOLO CONTENDERE TO, a felony under any
26 state or federal law relating to a controlled substance;

27 SECTION 22. 12-22-314 (1) (m), Colorado Revised

1 Statutes, 1985 Repl. Vol., is REPEALED AND REENACTED, WITH
2 AMENDMENTS, to read:

3 12-22-314. Unlawful acts - licenses - penalties.
4 (1) (m) The possession, by any practitioner, of a controlled
5 substance which was not obtained from a prescription drug
6 outlet and which was received from a person who is not
7 licensed as a manufacturer, wholesaler, or practitioner. It
8 is also unlawful for a prescription drug outlet to have
9 possession of a controlled substance which is received from
10 any person who is not licensed as a manufacturer or
11 wholesaler; except that a prescription drug outlet may buy
12 controlled substances from another prescription drug outlet.

13 SECTION 23. 12-22-318, Colorado Revised Statutes, 1985
14 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
15 read:

16 12-22-318. Records to be kept - order forms.
17 (5.5) Prescription drug outlets shall report thefts of
18 controlled substances to the proper law enforcement agencies
19 and to the board within thirty days after the occurrence of
20 such thefts.

21 SECTION 24. 13-4-102 (2), Colorado Revised Statutes, as
22 amended, is amended to read:

23 13-4-102. Jurisdiction. (2) The court of appeals shall
24 have initial jurisdiction to review awards or actions of the
25 industrial commission, as provided in articles 53 and 74 of
26 title 8, C.R.S., to review orders of the banking board
27 granting or denying charters for new state banks, as provided

1 in article 2 of title 11, C.R.S., to review all final actions
2 and orders appropriate for judicial review of the state board
3 of registration for professional engineers and professional
4 land surveyors as provided in article 25 of title 12, C.R.S.,
5 to review all final actions and orders appropriate for
6 judicial review of the Colorado podiatry board, as provided in
7 section 12-32-108.7, C.R.S., to review all final actions and
8 orders appropriate for judicial review of the Colorado state
9 board of chiropractic examiners as provided in section
10 12-33-121, C.R.S., to review actions of the state board of
11 medical examiners in refusing to grant or in revoking or
12 suspending a license or in placing the holder thereof on
13 probation, as provided in section 12-36-119 (2), C.R.S., to
14 review actions of the board of dental examiners in refusing to
15 issue or renew or in suspending or revoking a license to
16 practice dentistry or dental hygiene, as provided in section
17 12-35-115, C.R.S., to review all final actions and orders
18 appropriate for judicial review of the board of nursing as
19 provided in articles 38 and 42 of title 12, C.R.S., to review
20 actions of the state board of optometric examiners in refusing
21 to grant or renew, revoking, or suspending a license, issuing
22 a letter of admonition, or placing a licensee on probation or
23 under supervision, as provided by section 12-40-119 (2) (e),
24 C.R.S., TO REVIEW ALL FINAL ACTIONS AND ORDERS APPROPRIATE FOR
25 JUDICIAL REVIEW OF THE STATE BOARD OF PHARMACY, AS PROVIDED IN
26 SECTION 12-22-125.5, C.R.S., to review decisions of the board
27 of education in proceedings for the dismissal of a teacher, as

1 provided in section 22-63-117, C.R.S., to review final
2 decisions or orders of the Colorado real estate commission, as
3 provided in parts 1, 3, 4, and 6 of article 61 of title 12,
4 C.R.S., and to review final decisions and orders of the
5 Colorado civil rights commission, as provided in parts 3, 4,
6 and 7 of article 34 of title 24, C.R.S.

7 SECTION 25. 24-34-104, Colorado Revised Statutes, 1982
8 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
9 SUBSECTION to read:

10 24-34-104. General assembly review of regulatory
11 agencies for termination, continuation, or reestablishment.

12 (25) The following board in the department of regulatory
13 agencies shall terminate on July 1, 1996: The state board of
14 pharmacy, created by part 1 of article 22 of title 12, C.R.S.

15 SECTION 26. Repeal. 12-22-102 (5), (18), and (19),
16 12-22-109, 12-22-126 (1) (g), 12-22-201, 12-22-202, 12-22-203,
17 12-22-204, and 12-47-125, Colorado Revised Statutes, 1985
18 Repl. Vol., and 24-34-104 (15) (c), Colorado Revised Statutes,
19 1982 Repl. Vol., as amended, are repealed.

20 SECTION 27. Effective date. This act shall take effect
21 July 1, 1986.

22 SECTION 28. Safety clause. The general assembly hereby
23 finds, determines, and declares that this act is necessary
24 for the immediate preservation of the public peace, health,
25 and safety.



BILL 45

A BILL FOR AN ACT

1 CONCERNING THE CERTIFICATION OF PHYSICIAN ASSISTANTS, AND, IN
2 CONNECTION THEREWITH, PROVIDING FOR THE CERTIFICATION OF
3 CHILD HEALTH ASSOCIATES AS PHYSICIAN ASSISTANTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Eliminates the list of drugs which may be prescribed by a child health associate. Authorizes physicians to employ two child health associates. Repeals the requirement that applicants for board certification complete a specified course of study. Amends the provisions relating to certificate renewal. Requires persons applying for a license to report any act which would be a violation of the disciplinary provisions of article 31 of title 12, Colorado Revised Statutes. Defines the scope of practice of child health associates.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. 12-31-103 (2), Colorado Revised Statutes,
6 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
7 to read:

8 12-31-103. Limitations on practice. (2) (a) No person

1 certified as a child health associate may perform any act
2 which constitutes the practice of medicine unless such person
3 is certified by the board of medical examiners as a physician
4 assistant pursuant to section 12-36-106 (5), C.R.S., and the
5 limitations placed on the practice of medicine by physician
6 assistants in section 12-36-106 (5), C.R.S., shall also apply
7 to child health associates.

8 (b) No person certified as a child health associate may
9 perform any act which constitutes the practice of medicine
10 within a hospital or nursing care facility which is licensed
11 pursuant to part 1 of article 3 of title 25, C.R.S., or which
12 is required to obtain a certificate of compliance pursuant to
13 section 25-1-107 (1) (1) (II), C.R.S., without authorization
14 from the governing board of the hospital or nursing care
15 facility. Such governing board shall have the authority to
16 grant, deny, or limit such authority to its own established
17 procedures, but under no circumstances shall a child health
18 associate write prescriptions unless countersigned by the
19 supervising physician, and the supervising physician shall in
20 no case countersign the prescription of a controlled substance
21 by a child health associate.

22 SECTION 2. 12-31-103 (5), Colorado Revised Statutes,
23 1985 Repl. Vol., is amended to read:

24 12-31-103. Limitations on practice. (5) No more than
25 one TWO child health associate ASSOCIATES shall be employed at
26 any one time by any one physician or, in the case of a group
27 of employing physicians, no more than one TWO child health

1 **associate** ASSOCIATES shall be employed at any one time for
2 each of such physicians whose practice to a substantial extent
3 is in pediatrics.

4 SECTION 3. 12-31-106 (1) (f), Colorado Revised Statutes,
5 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
6 to read:

7 12-31-106. Qualifications - examination. (1) (f) He
8 has passed an impartially administered examination given and
9 graded by the board. Such examination shall be in writing or
10 oral, or both, and shall fairly test the applicant's knowledge
11 in whatever subjects the board deems advisable. The
12 applicant's professional skill and judgment in the utilization
13 of pediatric techniques and methods may also be examined.

14 SECTION 4. 12-31-108 (1) and (2), Colorado Revised
15 Statutes, 1985 Repl. Vol., are amended to read:

16 12-31-108. Renewal. (1) Every person holding a
17 certificate as a child health associate shall renew his
18 certificate annually in the-twelfth-month-following-the-date
19 of-issuance-of-his-certificate ACCORDANCE WITH THE PROVISIONS
20 OF SECTION 24-34-102 (8), C.R.S.

21 (2) Any certificate not so renewed shall be suspended on
22 ~~the---first---day---of--the--thirteenth--month--following--the~~
23 ~~anniversary~~ THIRTY DAYS AFTER THE TERMINATION date of issuance
24 of the certificate. A certificate so suspended may be
25 reinstated during the following twelve months by payment of
26 the renewal fee and a reinstatement fee as fixed by the board
27 pursuant to section 24-34-105, C.R.S. Thereafter, a

1 certificate so suspended may be reinstated only upon payment
2 of all delinquent renewal fees and a reinstatement fee fixed
3 pursuant to section 12-31-109, following specific approval by
4 the board.

5 SECTION 5. 12-31-110, Colorado Revised Statutes, 1985
6 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
7 read:

8 12-31-110. Denial, suspension, revocation, and
9 probation. The board may deny an application for, or suspend,
10 revoke, or impose probationary conditions upon, a certificate
11 for any act which would subject a physician to disciplinary
12 action under article 36 of this title.

13 SECTION 6. Article 31 of title 12, Colorado Revised
14 Statutes, 1985 Repl. Vol., is amended BY THE ADDITION OF A NEW
15 SECTION to read:

16 12-31-116. Repeal of article. This article is repealed,
17 effective July 1, 1990.

18 SECTION 7. 12-36-106 (5) (d), Colorado Revised Statutes,
19 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
20 to read:

21 12-36-106. Practice of medicine defined - exemptions
22 from licensing requirements. (5) (d) The board may determine
23 whether any applicant for certification as a physician
24 assistant possesses sufficient education, experience, or
25 training in health care which may be accepted in lieu of the
26 qualifications required for certification under subparagraph
27 (I) of paragraph (c) of this subsection (5). Every person who

1 desires to qualify for practice as a physician assistant
2 within this state shall file with the secretary of the board
3 his written application for a license, on which application he
4 shall list any act the commission of which would be grounds
5 for disciplinary action against a licensed physician assistant
6 under section 12-31-110, along with an explanation of the
7 circumstances of such act.

8 SECTION 8. 12-36-106 (5) (e) and (5) (j), Colorado
9 Revised Statutes, 1985 Repl. Vol., are amended to read:

10 12-36-106. Practice of medicine defined - exemptions
11 from licensing requirements. (5) (e) No person certified as
12 a physician assistant may perform any act which constitutes
13 the practice of medicine within a hospital or nursing care
14 facility which is licensed pursuant to part 1 of article 3 of
15 title 25, C.R.S., or which is required to obtain a certificate
16 of compliance pursuant to section 25-1-107 (1) (1) (II),
17 C.R.S., without authorization from the governing board of the
18 hospital or nursing care facility. Such governing board shall
19 have the authority to grant, deny, or limit such authority to
20 its own established procedures, but under no circumstances
21 shall a physician assistant write prescriptions unless
22 cosigned COUNTERSIGNED by the supervising physician.

23 (j) This subsection (5) is repealed, ~~July 1, 1986~~ JULY
24 1, 1995.

25 SECTION 9. Article 36 of title 12, Colorado Revised
26 Statutes, 1985 Repl. Vol., is amended BY THE ADDITION OF A NEW
27 SECTION to read:

1 12-36-106.5. Child health associates - scope of
2 practice. On and after July 1, 1990, any person who, on June
3 30, 1990, was licensed as a child health associate under the
4 laws of this state shall, upon application to the board, be
5 granted certification as a physician assistant. The practice
6 of any such person shall be subject to the provisions of
7 section 12-36-106 (5); except that such practice shall be
8 limited to patients under the age of twenty-one.

9 SECTION 10. Repeal. 12-31-103 (3), 12-31-106 (1) (b)
10 and (1) (d), and 12-31-113, Colorado Revised Statutes, 1985
11 Repl. Vol., are repealed.

12 SECTION 11. Effective date. This act shall take effect
13 July 1, 1986.

14 SECTION 12. Safety clause. The general assembly hereby
15 finds, determines, and declares that this act is necessary
16 for the immediate preservation of the public peace, health,
17 and safety.

BILL 46

A BILL FOR AN ACT

1 CONCERNING THE PRACTICE OF DENTISTRY, AND PROVIDING FOR THE
2 TERMINATION AND REESTABLISHMENT OF THE STATE BOARD OF
3 DENTAL EXAMINERS AND RELATING TO THE POWERS AND DUTIES OF
4 SAID BOARD.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Terminates and reestablishes the state board of dental examiners. Increases the number of members and changes the composition and term of the board. Requires the board to promulgate rules with respect to the administration of anesthesia. Authorizes the board to determine the subjects of the examination for dentists and dental hygienists. Allows the board to license an applicant for a dentist's or dental hygienist's license from another state or territory showing proof of substantially equivalent qualifications to Colorado requirements for licensure.

Partially conforms the causes for denying, suspending, or revoking a license to the "Colorado Medical Practice Act". Includes the administration of a topical anesthetic within the definition of the practice of dental hygiene. Requires dental auxiliaries to practice only under the direct supervision, not the personal direction or general supervision, of a dentist. Makes final action of the board open to the public.

5 Be it enacted by the General Assembly of the State of Colorado:

6 SECTION 1. 12-35-102, Colorado Revised Statutes, 1985,

1 Repl. Vol., is amended to read:

2 12-35-102. Legislative declaration. The practice of
3 dentistry AND DENTAL HYGIENE in this state is declared to
4 affect the public health, safety, and welfare and to be
5 subject to regulation and control in the public interest. It
6 is further declared to be a matter of public interest and
7 concern that the dental profession merit and receive the
8 confidence of the public and that only qualified dentists AND
9 DENTAL HYGIENISTS be permitted to practice dentistry OR DENTAL
10 HYGIENE in this state. It is the purpose of this law to
11 promote the public health, safety, and welfare by regulating
12 the practice of dentistry AND DENTAL HYGIENE and to insure
13 that no one shall practice dentistry OR DENTAL HYGIENE without
14 qualifying under this article. All provisions of this article
15 relating to the practice of dentistry and dental hygiene shall
16 be liberally construed to carry out these objects and
17 purposes.

18 SECTION 2. 12-35-104 (1) and (3), Colorado Revised
19 Statutes, 1985 Repl. Vol., are amended to read:

20 12-35-104. State board of dental examiners - subject to
21 termination. (1) The state board of dental examiners,
22 referred to in this article as the "board", in existence on
23 July 1, 1968;--is--continued 1986, IS TERMINATED AND
24 REESTABLISHED, WITH THE SAME OR DIFFERENT MEMBERS, ON JULY 1,
25 1986, as the agency of this state for the regulation of the
26 practice of dentistry in this state and to carry out the
27 purposes of this article. The board shall be under the

1 supervision and control of the division of registrations as
2 provided by section 24-34-102, C.R.S. The board shall consist
3 of five dentist members, two dental hygienist members, ONE
4 DENTAL AUXILIARY MEMBER, and one member from the public at
5 large, each member to be appointed by the governor for a term
6 of ~~five~~ FOUR years and to have the qualifications provided in
7 this article; except that, ~~the dental hygienist member first~~
8 ~~appointed shall be appointed for a term ending January 1,~~
9 ~~1982; and the member from the public at large first appointed~~
10 ~~shall be appointed for a term ending January 1, 1981.~~ OF THE
11 MEMBERS FIRST APPOINTED, ONE DENTIST MEMBER AND THE DENTAL
12 AUXILIARY MEMBER SHALL SERVE FOR A TERM ENDING JULY 1, 1987;
13 ONE DENTIST MEMBER AND A DENTAL HYGIENIST MEMBER SHALL SERVE
14 FOR A TERM ENDING JULY 1, 1988; ONE DENTIST MEMBER AND A
15 DENTAL HYGIENIST MEMBER SHALL SERVE FOR A TERM ENDING JULY 1,
16 1989; AND TWO DENTIST MEMBERS AND THE PUBLIC MEMBER SHALL
17 SERVE FOR A TERM ENDING JULY 1, 1990. No more than ~~one dentist~~
18 ~~member~~ TWO MEMBERS of the board may reside in the same
19 congressional district at the same time, AND THERE SHALL BE AT
20 LEAST ONE MEMBER FROM EACH CONGRESSIONAL DISTRICT. No more
21 than five members of the board shall be members of the same
22 major political party. Appointments made to take effect on
23 ~~January 1, 1983;~~ JULY 1, 1986, shall be made in accordance
24 with section 24-1-135, C.R.S. A vacancy on the board occurs
25 whenever any dentist member moves out of the congressional
26 district from which he was appointed. A member who moves out
27 of such congressional district shall promptly notify the

1 governor of the date of such move, but such notice is not a
2 condition precedent to the occurrence of the vacancy. Should
3 a vacancy occur in any board membership before the expiration
4 of the term thereof, the governor shall fill such vacancy by
5 appointment for the remainder of such term in the same manner
6 as in the case of original appointments. ~~The--terms--of~~
7 ~~existing---board---members---shall---not---be---disturbed---by---the~~
8 ~~provisions-of-this-subsection-(1):~~ ANY MEMBER OF THE BOARD MAY
9 BE REMOVED BY THE GOVERNOR FOR MISCONDUCT, INCOMPETENCE, OR
10 NEGLECT OF DUTY.

11 (3) The board may employ ~~an--executive--secretary;~~
12 examination proctors when necessary. ~~and-such--other--clerical~~
13 ~~and--investigatory--personnel-upon-a-temporary-and-contractual~~
14 ~~basis-when--need--for--such--services--arises--and--funds--are~~
15 ~~available:~~

16 SECTION 3. The introductory portion to 12-35-107 (1) (b)
17 and 12-35-107 (1) (f), Colorado Revised Statutes, 1985 Repl.
18 Vol., are amended to read:

19 12-35-107. Powers and duties of board. (1) (b) Make,
20 publish, and declare reasonable rules and regulations after
21 public hearing thereon. All rules and regulations of the
22 board shall be reviewed annually at a public hearing. Notice
23 of such hearing shall be given at least thirty days prior to
24 the date set for the hearing in the manner prescribed by
25 section ~~24-4-105~~ 24-4-103, C.R.S. Rules and regulations of the
26 board may concern but not be limited to:

27 (f) Make such reasonable rules and regulations as may be

1 necessary to carry out and make effective the powers and
2 duties of the board as vested in it by the provisions of this
3 article; except that all rules adopted or amended by the board
4 on or after July 1, 1979, shall be subject to sections
5 24-4-103 (8) (c) and (8) (d) and 24-34-104 (9) (b) (II),
6 C.R.S. SUCH RULES AND REGULATIONS MAY INCLUDE, BUT SHALL NOT
7 BE LIMITED TO, MINIMUM TRAINING AND EQUIPMENT REQUIREMENTS FOR
8 THE ADMINISTRATION OF GENERAL ANESTHESIA, CONSCIOUS SEDATION,
9 AND NITROUS OXIDE/OXYGEN INHALATION SEDATION, INCLUDING
10 PROCEDURES THAT MAY BE USED BY AND MINIMUM TRAINING
11 REQUIREMENTS FOR DENTISTS, DENTAL HYGIENISTS, AND DENTAL
12 AUXILIARIES. THE GENERAL ASSEMBLY DECLARES THAT RULES
13 RELATING TO ANESTHESIA ARE NOT INTENDED TO PERMIT
14 ADMINISTRATION OF GENERAL ANESTHESIA, CONSCIOUS SEDATION, OR
15 NITROUS OXIDE/OXYGEN INHALATION SEDATION BY DENTAL
16 AUXILIARIES, NOR TO REDUCE COMPETITION OR RESTRAIN TRADE WITH
17 RESPECT TO DENTISTRY NEEDS OF THE PUBLIC.

18 SECTION 4. 12-35-108 (1), Colorado Revised Statutes,
19 1985 Repl. Vol., is amended to read:

20 12-35-108. Power of board to administer oaths - issue
21 subpoenas - service - penalty for refusing to obey subpoena.

22 (1) (a) The president and, in his absence, the vice-president
23 and, in the latter's absence, the secretary and treasurer, or
24 a hearing officer, shall have the power to administer oaths,
25 take affirmations of witnesses, and issue subpoenas to compel
26 the attendance of witnesses and the production of all
27 necessary papers, books, records, documentary evidence, and

1 materials in any hearing, investigation, accusation, or other
2 matter coming before the board. The board may appoint a
3 hearing officer pursuant to part 10 of article 30 of title 24,
4 C.R.S., to take evidence and to make findings and report them
5 to the board. The sheriffs of the several counties of the
6 state or other officers authorized to serve process shall
7 serve any subpoena or other order issued by such officer or
8 officers of said board and shall receive for such services the
9 fees provided for like service to be paid on certification of
10 such officer from any funds in the hands of the board.

11 (b) IN ADDITION, THE PROGRAM ADMINISTRATOR SHALL HAVE
12 THE POWER TO ADMINISTER OATHS AND TAKE AFFIRMATIONS OF
13 WITNESSES.

14 SECTION 5. 12-35-113 (1) (c), Colorado Revised Statutes,
15 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
16 to read:

17 12-35-113. Application for license - fee. (1) (c) Has
18 listed any act, the commission of which would be grounds for
19 disciplinary action under section 12-35-118 against a licensed
20 dentist, along with an explanation of the circumstances of
21 such act.

22 SECTION 6. 12-35-114 (1) and (2), Colorado Revised
23 Statutes, 1985 Repl. Vol., are amended to read:

24 12-35-114. Examinations - how conducted - certificates
25 issued to successful applicants. (1) When the application and
26 accompanying proof, as required by section 12-35-113, are
27 found satisfactory, the board shall notify the applicant to

1 appear--before--it--for SUBMIT TO AN examination at a time and
2 place to be fixed by the board.

3 (2) Such examination shall be oral; written,
4 theoretical, practical, and clinical and of such a character
5 as to thoroughly test the qualification of the applicant to
6 practice dentistry. and--shall--be--taken--from--the--following
7 subjects:--Pathology;--radiology;--bacteriology;--treatment
8 planning;--clinical--dentistry;--operative--dentistry;
9 prosthetics;--crown--and--bridge--technique;--orthodontia;
10 materials--in--dentistry;--diet--and--nutrition;--oral--hygiene--and
11 prophylaxis;--preventive--dentistry;--periodontia;--anesthesia;
12 oral--surgery;--oral--medicine;--principles--of--dentistry;--material
13 medical--and--pharmacology;--anatomy;--physiology;--histology;
14 chemistry;--embryology;--and--such--subdivisions--of--these--general
15 subjects--as--relate--to--the--practice--of--dentistry: Such
16 examination may be given at any accredited dental school or
17 other facility approved by the board within or without the
18 state of Colorado and may be on a regional basis. Every
19 applicant, however, must appear--personally--before--the--board
20 prior--to--receiving--a--license--and be examined for knowledge of
21 the provisions of this article.

22 SECTION 7. 12-35-114 (3), Colorado Revised Statutes,
23 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
24 to read:

25 12-35-114. Examinations - how conducted - certificates
26 awarded to successful applicants. (3) The board shall
27 provide for licensure upon application of any person licensed

1 in good standing to practice dentistry in another state or
2 territory of the United States showing proof of credentials
3 and qualifications which are substantially equivalent to the
4 requirements of section 12-35-113 and subsections (1) and (2)
5 of this section. The examination for knowledge of the
6 provisions of this article shall be accomplished by the use of
7 a mail-in jurisprudence examination administered by the board.

8 SECTION 8. 12-35-116 (1), Colorado Revised Statutes,
9 1985 Repl. Vol., as amended, is amended to read:

10 12-35-116. Renewal of license - fees. (1) On or before
11 the first day of the month designated pursuant to rules and
12 regulations promulgated by the board, every dentist licensed
13 to practice dentistry in this state shall transmit to the
14 secretary of the board, upon a form prescribed by the board,
15 his signature, post-office address, office address, the number
16 of his license certificate, and such other pertinent
17 information as may be requested, together with a fee
18 established pursuant to section 24-34-105, C.R.S., and shall
19 receive therefor a ~~biennial~~ renewal certificate authorizing
20 him to continue the practice of dentistry in this state. ~~for a~~
21 ~~period-of-two-years:~~ THE BOARD SHALL ESTABLISH RENEWAL FEES
22 AND SCHEDULES SUBJECT TO THE PROVISIONS OF SECTION 24-34-102
23 (8), C.R.S.

24 SECTION 9. 12-35-118 (1), Colorado Revised Statutes,
25 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
26 to read:

27 12-35-118. Causes for denial of issuance or renewal -

1 suspension or revocation of licenses - other disciplinary
2 action - immunity in professional review. (1) The board may
3 deny the issuance or renewal of, suspend for a specified time
4 period of not more than one year, or revoke any license
5 provided for by this article or may reprimand, censure, or
6 place on probation any licensed dentist or dental hygienist
7 after notice and hearing, which may be conducted by a hearing
8 officer, pursuant to the provisions of article 4 of title 24,
9 C.R.S., or it may issue a ~~private-and-confidential~~ letter of
10 admonition without a hearing (except that any licensed dentist
11 or dental hygienist to whom such a letter of admonition is
12 sent may, within thirty days after receipt thereof, request in
13 writing to the board a formal hearing thereon, and the letter
14 of admonition shall be deemed vacated, and the board shall,
15 upon such request, hold such a hearing) for any of the
16 following causes:

17 (a) Resorting to fraud, misrepresentation, or deception
18 in applying for or in securing a license, or in taking the
19 examination provided for in this article;

20 (b) Conviction of a felony or pleading guilty or nolo
21 contendere to a felony;

22 (c) Administering, dispensing, or prescribing any
23 habit-forming drug, as defined in section 12-22-102 (13), or
24 any controlled substance, as defined in section 12-22-303 (7),
25 other than in the course of legitimate professional practice;

26 (d) Conviction of violation of any federal or state law
27 regulating the possession, distribution, or use of any

1 controlled substance, as defined in section 12-22-303 (7),
2 and, in determining if a license should be denied, revoked, or
3 suspended, or if the licensee should be placed on probation,
4 the board shall be governed by the provisions of section
5 24-5-101, C.R.S.;

6 (e) Habitual intemperance or excessive use of any
7 habit-forming drug, as defined in section 12-22-102 (13), or
8 any controlled substance, as defined in section 12-22-303 (7);

9 (f) The aiding or abetting, in the practice of dentistry
10 or dental hygiene, of any person not licensed to practice
11 dentistry or dental hygiene as defined under this article or
12 of any person whose license to practice dentistry or dental
13 hygiene is suspended;

14 (g) Practicing dentistry as a partner, agent, or
15 employee of or in joint venture with any person who does not
16 hold a license to practice dentistry within this state or
17 practicing dentistry as an employee of or in joint venture
18 with any partnership, association, or corporation except as
19 provided in section 12-35-112. Any licensee holding a license
20 to practice dentistry in this state may accept employment from
21 any person, partnership, association, or corporation to
22 examine, prescribe, and treat the employees of such person,
23 partnership, association, or corporation;

24 (h) Violating, or attempting to violate, directly or
25 indirectly, or assisting in or abetting the violation of or
26 conspiring to violate any provision or term of this article;

27 (i) Such physical or mental disability as to render the

1 licensee unable to perform dental or dental hygiene services
2 with reasonable skill and with safety to the patient;

3 (j) An act or omission constituting grossly negligent
4 dental or dental hygiene practice or which fails to meet
5 generally accepted standards of dental or dental hygiene
6 practice;

7 (k) Advertising which is misleading, deceptive, or
8 false;

9 (l) Engaging in a sexual act with a patient during the
10 course of patient care. "Sexual act", as used in this
11 paragraph (k), means sexual contact, sexual intrusion, or
12 sexual penetration as defined in section 18-3-401, C.R.S.;

13 (m) Refusing to make patient records available to a
14 patient pursuant to a written authorization-request under
15 section 25-1-802, C.R.S.;

16 (n) False billing in the delivery of dental or dental
17 hygiene services, including, but not limited to, performing
18 one service and billing for another and billing for any
19 service not rendered;

20 (o) Abuse of health insurance pursuant to section
21 18-13-119, C.R.S.;

22 (p) Failure of any person licensed by the board to
23 notify the board, in writing, of the entry of a final judgment
24 by a court of competent jurisdiction in favor of any party and
25 against the licensee involving negligent malpractice of
26 dentistry or dental hygiene. Such notice shall be given
27 within ninety days of the entry of such judgment and shall

1 contain the name of the court, the case number, and the names
2 of all parties to the action.

3 (q) Failure to report a dental malpractice judgment or
4 settlement to the board by the licensee within ninety days.

5 SECTION 10. 12-35-118 (1.5) and (5) (e), Colorado
6 Revised Statutes, 1985 Repl. Vol., are amended to read:

7 12-35-118. Causes for denial of issuance or renewal -
8 suspension or revocation of licenses - other disciplinary
9 action - immunity in professional review. (1.5) A revocation
10 or suspension of a license to practice dentistry OR DENTAL
11 HYGIENE in any other state, territory, or country for
12 disciplinary reasons shall be deemed to be prima facie
13 evidence of unprofessional conduct GROUNDS FOR ACTION UNDER
14 SUBSECTION (1) OF THIS SECTION.

15 (5) (e) Investigations, examinations, hearings,
16 meetings, or any other proceedings of the board conducted
17 pursuant to the provisions of this section shall be exempt
18 from the provisions of any law requiring that proceedings of
19 the board be conducted publicly or that the minutes or records
20 of the board with respect to action of the board taken
21 pursuant to the provisions of this section are open to public
22 inspection; EXCEPT THAT THE FINAL ACTION OF THE BOARD TAKEN
23 PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE OPEN TO
24 THE PUBLIC.

25 SECTION 11. 12-35-122.5 (1) (d), Colorado Revised
26 Statutes, 1985 Repl. Vol., is amended, and the said
27 12-35-122.5 (1) is further amended BY THE ADDITION OF NEW

1 PARAGRAPH, to read:

2 12-35-122.5. What constitutes practicing dental hygiene.

3 (1) (d) Gathers and assembles information for--use--by--the
4 dentist---in--his--diagnosis--and--treatment--planning----Such
5 information--shall--include INCLUDING, BUT NOT LIMITED TO,
6 fact-finding and patient history, radiographic AND X-RAY
7 survey, preparation of study casts, oral inspection, and
8 dental and periodontal charting;

9 (e) Administers a topical anesthetic to a patient in the
10 course of providing dental care.

11 SECTION 12. 12-35-123, Colorado Revised Statutes, 1985
12 Repl. Vol., is amended to read:

13 12-35-123. Dental hygienists - application fees. Every
14 person who desires to qualify for practice as a dental
15 hygienist within this state shall file with the secretary of
16 the board his written application for a license, ON WHICH
17 APPLICATION HE SHALL LIST ANY ACT, THE COMMISSION OF WHICH
18 WOULD BE GROUNDS FOR DISCIPLINARY ACTION UNDER SECTION
19 12-35-118 AGAINST A LICENSED DENTAL HYGIENIST, ALONG WITH AN
20 EXPLANATION OF THE CIRCUMSTANCES OF SUCH ACT, and shall
21 furnish satisfactory proof that he is of-good-moral-character;
22 of-such-state-of-health-as-not-to-endorse-the--well-being--of
23 patients--and a graduate of a school of dental hygiene which,
24 at the time of the applicant's graduation, was accredited by
25 the council on dental education of the American dental
26 association. Such application must be on the form prescribed
27 and furnished by the board, verified by the oath of the

1 applicant, and accompanied by a fee established pursuant to
2 section 24-34-105, C.R.S. ~~In--determining--an--applicant's~~
3 ~~character;-the-board-shall-be-governed-by--the--provisions--of~~
4 ~~section-24-5-101;-6-R-5:~~

5 SECTION 13. 12-35-124 (1), Colorado Revised Statutes,
6 1985 Repl. Vol., is amended to read:

7 12-35-124. Examinations - license. (1) When the
8 application and accompanying proof as required by section
9 12-35-123 are found satisfactory, the board shall notify the
10 applicant to ~~appear-before-it-for~~ SUBMIT TO AN examination at
11 a time and place to be fixed by the board. Such examination
12 shall be ~~oral~~; written, theoretical, practical, and clinical.
13 ~~and-shall-be-based-upon-the-following-subjects:-oral-histology~~
14 ~~and-pathology;-oral-hygiene;-oral-anatomy-and-dental--anatomy;~~
15 ~~physiology;---laboratory---technique;---radiology;---and--such~~
16 ~~subdivisions-of-these-general-subjects--as--relate--to--dental~~
17 ~~hygiene:~~ The examination may be given at any accredited dental
18 school or other facility approved by the board within or
19 without the state of Colorado and may be given on a regional
20 basis. Every applicant, however, must ~~appear--personally~~
21 ~~before-the-board-prior-to-receiving-a-license-and~~ be examined
22 for knowledge of the provisions of this article.

23 SECTION 14. 12-35-124 (4), Colorado Revised Statutes,
24 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
25 to read:

26 12-35-124. Examination - license. (4) The board shall
27 provide for licensure upon application of any person licensed

1 in good standing to practice dental hygiene in another state
2 or territory of the United States showing proof of credentials
3 and qualifications which are substantially equivalent to the
4 requirements of section 12-35-123 and subsections (1) and (2)
5 of this section. The examination for knowledge of the
6 provisions of this article shall be accomplished by the use of
7 a mail-in jurisprudence examination administered by the board.

8 SECTION 15. 12-35-125 (3), Colorado Revised Statutes,
9 1985 Repl. Vol., is amended to read:

10 12-35-125. Tasks authorized to be performed by dental
11 auxiliaries or dental hygienists. (3) Except as provided in
12 subsection (1) of this section, a dental auxiliary may perform
13 any dental tasks and procedures, whether constituting dental
14 hygiene pursuant to section 12-35-122.5 or not, except
15 scaling, root planing, and soft tissue curettage, assigned to
16 him by a licensed dentist that do not require the professional
17 skill of a licensed dentist but only under the personal
18 direction DIRECT SUPERVISION of the licensed dentist. A
19 ~~dental-auxiliary-may-perform-his-duties-only-under-the-general~~
20 ~~supervision-of-a-licensed-dentist.~~

21 SECTION 16. 12-35-127, Colorado Revised Statutes, 1985
22 Repl. Vol., is amended to read:

23 12-35-127. Dental hygienist - renewal of license - fee.
24 All licensed dental hygienists who engage in the practice of
25 dental hygiene shall be registered with the board and have
26 issued to them a renewal certificate by the board. ~~on or~~
27 ~~before-the-first-day-of-the-month-designated-pursuant-to-rules~~

1 and--regulations--promulgated--by--the--board;--which--renewal
2 certificate--shall-be-effective-for-a-period-of-two-years: THE
3 BOARD SHALL ESTABLISH RENEWAL FEES AND SCHEDULES SUBJECT TO
4 THE PROVISIONS OF SECTION 24-34-102 (8), C.R.S. The renewal
5 fee shall be as established pursuant to section 24-34-105,
6 C.R.S. The form and method and all provisions relating to the
7 renewal of licenses of dentists as provided in sections
8 12-35-116 and 12-35-117, insofar as applicable, shall apply to
9 dental hygienists.

10 SECTION 17. 24-34-104, Colorado Revised Statutes, 1982
11 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
12 SUBSECTION to read:

13 24-34-104. General assembly review of regulatory
14 agencies for termination, continuation, or reestablishment.

15 (25) The following board in the division of registrations
16 shall terminate on July 1, 1996: The state board of dental
17 examiners, created by article 35 of title 12, C.R.S.

18 SECTION 18. Repeal. 12-35-107 (2), 12-35-113 (1) (d)
19 and (2), and 12-35-118 (2), Colorado Revised Statutes, 1985
20 Repl. Vol., and 24-34-104 (15) (a), Colorado Revised Statutes,
21 1982 Repl. Vol., as amended, are repealed.

22 SECTION 19. Effective date. This act shall take effect
23 July 1, 1986.

24 SECTION 20. Safety clause. The general assembly hereby
25 finds, determines, and declares that this act is necessary
26 for the immediate preservation of the public peace, health,
27 and safety.

BILL 47

A BILL FOR AN ACT

1 CONCERNING TERMINATION OF THE STATE BOARD OF PHYSICAL THERAPY,
2 AND IN CONNECTION THEREWITH PROVIDING FOR THE
3 REGISTRATION OF PHYSICAL THERAPISTS WITH THE DEPARTMENT
4 OF REGULATORY AGENCIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Allows the termination of the state board of physical therapy. Requires physical therapists to be registered with the director of the division of registrations in the department of regulatory agencies, instead of licensed by the board. Makes conforming amendments to effectuate such transfer.

Allows the director to register a physical therapist by endorsement without examination under certain circumstances. Makes failure to report a malpractice judgment or settlement by a physical therapist and failure to refer a patient to a physician, dentist, or podiatrist when the problem is beyond the scope of a physical therapist grounds for disciplinary proceedings. Requires the supervisor of a physical therapist to report to the director when the physical therapist is dismissed for incompetence or failure to comply with the standards of practice. Requires a physical therapist to report violations of the standards of practice by another physical therapist.

Authorizes the director to require a physical therapist to submit to a mental or physical examination upon reasonable cause. Directs appeals from a decision of the director to the court of appeals, not the district court. Repeals the article

at a future date.

1 Be it enacted by the General Assembly of the State of Colorado:

2 SECTION 1. 12-41-102 (1), Colorado Revised Statutes,
3 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
4 to read:

5 12-41-102. Definitions. (1) "Director" means the
6 director of the division of registrations in the department of
7 regulatory agencies.

8 SECTION 2. 12-41-102 (4), Colorado Revised Statutes,
9 1985 Repl. Vol., is amended to read:

10 12-41-102. Definitions. (4) "Physiotherapist" and
11 "physical therapy technician" are synonymous with the term
12 "physical therapist", and none of said terms shall be used to
13 identify anyone not ~~licensed~~ REGISTERED under this article.
14 For the purposes of this article, the terms "physical therapy"
15 and "physiotherapy" shall be synonymous.

16 SECTION 3. 12-41-103, Colorado Revised Statutes, 1985
17 Repl. Vol., is amended to read:

18 12-41-103. Titles restricted. A person holding--a
19 ~~license~~ REGISTERED as a physical therapist ~~issued-by-the-board~~
20 may use the title "physical therapist" or the letters "P.T."
21 or any other generally accepted terms, letters, or figures
22 which indicate that the person using the same is a ~~licensed~~
23 REGISTERED physical therapist. No other person shall be so
24 designated or shall use the terms "~~licensed---~~physical
25 therapist"~~---~~ or "registered physical therapist", "~~licensed~~

1 physiotherapist" or "registered physiotherapist", "licensed
2 physical--therapy--technician" or "registered physical therapy
3 technician", or the letters "P.T." OR "R.P.T.". or--"L:P:T":

4 SECTION 4. The introductory portion to 12-41-108 (2) and
5 12-41-108 (2) (b), (2) (c), (2) (d), (2) (e), (2) (f), (2)
6 (g), (2) (h), (2) (i), (2) (j), and (2) (k), Colorado Revised
7 Statutes, 1985 Repl. Vol., are amended, and the said 12-41-108
8 is further amended BY THE ADDITION OF A NEW SUBSECTION, to
9 read:

10 12-41-108. Powers and duties of director - reports -
11 publications. (2) In addition to any other powers and duties
12 given the board DIRECTOR by this article, the board DIRECTOR
13 shall have the following powers and duties:

14 (b) To evaluate the qualifications of applicants for
15 licensure REGISTRATION, administer examinations, issue and
16 renew licenses-to THE REGISTRATIONS OF physical therapists
17 qualifying for such under this article, and, in proper cases,
18 suspend or revoke the license REGISTRATION of any physical
19 therapist;

20 (c) To adopt rules and regulations not inconsistent with
21 the law as it HE deems necessary or proper for the performance
22 of its HIS duties; except that such rules and regulations
23 shall be fair, impartial, and nondiscriminatory;

24 (d) To conduct hearings upon charges for discipline of a
25 licensee REGISTRANT, issue subpoenas, compel attendance of
26 witnesses, compel the production of books, records, papers,
27 and documents, administer oaths to persons giving testimony at

1 hearings, and cause the prosecution and enjoinder of all
2 persons violating this article and incur the necessary
3 expenses thereof;

4 (e) To maintain a register listing the name of every
5 physical therapist licensed REGISTERED to practice in this
6 state, his last-known place of business, his last-known place
7 of residence, and the number of his license REGISTRATION;

8 (f) At least once a year, to compile a list of physical
9 therapists currently licensed REGISTERED to practice in this
10 state, such list to be available at-the-discretion-of-the
11 board to any person upon application to the board DIRECTOR and
12 the payment of such charge as may be fixed by it HIM;

13 (g) Subject to the provisions of section 12-41-117 and
14 section 24-34-105, C.R.S., to set fees and make such
15 expenditures as it HE may deem necessary for the
16 administration of the provisions of this article;

17 (h) To prepare and transmit annually, in the form and
18 manner prescribed by the heads of the principal departments
19 pursuant to the provisions of section 24-1-136, C.R.S., a
20 report accounting to the governor and the general assembly for
21 the efficient discharge of all responsibilities assigned by
22 law or directive to the board DIRECTOR;

23 (i) To insure that publications issued or circulated by
24 the board DIRECTOR in quantity outside the executive branch
25 are in accordance with the provisions of section 24-1-136,
26 C.R.S.;

27 (j) To promote consumer protection and education by such

1 means as it HE finds appropriate;

2 (k) To appoint advisory committees to assist in the
3 performance of its HIS duties; members of advisory committees
4 shall receive no compensation for their services but shall be
5 reimbursed for actual and necessary expenses which they may
6 incur in the performances of their duties. Such reimbursement
7 shall be cash funded and shall not exceed the amount
8 anticipated to be raised from fees collected by the board
9 DIRECTOR, pursuant to section 24-34-105 (2) (c), C.R.S.

10 (3) The transfer of authority under this article from
11 the state board of physical therapy to the director shall be
12 effective July 1, 1986, notwithstanding the termination
13 schedule of section 24-34-104, C.R.S.

14 SECTION 5. 12-41-109, Colorado Revised Statutes, 1985
15 Repl. Vol., is amended to read:

16 12-41-109. Registration required. No person shall
17 practice nor hold himself out as being able to practice
18 physical therapy in this state unless he is licensed
19 REGISTERED in accordance with the provisions of this article.

20 SECTION 6. 12-41-110, Colorado Revised Statutes, 1985
21 Repl. Vol., is amended to read:

22 12-41-110. Application for registration. (1) An
23 applicant for a license REGISTRATION as a physical therapist
24 shall file a written application with the board DIRECTOR, on
25 forms provided by the board DIRECTOR.

26 (2) Each applicant shall accompany his application with
27 an appropriate fee to be set by the board DIRECTOR.

1 SECTION 7. The introductory portion to 12-41-111 (1),
2 12-41-111 (1) (b), the introductory portion to 12-41-111 (2),
3 and 12-41-111 (2) (d), Colorado Revised Statutes, 1985 Repl.
4 Vol., are amended, and the said 12-41-111 is further amended
5 BY THE ADDITION OF A NEW SUBSECTION, to read:

6 12-41-111. Qualifications for registration. (1) Every
7 applicant for licensure REGISTRATION by examination who has
8 received physical therapy education in the United States shall
9 submit written evidence, verified by oath and satisfactory to
10 the board DIRECTOR, that said applicant:

11 (b) Has successfully completed an accredited physical
12 therapy education program. For the purposes of this article,
13 an "accredited physical therapy education program" shall be as
14 determined by the board DIRECTOR and shall be of not less than
15 twelve months' duration. Said program shall conform with the
16 standards of official accrediting agencies as determined by
17 the United States office of education.

18 (2) Every foreign-trained applicant for licensure
19 REGISTRATION by examination shall submit written evidence to
20 the board DIRECTOR, verified by oath, and satisfactory to the
21 board DIRECTOR, that said applicant:

22 (d) Has successfully served an internship, as required
23 by rule and regulation of the board DIRECTOR.

24 (3) The director may refuse to examine or register an
25 applicant if the applicant has committed any act which would
26 be grounds for disciplinary action under section 12-41-118
27 against a registered physical therapist.

1 SECTION 8. 12-41-112 (1), Colorado Revised Statutes,
2 1985 Repl. Vol., is amended to read:

3 12-41-112. Examinations. (1) All applicants, unless
4 licensed by endorsement, shall be required to pass a written
5 examination approved by the board DIRECTOR. Such examination
6 shall be based upon, but not limited to, content drawn from
7 basic biological and physical sciences, physical therapy arts
8 and sciences, behavioral and humanistic sciences, medical
9 sciences, administration and management, education,
10 communication, and research methodology. Examinations shall
11 be held within the state at least twice a year and at such
12 other times and places as the board DIRECTOR shall determine.

13 SECTION 9. 12-41-112 (2), Colorado Revised Statutes,
14 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
15 to read:

16 12-41-112. Examinations. The director shall be
17 responsible for determining the passing score to reflect a
18 standard of minimum competency for the practice of physical
19 therapy.

20 SECTION 10. 12-41-113 (1), Colorado Revised Statutes,
21 1985 Repl. Vol., is amended to read:

22 12-41-113. Examination results and issuance of
23 registration. (1) The board--shall--issue--a--license--to
24 DIRECTOR SHALL REGISTER each applicant who passes the
25 examination and who is not otherwise disqualified to receive-a
26 license BE REGISTERED subject to the provisions of this
27 article.

1 SECTION 11. The introductory portion to 12-41-114 (1)
2 and 12-41-114 (1) (a), (3), (4), and (5), Colorado Revised
3 Statutes, 1985 Repl. Vol., are amended to read:

4 12-41-114. Registration by endorsement. (1) The board
5 DIRECTOR may ~~issue-a-license~~ REGISTER without an examination
6 to an applicant who is licensed or otherwise statutorily
7 recognized as a physical therapist by another state or
8 territory of the United States. In order to qualify for
9 consideration of ~~license~~ REGISTRATION by endorsement, the
10 applicant shall file with the board DIRECTOR:

11 (a) A written application on a form provided by the
12 board DIRECTOR and accompanied by a fee to be set by the board
13 DIRECTOR;

14 (3) ~~Upon--the--first--meeting--of--the--board~~ After the
15 applicant has met the requirements of subsection (1) OR (2) of
16 this section, the board DIRECTOR shall review the credentials
17 of the applicant and notify the applicant, in writing, of
18 approval or denial of the ~~license~~ REGISTRATION.

19 (4) A fee to be set by the board DIRECTOR shall be
20 charged for ~~license~~ REGISTRATION by endorsement.

21 (5) Any applicant for ~~license~~ REGISTRATION by
22 endorsement who has not practiced physical therapy in the five
23 years immediately preceding application shall successfully
24 demonstrate to the board DIRECTOR competency in the practice
25 of physical therapy, or shall serve an internship or take
26 remedial courses as determined by the board DIRECTOR, or both.
27 The board DIRECTOR may also require the applicant to take an

1 examination.

2 SECTION 12. 12-41-114 (2), Colorado Revised Statutes,
3 1985 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
4 to read:

5 12-41-114. Registration by endorsement.

6 (2) Notwithstanding the provisions of subsection (1) of this
7 section, the director may issue a registration to engage in
8 the practice of physical therapy in this state to a physical
9 therapist who is licensed to practice physical therapy in
10 another state or a territory of the United States or in a
11 foreign country if the applicant presents proof satisfactory
12 to the director that, at the time of application for a
13 Colorado registration by endorsement, the applicant possesses
14 credentials and qualifications which are substantially
15 equivalent to requirements in Colorado for registration by
16 examination. The director may specify by rule and regulation
17 what shall constitute substantially equivalent credentials and
18 qualifications.

19 SECTION 13. The introductory portion to 12-41-115 (1)
20 and 12-41-115 (1) (b) and (4), Colorado Revised Statutes, 1985
21 Repl. Vol., are amended and the said 12-41-115 is further
22 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

23 12-41-115. Temporary permits. (1) Upon the submission
24 of a written application on forms provided by the board
25 DIRECTOR, accompanied by an application fee, proof that a
26 person licensed REGISTERED as a physical therapist in this
27 state agrees to be responsible for the physical therapy

1 services provided by the holder of the temporary permit, and
2 any other necessary documentation, the board---or---its
3 administrator DIRECTOR shall issue a temporary permit:

4 (b) To a person who meets the requirements of section
5 12-41-114 (1) but has not been issued-a-license REGISTERED by
6 endorsement. Such permit shall be valid from the date of its
7 issuance until the application for license REGISTRATION by
8 endorsement has been acted upon by the board DIRECTOR.

9 (4) ~~By--affirmative--vote--of--at--least--three--of--its--five~~
10 ~~members;--the-board~~ THE DIRECTOR may revoke a temporary permit
11 for any of the reasons described in section 12-41-118.

12 (5) The director shall promulgate rules and regulations
13 defining what constitutes being a responsible registered
14 physical therapist pursuant to subsection (1) of this section.

15 SECTION 14. 12-41-116, Colorado Revised Statutes, 1985
16 Repl. Vol., is amended to read:

17 12-41-116. Renewal of registration. (1) Every license
18 REGISTRATION issued pursuant to this article shall be renewed
19 annually by the applicant, except as provided in subsection
20 (3) of this section. THE DIRECTOR SHALL ESTABLISH RENEWAL
21 FEES AND SCHEDULES SUBJECT TO THE PROVISIONS OF SECTION
22 24-34-102 (8), C.R.S. NOT LATER THAN sixty-one days prior to
23 the expiration of current licenses REGISTRATIONS, the board
24 DIRECTOR shall mail an application for renewal to all
25 licensees EACH REGISTRANT in this state. The application
26 shall be mailed to the most recent address of said-licensees
27 EACH REGISTRANT which appears on the records of the board

1 DIRECTOR.

2 (2) Each licensee REGISTRANT shall complete the renewal
3 application and return it to the board DIRECTOR, accompanied
4 by a renewal fee, not later than thirty days before the
5 expiration date on his current license REGISTRATION. Upon the
6 receipt of both the application and the fee, the board
7 DIRECTOR shall issue to the applicant a certificate of renewal
8 of license REGISTRATION. It shall be the duty of each
9 licensee REGISTRANT to provide the board DIRECTOR with his
10 correct mailing address at least ninety-one days prior to the
11 expiration of his current license REGISTRATION.

12 (3) If any licensee REGISTRANT fails to renew his
13 license REGISTRATION, such license REGISTRATION shall
14 automatically expire. A license REGISTRATION which has thus
15 expired may be restored upon payment of a fee therefor to be
16 determined and collected pursuant to section 24-34-105,
17 C.R.S., unless expired for more than five years. A license
18 REGISTRATION which has expired for more than five years may be
19 restored by the licensee's REGISTRANT'S successfully
20 demonstrating to the board DIRECTOR competency in the practice
21 of physical therapy or by his taking of an internship as
22 determined by the board DIRECTOR. The board DIRECTOR may also
23 require an applicant to take an examination.

24 SECTION 15. The introductory portion to 12-41-118 (1),
25 12-41-118 (1) (d), (1) (g), (1) (i) (II), the introductory
26 portion to 12-41-118 (2), and 12-41-118 (2) (b), (2) (c), (3),
27 and (4), Colorado Revised Statutes, 1985 Repl. Vol., are

1 amended, and the said 12-41-118 (1) is further amended BY THE
2 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

3 12-41-118. Denial, revocation, or suspension of
4 registration. (1) The board;--by-an-affirmative-vote-of-at
5 ~~least-three-of-its-five-members~~; DIRECTOR has the power to
6 discipline any licensee REGISTRANT or to withhold, deny,
7 revoke, or suspend any license REGISTRATION to practice
8 physical therapy issued or applied for in accordance with the
9 provisions of this article upon proof that the licensee
10 REGISTRANT has:

11 (d) ~~Obtained-or-attempted-to-obtain-a-license~~ REGISTERED
12 OR ATTEMPTED TO REGISTER by fraud or deception;

13 (g) Been determined to be mentally incompetent by a
14 court of competent jurisdiction and a court's entry, pursuant
15 to part 3 or part 4 of article 14 of title 15 or section
16 26-3-104 (4), 27-10-109 (4), or 27-10-125, C.R.S., or an order
17 specifically finding that the mental incompetency is of such a
18 degree that the licensee REGISTRANT is incapable of practicing
19 physical therapy; and regulations enacted thereto;

20 (i) (II) Advertised through newspapers, magazines,
21 circulars, direct mail, directories, radio, television, or
22 otherwise that the licensee REGISTRANT will perform any act
23 prohibited by section 18-13-119 (3), C.R.S.;

24 (j) Failed to refer a patient to a physician, dentist,
25 or podiatrist when the problem of the patient is beyond the
26 scope of the practice of physical therapy;

27 (k) Failed to notify the director, in writing, of the

1 entry of a final judgment by a court of competent jurisdiction
2 in favor of any party and against the registrant or of any
3 settlement involving negligent malpractice of physical
4 therapy. Such notice shall be given within ninety days of the
5 entry of such judgment or of such settlement and, in the case
6 of a judgment, shall contain the name of the court, the case
7 number, and the names of all parties to the action.

8 (2) If the board DIRECTOR finds that charges have been
9 proven and discipline should be imposed, it HE shall determine
10 the extent of such discipline. Discipline may be in the form
11 of a letter of admonition, ~~private--censure~~; public censure,
12 fine, suspension of the license REGISTRATION for a definite or
13 indefinite period, revocation of the license REGISTRATION, or
14 any combination thereof. Probation may be granted pursuant to
15 any disciplinary action other than revocation of the license
16 REGISTRATION, and the person on probation may be allowed to
17 practice during the period of probation. The board DIRECTOR
18 may also include in any disciplinary order which allows a
19 physical therapist to continue to practice such conditions as
20 it deems appropriate to insure that the physical therapist is
21 physically, mentally, ~~morally~~; and otherwise qualified to
22 practice physical therapy in accordance with generally
23 accepted professional standards. The board DIRECTOR may
24 require any or all of the following:

25 (b) Any therapy, training, or education which the board
26 DIRECTOR believes to be necessary to correct deficiencies
27 found either pursuant to a hearing or through an examination

1 pursuant to paragraph (a) of this subsection (2);

2 (c) Any review or supervision of a therapist's practice
3 which the board DIRECTOR finds necessary to identify and
4 correct deficiencies therein;

5 (3) The board DIRECTOR may order suspension of a
6 physical therapist's license REGISTRATION for failure to
7 comply with any of the conditions imposed by the board
8 DIRECTOR pursuant to subsection (2) of this section.

9 (4) Revocation or suspension, without reinstatement, of
10 a license to practice physical therapy in another state,
11 territory, or country for disciplinary reasons shall be
12 presumptive evidence of unprofessional conduct and will result
13 in a denial of licensure REGISTRATION in this state.

14 SECTION 16. 12-41-118 (1) (b) and (1) (c), Colorado
15 Revised Statutes, 1985 Repl. Vol., are REPEALED AND REENACTED,
16 WITH AMENDMENTS, to read:

17 12-41-118. Denial, revocation, or suspension of
18 registration. (1) (b) Habitual intemperance or excessive use
19 of any habit-forming drug, as defined in section 12-22-102
20 (13), any controlled substance, as defined in section
21 12-22-303 (7), or intoxicating liquors;

22 (c) Been convicted of a felony or pled guilty or nolo
23 contendere to a felony;

24 SECTION 17. 12-41-118, Colorado Revised Statutes, 1985
25 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
26 read:

27 12-41-118. Denial, revocation, or suspension of

1 registration. (1.5) When a complaint or an investigation
2 discloses an instance of misconduct which, in the opinion of
3 the director, does not warrant formal action by the director
4 but which should not be dismissed as being without merit, a
5 letter of admonition may be sent by certified mail to the
6 physical therapist against whom a complaint was made and a
7 copy thereof to the person making the complaint, but, when a
8 letter of admonition is sent by certified mail by the director
9 to a physical therapist complained against, such physical
10 therapist shall be advised that he has the right to request in
11 writing, within twenty days after proven receipt of the
12 letter, that formal disciplinary proceedings be initiated
13 against him to adjudicate the propriety of the conduct upon
14 which the letter of admonition is based. If such request is
15 timely made, the letter of admonition shall be deemed vacated,
16 and the matter shall be processed by means of formal
17 disciplinary proceedings.

18 SECTION 18. Article 41 of title 12, Colorado Revised
19 Statutes, 1985 Repl. Vol., is amended BY THE ADDITION OF A NEW
20 SECTION to read:

21 12-41-118.5. Mental and physical examination of
22 registrants. (1) If the director has reasonable cause to
23 believe that a registrant is unable to practice with
24 reasonable skill and safety to patients because of a condition
25 described in section 12-41-118 (1) (b), he may require such
26 person to submit to a mental or physical examination by a
27 physician he designates. Upon the failure of such person to

1 submit to such mental or physical examination, unless due to
2 circumstances beyond his control, the director may suspend
3 such person's registration until such time as such person
4 submits to the required examinations.

5 (2) Every registrant, by engaging in the practice of
6 physical therapy in this state or by applying for the renewal
7 of his registration, shall be deemed to have given consent to
8 submit to a mental or physical examination when so directed in
9 writing by the director. The direction to submit to such an
10 examination shall contain the basis of the director's
11 reasonable cause to believe that the registrant is unable to
12 practice with reasonable skill and safety to patients because
13 of a condition described in section 12-41-118 (1) (b). The
14 registrant shall be deemed to have waived all objections to
15 the admissibility of the examining physician's testimony or
16 examination reports on the ground of privileged communication.

17 (3) Nothing in this section shall prevent the registrant
18 from submitting to the director testimony or examination
19 reports of a physician designated by the registrant pertaining
20 to a condition described in section 12-41-118 (1) (b) which
21 may be considered by the director in conjunction with, but not
22 in lieu of, testimony and examination reports of the physician
23 designated by the director.

24 (4) The results of any mental or physical examination
25 ordered by the director shall not be used as evidence in any
26 proceeding other than one before the director and shall not be
27 deemed public records nor made available to the public.

1 SECTION 19. 12-41-119, Colorado Revised Statutes, 1985
2 Repl. Vol., is amended to read:

3 12-41-119. Unauthorized practice. The practice of
4 physical therapy by any person who has not been issued a
5 license REGISTERED under the provisions of this article or
6 whose license REGISTRATION has been suspended or revoked, or
7 has expired, is declared to be inimical to the general public
8 welfare.

9 SECTION 20. 12-41-120, Colorado Revised Statutes, 1985
10 Repl. Vol., is amended to read:

11 12-41-120. Disciplinary proceedings - hearing officers -
12 judicial review. (1) The board DIRECTOR, through the
13 department of regulatory agencies, may employ hearing
14 officers, on a full-time or part-time basis, to conduct
15 hearings as provided by this article or on any matter within
16 the-board's HIS jurisdiction upon such conditions and terms as
17 the-board HE may determine.

18 (2) (a) The board DIRECTOR may investigate upon its HIS
19 own motion or when it HE is informed of dismissal of any
20 person licensed REGISTERED pursuant to this article if such
21 dismissal was for incompetence in physical therapy.

22 (b) ANY PERSON WHO SUPERVISES A PHYSICAL THERAPIST SHALL
23 REPORT TO THE DIRECTOR WHEN SUCH PHYSICAL THERAPIST HAS BEEN
24 DISMISSED BECAUSE OF INCOMPETENCE IN PHYSICAL THERAPY OR
25 FAILURE TO COMPLY WITH THIS ARTICLE. ANY PHYSICAL THERAPIST
26 WHO IS AWARE THAT ANOTHER PHYSICAL THERAPIST IS VIOLATING ANY
27 OF THE PROVISIONS OF THIS ARTICLE SHALL REPORT SUCH VIOLATION

1 TO THE DIRECTOR.

2 (3) A proceeding for the discipline of a licensee
3 REGISTRANT may be commenced when the board DIRECTOR has
4 reasonable grounds to believe that a licensee REGISTRANT under
5 the board's DIRECTOR'S jurisdiction has committed acts which
6 may violate section 12-41-118.

7 (4) The attendance of witnesses and the production of
8 books, patient records, papers, and other pertinent documents
9 at the hearing may be summoned by subpoenas issued by the
10 board DIRECTOR, which shall be served in the manner provided
11 by the Colorado rules of civil procedure for service of
12 subpoenas.

13 (5) Disciplinary proceedings shall be conducted in the
14 manner prescribed by article 4 of title 24, C.R.S., and the
15 hearing and opportunity for review shall be conducted pursuant
16 to article 4 of title 24, C.R.S., by the board DIRECTOR or a
17 hearing officer at the board's DIRECTOR'S discretion.

18 (6) No previously issued license OR REGISTRATION to
19 engage in the practice of physical therapy shall be revoked or
20 suspended until after a hearing conducted pursuant to section
21 24-4-105, C.R.S., except as provided for emergency situations
22 by section 24-4-104, C.R.S. The denial of an application to
23 renew an existing license REGISTRATION shall be treated in all
24 respects as a revocation. If an application for a new license
25 REGISTRATION is denied, the applicant, within sixty days after
26 the giving of notice of such action, may request a hearing as
27 provided in section 24-4-105, C.R.S.

1 (7) Final board action OF THE DIRECTOR may be judicially
2 reviewed ~~as provided in section 24-4-106, C.R.S.~~ BY THE COURT
3 OF APPEALS BY APPROPRIATE PROCEEDINGS UNDER SECTION 24-4-106
4 (11), C.R.S., and judicial proceedings for the enforcement of
5 ~~a--board~~ AN order OF THE DIRECTOR may be instituted in
6 accordance with section 24-4-106, C.R.S.

7 (8) In order to aid the ~~board~~ DIRECTOR in any hearing or
8 investigation instituted pursuant to this section, the ~~board~~
9 DIRECTOR shall have the power to issue subpoenas commanding
10 production of copies of any records containing information
11 relevant to the practice of physical therapy. The person
12 providing such copies shall prepare them from the original
13 record and shall delete from the copy provided pursuant to the
14 subpoena the name of the patient, but he shall identify the
15 patient by a numbered code, to be retained by the custodian of
16 the records from which the copies were made. Upon
17 certification of the custodian that the copies are true and
18 complete except for the patient's name, they shall be deemed
19 authentic, subject to the right to inspect the originals for
20 the limited purpose of ascertaining the accuracy of the
21 copies. No privilege of confidentiality shall exist with
22 respect to such copies, and no liability shall lie against the
23 ~~board~~ DIRECTOR or the custodian for furnishing or using such
24 copies in accordance with this subsection (8).

25 SECTION 21. 12-41-121, Colorado Revised Statutes, 1985
26 Repl. Vol., is amended to read:

27 12-41-121. Immunity in professional review. (1) If a

1 professional review committee is established pursuant to this
2 section to investigate the quality of care being given by a
3 person licensed REGISTERED pursuant to this article, it shall
4 include in its membership at least three persons licensed
5 REGISTERED under this article, but such committee may be
6 authorized to act only by:

7 (a) The board DIRECTOR; or

8 (b) A society or an association of persons licensed
9 REGISTERED pursuant to this article whose membership includes
10 not less than one-third of the persons licensed REGISTERED
11 pursuant to this article residing in this state if the
12 licensee REGISTRANT whose services are the subject of review
13 is a member of such society or association.

14 (2) ~~Any member of the board~~ THE DIRECTOR or a
15 professional review committee authorized by the board DIRECTOR
16 and any witness appearing before the board DIRECTOR or such
17 professional review committee shall be immune from suit in any
18 civil action brought by a licensee REGISTRANT who is the
19 subject of a professional review proceeding if such member or
20 witness acts in good faith within the scope of the function of
21 the board DIRECTOR or such committee, has made a reasonable
22 effort to obtain the facts of the matter as to which he acts,
23 and acts in the reasonable belief that the action taken by him
24 is warranted by the facts. The immunity provided by this
25 subsection (2) shall extend to the members of an authorized
26 professional review committee of a society or an association
27 of persons licensed REGISTERED pursuant to this article and

1 witnesses appearing before such committee if such committee is
2 authorized to act as provided in paragraph (b) of subsection
3 (1) of this section.

4 SECTION 22. 12-41-123 (1) (a), (1) (b), (1) (c), (1)
5 (d), (1) (e), (1) (f), (1) (g), (1) (h), and (1) (i), Colorado
6 Revised Statutes, 1985 Repl. Vol., are amended to read:

7 12-41-123. Exclusions. (1) (a) The practice of
8 physical therapy by students enrolled in an accredited
9 physical therapy education program and performing under the
10 direction and immediate supervision of a physical therapist
11 currently licensed REGISTERED in this state;

12 (b) Any person who has successfully completed an
13 accredited physical therapy program within twelve months prior
14 to filing an application with the board DIRECTOR for a license
15 REGISTRATION to practice physical therapy and who has paid the
16 required fees from practicing physical therapy under the
17 direct and immediate supervision of a licensed REGISTERED
18 physical therapist between the date of the filing of his
19 application and the publication of the results of the next
20 examination;

21 (c) The practice of physical therapy in this state by
22 any legally qualified physical therapist from another state or
23 country whose employment requires him to accompany and care
24 for a patient temporarily residing in this state, but such
25 physical therapist shall not provide physical therapy services
26 for any other individuals nor shall such person represent or
27 hold himself out as a physical therapist licensed REGISTERED

1 to practice in this state;

2 (d) The administration of massage, external baths, or
3 exercise that is not a part of a physical therapy regimen; as
4 ~~set-forth-in-the-rules-and-regulations-of-the-board;~~

5 (e) Any person ~~licensed~~ REGISTERED in this state under
6 any other law from engaging in the practice for which he is
7 ~~licensed~~ REGISTERED;

8 (f) The practice of physical therapy in this state by
9 any legally qualified physical therapist from another state or
10 country when providing services in the absence of a physical
11 therapist ~~licensed~~ REGISTERED in this state, so long as said
12 ~~unlicensed~~ UNREGISTERED physical therapist is acting in
13 accordance with rules and regulations established by the board
14 DIRECTOR. Such ~~unlicensed~~ UNREGISTERED practice shall not be
15 of more than four weeks' duration, and no person shall be
16 authorized by the board DIRECTOR to undertake such practice
17 more than once in any twelve-month period.

18 (g) A ~~licensed~~ REGISTERED physical therapist from
19 utilizing the services of not more than two ~~unlicensed~~
20 UNREGISTERED individuals to assist him in his practice. Such
21 ~~unlicensed~~ UNREGISTERED individuals shall at all times be
22 under the immediate supervision of the said ~~licensee~~
23 REGISTRANT. ~~Upon-application-to-the-board;-a-licensee-may-be~~
24 ~~authorized-to-supervise-more-than--one--unlicensed--individual~~
25 ~~if;---in--the--board's--opinion;--the--situation--is--suitable~~
26 ~~therefor.~~ In any case, the ~~licensee~~ REGISTRANT shall at all
27 times be responsible for the performance of any services by

1 any ~~un~~licensed UNREGISTERED individual under his supervision.

2 (h) The practice of physical therapy in this state by
3 any legally qualified physical therapist from another state or
4 country for the purpose of participating in an educational
5 program of not more than six weeks' duration. Prior notice of
6 intent to so participate shall be given the ~~board~~ DIRECTOR and
7 is subject to ~~its~~ HIS approval. Upon written application by
8 the participant, an extension may be granted by the ~~board~~
9 DIRECTOR.

10 (i) The provision of physical therapy services in this
11 state by any individual from another country who is engaged in
12 a physical therapy related educational program if said program
13 is sponsored by an institution, agency, or individual approved
14 by the ~~board~~ DIRECTOR, if said program is under the direction
15 and supervision of a physical therapist ~~licensed~~ REGISTERED in
16 this state, and if said program does not exceed twelve
17 consecutive months' duration without the specific approval of
18 the ~~board~~ DIRECTOR.

19 SECTION 23. 12-41-124 (1) (a), (1) (b), (1) (c), and (1)
20 (d), Colorado Revised Statutes, 1985 Repl. Vol., are amended
21 to read:

22 12-41-124. Violations. (1) (a) Sell or fraudulently
23 obtain or furnish any physical therapy diploma, ~~license~~
24 CERTIFICATE OF REGISTRATION, renewal of ~~license~~ REGISTRATION,
25 or record, or aid or abet therein;

26 (b) Advertise, represent, or hold himself out in any
27 manner as a physical therapist or to practice physical

1 therapy, without ~~having--a--license--issued~~ BEING REGISTERED
2 under this article;

3 (c) Use in connection with his name any designation
4 tending to imply that he is a physical therapist without
5 ~~having-a-license-issued~~ BEING REGISTERED under this article;

6 (d) Practice physical therapy during the time his
7 ~~license~~ REGISTRATION is suspended or revoked; or

8 SECTION 24. 12-41-125, Colorado Revised Statutes, 1985
9 Repl. Vol., is amended to read:

10 12-41-125. Reports by insurance companies. (1) Each
11 insurance company licensed to do business in this state and
12 engaged in the writing of malpractice insurance for physical
13 therapists, hospitals, physicians, dentists, podiatrists, or
14 any other health care persons or facilities licensed OR
15 REGISTERED in this state shall send to the ~~board~~ DIRECTOR any
16 information relating to any malpractice claim which involves
17 physical therapy or a physical therapist. In addition, the
18 insurance company shall submit supplementary reports regarding
19 the disposition of any such claim as it is disposed. This
20 information shall be submitted to the ~~board~~ DIRECTOR within
21 ninety days of any settlement, judgment, or other disposition
22 of the claim.

23 (2) Regardless of the disposition of any claim, said
24 insurance company shall provide such information as the ~~board~~
25 DIRECTOR finds necessary to conduct ~~its~~ HIS own investigation
26 and hearing.

27 SECTION 25. 12-41-126, Colorado Revised Statutes, 1985

1 Repl. Vol., is amended to read:

2 12-41-126. Injunctive proceedings. The ~~board~~ DIRECTOR
3 may, in the name of the people of the state of Colorado,
4 through the attorney general of the state of Colorado, apply
5 for an injunction in any court of competent jurisdiction to
6 enjoin any person from committing any act declared to be a
7 misdemeanor by this article. If it is established that the
8 defendant has been or is committing an act declared to be a
9 misdemeanor by this article, the court shall enter a decree
10 perpetually enjoining said defendant from further committing
11 such act. In case of violation of any injunction issued under
12 the provisions of this section, the court may try and punish
13 the offender for contempt of court. Such injunction
14 proceedings shall be in addition to, and not in lieu of, all
15 penalties and other remedies provided in this article.

16 SECTION 26. 12-41-127 (1), Colorado Revised Statutes,
17 1985 Repl. Vol., is amended to read:

18 12-41-127. Judicial review. (1) Any person aggrieved
19 by a decision of the ~~state-board-of-physical-therapy~~ DIRECTOR
20 and affected thereby is entitled to judicial review by ~~filing~~
21 ~~in-the-district-court-of-the-county-of-his-residence-or-of-the~~
22 ~~city-and-county-of-Denver,-within-ninety-days-after-the--final~~
23 ~~decision--of--the-board-in-the-particular-case,-an-appropriate~~
24 ~~action--requesting--such--review,---The--court--may--make--any~~
25 ~~interested-person-a-party-to-the-action,---The-court-may-affirm~~
26 ~~the--decision--or--may-reverse-or-modify-it-if-the-substantial~~
27 ~~rights-of-the-appellant-have-been-prejudiced-as--a--result--of~~

1 the--findings--and--decision--of--the--board--being--contrary--to
2 constitutional--rights--or--privileges;--or--in--excess--of--the
3 statutory--authority--or--jurisdiction--of--the--board;--or--by--an
4 error--of--law--made--or--promulgated--upon--unlawful--procedures;--or
5 unsupported--by--substantial--evidence--in--view--of--the--entire
6 record--as--submitted;--or--arbitrary--or--capricious THE COURT OF
7 APPEALS BY APPROPRIATE PROCEEDINGS UNDER SECTION 24-4-106
8 (11), C.R.S.

9 SECTION 27. The introductory portion to 12-41-130 (1)
10 and 12-41-130 (1) (b), (1) (d), (1) (g) (I), (3), and (4),
11 Colorado Revised Statutes, 1985 Repl. Vol., are amended to
12 read:

13 12-41-130. Professional service corporations for the
14 practice of physical therapy. (1) Persons ~~licensed~~
15 REGISTERED to practice physical therapy by the ~~board~~ DIRECTOR
16 may form professional service corporations for the practice of
17 physical therapy under the "Colorado Corporation Code", if
18 such corporations are organized and operated in accordance
19 with the provisions of this section. The articles of
20 incorporation of such corporations shall contain provisions
21 complying with the following requirements:

22 (b) The corporation shall be organized solely for the
23 purposes of conducting the practice of physical therapy only
24 through persons ~~licensed~~ REGISTERED by the ~~board~~ DIRECTOR to
25 practice physical therapy in the state of Colorado.

26 (d) All shareholders of the corporation shall be persons
27 ~~licensed~~ REGISTERED by the ~~board~~ DIRECTOR to practice physical

1 therapy in the state of Colorado, and who at all times own
2 their shares in their own right. They shall be individuals
3 who, except for illness, accident, time spent in the armed
4 services, on vacations, and on leaves of absence not to exceed
5 one year, are actively engaged in the practice of physical
6 therapy in the offices of the corporation.

7 (g) (I) The insurance shall insure the corporation
8 against liability imposed upon the corporation by law for
9 damages resulting from any claim made against the corporation
10 arising out of the performance of professional services for
11 others by those officers and employees of the corporation who
12 are ~~licensed~~ REGISTERED by the ~~board~~ DIRECTOR to practice
13 physical therapy.

14 (3) The corporation shall do nothing which, if done by a
15 person ~~licensed~~ REGISTERED to practice physical therapy in the
16 state of Colorado and employed by it, would violate the
17 standards of professional conduct, as provided for in section
18 12-41-118. Any violation by the corporation of this section
19 shall be grounds for the ~~board~~ DIRECTOR to terminate or
20 suspend its right to practice physical therapy.

21 (4) Nothing in this section shall be deemed to diminish
22 or change the obligation of each person ~~licensed~~ REGISTERED to
23 practice physical therapy employed by the corporation to
24 conduct his practice in accordance with the standards of
25 professional conduct provided for in section 12-41-118. Any
26 person ~~licensed~~ REGISTERED by the ~~board~~ DIRECTOR to practice
27 physical therapy who by act or omission causes the corporation

1 to act or fail to act in a way which violates such standards
2 of professional conduct, including any provision of this
3 section, shall be deemed personally responsible for such act
4 or omission and shall be subject to discipline therefor.

5 SECTION 28. Article 41 of title 12, Colorado Revised
6 Statutes, 1985 Repl. Vol., is amended BY THE ADDITION OF THE
7 FOLLOWING NEW SECTIONS to read:

8 12-41-131. Physical therapists - licensed prior to July
9 1, 1986 - proceedings. (1) Any physical therapist who was
10 licensed by the state board of physical therapy prior to July
11 1, 1986, shall be registered with the director as of July 1,
12 1986, and shall thereafter be subject to the requirements of
13 this article. Any such registration shall expire on the date
14 that it was scheduled to expire under the provisions of
15 section 12-41-116 and shall thereafter be subject to the
16 provisions of that section.

17 (2) Any proceeding under this article which is pending
18 before the state board of physical therapy on July 1, 1986,
19 shall be transferred to and heard by the director on and after
20 said date.

21 12-41-132. Repeal - review of functions. Unless
22 continued by the general assembly, this article is repealed,
23 effective July 1, 1990, and those powers, duties, and
24 functions of the director specified in this article are
25 abolished. The provisions of section 24-34-104 (5) to (12),
26 C.R.S., concerning a windup period, an analysis and
27 evaluation, public hearings, and claims by or against an

1 agency shall apply to the powers, duties, and functions of the
2 director.

3 SECTION 29. 12-36-106 (3) (m), Colorado Revised
4 Statutes, 1985 Repl. Vol., is amended to read:

5 12-36-106. Practice of medicine defined - exemptions
6 from licensing requirements. (3) (m) The practice by persons
7 licensed OR REGISTERED under any law of this state to practice
8 a limited field of the healing arts not specifically
9 designated in this section, under the conditions and
10 limitations defined by such law; or

11 SECTION 30. 13-4-102 (2), Colorado Revised Statutes, as
12 amended, is amended to read:

13 13-4-102. Jurisdiction. (2) The court of appeals shall
14 have initial jurisdiction to review awards or actions of the
15 industrial commission, as provided in articles 53 and 74 of
16 title 8, C.R.S., to review orders of the banking board
17 granting or denying charters for new state banks, as provided
18 in article 2 of title 11, C.R.S., to review all final actions
19 and orders appropriate for judicial review of the state board
20 of registration for professional engineers and professional
21 land surveyors as provided in article 25 of title 12, C.R.S.,
22 to review all final actions and orders appropriate for
23 judicial review of the Colorado podiatry board, as provided in
24 section 12-32-108.7, C.R.S., to review all final actions and
25 orders appropriate for judicial review of the Colorado state
26 board of chiropractic examiners as provided in section
27 12-33-121, C.R.S., to review actions of the state board of

1 medical examiners in refusing to grant or in revoking or
2 suspending a license or in placing the holder thereof on
3 probation, as provided in section 12-36-119 (2), C.R.S., to
4 review actions of the board of dental examiners in refusing to
5 issue or renew or in suspending or revoking a license to
6 practice dentistry or dental hygiene, as provided in section
7 12-35-115, C.R.S., to review all final actions and orders
8 appropriate for judicial review of the board of nursing as
9 provided in articles 38 and 42 of title 12, C.R.S., to review
10 actions of the state board of optometric examiners in refusing
11 to grant or renew, revoking, or suspending a license, issuing
12 a letter of admonition, or placing a licensee on probation or
13 under supervision, as provided by section 12-40-119 (2) (e),
14 C.R.S., TO REVIEW ALL FINAL ACTIONS AND ORDERS APPROPRIATE FOR
15 JUDICIAL REVIEW OF THE DIRECTOR OF THE DIVISION OF
16 REGISTRATIONS AS PROVIDED IN ARTICLE 41 OF TITLE 12, C.R.S.,
17 to review decisions of the board of education in proceedings
18 for the dismissal of a teacher, as provided in section
19 22-63-117, C.R.S., to review final decisions or orders of the
20 Colorado real estate commission, as provided in parts 1, 3, 4,
21 and 6 of article 61 of title 12, C.R.S., and to review final
22 decisions and orders of the Colorado civil rights commission,
23 as provided in parts 3, 4, and 7 of article 34 of title 24,
24 C.R.S.

25 SECTION 31. Repeal. 12-41-101, 12-41-102 (5), 12-41-104
26 (1) (c) and (2), 12-41-105, 12-41-106, 12-41-107, 12-41-108
27 (1) and (2) (a), 12-41-111 (1) (a) and (2) (a), 12-41-113 (4),

1 12-41-118 (1) (a), 12-41-122, 12-41-123 (2), 12-41-129, and
2 12-41-130 (2), Colorado Revised Statutes, 1985 Repl. Vol., and
3 24-1-122 (3) (s) and 24-34-104 (15) (d), Colorado Revised
4 Statutes, 1982 Repl. Vol., as amended, are repealed.

5 SECTION 32. Effective date. This act shall take effect
6 July 1, 1986.

7 SECTION 33. Safety clause. The general assembly hereby
8 finds, determines, and declares that this act is necessary
9 for the immediate preservation of the public peace, health,
10 and safety.

An Act

HOUSE BILL NO. 1087.

BY REPRESENTATIVES Kopel, Armstrong, Bath, Bond, Fish, T. Hernandez, Markert, Minahan, Mutzebaugh, Neale, Owens, Reeser, Tebedo, Trujillo, Webb, Wham, and K. Williams;
also SENATORS Durham, Allard, Lee, and Winkler.

CONCERNING THE SUNRISE AND SUNSET REVIEW COMMITTEE, AND PROVIDING FOR THE CREATION THEREOF AND THE POWERS AND DUTIES THEREFOR, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 3 of title 2, Colorado Revised Statutes, 1980 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 12

SUNRISE AND SUNSET REVIEW COMMITTEE

2-3-1201. Sunrise and sunset review - committee. There shall be established pursuant to the joint rules of the senate and house of representatives a committee for sunrise and sunset review which shall consist of at least six members of the general assembly, to be appointed as prescribed in the joint rule. Such committee shall perform the duties and functions assigned to it relating to the termination of each division, board, or agency pursuant to the provisions of section 24-34-104, C.R.S., and the duties and functions assigned to it relating to the proposed regulation of occupations and professions not presently regulated pursuant to the provisions of section 24-34-104.1, C.R.S.

2-3-1202. Staff assistance. In carrying out its duties under sections 24-34-104 and 24-34-104.1, C.R.S., and this part 12, the committee may request staff assistance from the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

legislative council, created by part 3 of this article.

SECTION 2. 24-34-104 (8) (a), (9) (a), (9) (c), and (9) (d), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

24-34-104. General assembly review of regulatory agencies for termination, continuation, or reestablishment.
(8) (a) The department of regulatory agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency scheduled for termination under this section. The analysis and evaluation shall be completed at least twelve months prior to the date established by this section for termination. In conducting the analysis and evaluation, the department of regulatory agencies shall take into consideration, but not be limited to considering, the factors listed in paragraph (b) of subsection (9) of this section. The department of regulatory agencies shall submit a report, and such supporting materials as may be requested, to the ~~legislative-council~~ SUNRISE AND SUNSET REVIEW COMMITTEE, CREATED BY JOINT RULE OF THE SENATE AND HOUSE OF REPRESENTATIVES, no later than July 1 of the year preceding the date established for termination, and a copy of said report shall be made available to each member of the general assembly.

(9) (a) Prior to the termination, continuation, or reestablishment of any such agency, the ~~legislative-council; sitting-as-an-interim-committee;-or-a-single-special-committee appointed-by-the-legislative-council~~ SUNRISE AND SUNSET REVIEW COMMITTEE, during the interim preceding each regular session, shall hold public hearings to receive testimony from the public, the executive director of the department of regulatory agencies, and the agencies involved, and, in such hearing, each agency shall have the burden of demonstrating a public need for its continued existence and that its regulation is the least restrictive regulation consistent with the public interest.

(c) The ~~legislative-council-or-its-special~~ SUNRISE AND SUNSET REVIEW committee shall report its findings and recommendations to the next regular session of the general assembly, said report to include whether or not each agency should be terminated, continued, or reestablished ~~or~~ AND whether its functions should be revised AND, IF IT DEEMS ADVISABLE, MAY INCLUDE PROPOSED BILLS TO CARRY OUT ITS RECOMMENDATIONS.

(d) Prior to the termination, continuation, reestablishment, or revision of an agency's functions, a committee of reference in each house of the general assembly shall hold a public hearing thereon to consider the reports

provided by the department of regulatory agencies and the ~~legislative--council--or--its--special~~ SUNRISE AND SUNSET REVIEW committee, said hearing to include the factors and testimony set forth in paragraph (b) of this subsection (9).

SECTION 3. Part 1 of article 34 of title 24, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

24-34-104.1. General assembly review of new regulation of occupations and professions. (1) The general assembly finds that regulation should be imposed on an occupation or profession only when necessary for the protection of the public interest. The general assembly further finds that establishing a system for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation will better enable it to evaluate the need for the regulation and to determine the least restrictive regulatory alternative consistent with the public interest.

(2) After October 1, 1985, any professional or occupational group or organization, any individual, or any other interested party which proposes the regulation of any unregulated professional or occupational group shall submit the following information to the sunrise and sunset review committee, created by joint rule of the senate and house of representatives, no later than twelve days after the convening of the regular session of the general assembly:

(a) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(b) A definition of the problem and the reasons why regulation is deemed necessary;

(c) The reasons why certification, registration, licensure, or other type of regulation is being proposed and why that regulatory alternative was chosen;

(d) The benefit to the public that would result from the proposed regulation; and

(e) The cost of the proposed regulation.

(3) No later than twenty days after the convening of the regular session of the general assembly, the sunrise and sunset review committee shall request the department of regulatory agencies to conduct an analysis and evaluation of the proposed regulation. The analysis and evaluation, which shall be based upon the criteria listed in paragraph (b) of

subsection (4) of this section, shall be completed prior to the July 1 following the date the proposal is submitted to the sunrise and sunset review committee. The department of regulatory agencies shall submit a report, and such supporting materials as may be requested, to the sunrise and sunset review committee no later than said July 1.

(4) (a) After receiving the report required by subsection (3) of this section and prior to the next legislative session, the sunrise and sunset review committee shall conduct public hearings to receive testimony from the public, the executive director of the department of regulatory agencies, and the group, organization, or individual who submitted the proposal for regulation to the sunrise and sunset review committee.

(b) In such hearings, the determination as to whether such regulation of an occupation or a profession is needed shall be based upon the following considerations:

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and

(III) Whether the public can be adequately protected by other means in a more cost-effective manner.

(c) The sunrise and sunset review committee shall report its findings and recommendations to the next regular session of the general assembly, said report to include a finding as to whether regulation of each occupation or profession is necessary for the public health and safety and, if regulation is necessary, recommendations as to what is the least restrictive type of regulation consistent with the public interest and whether regulation would result in the creation of a new agency or could be implemented more efficiently through an existing agency.

(5) (a) For the year 1985 only, and for the purpose of permitting evaluation and review of proposals for regulation prior to the 1986 regular session of the general assembly, the following schedule shall be in effect:

(I) Information shall be submitted by interested parties as required by subsection (2) of this section on or after June 1 and before July 1, 1985; except that this subsection (5)

shall not bar such submission on or after October 1, 1985, for purposes of analysis and evaluation in 1986;

(II) Requests by the sunrise and sunset review committee to the department of regulatory agencies for analysis and evaluation as required by subsection (3) of this section, shall be submitted within three days of receipt of information as required by subparagraph (I) of this paragraph (a);

(III) Reports and supporting materials, as requested from the department of regulatory agencies by the sunrise and sunset review committee, as set forth in subsection (3) of this section shall be submitted by October 1, 1985;

(IV) Hearings as set forth in subsection (4) of this section shall be held on or after August 1, 1985, and prior to the convening of the 1986 regular session of the general assembly.

(b) This subsection (5) shall be repealed, effective February 1, 1986.

SECTION 4. Appropriation. There is hereby appropriated, to the department of regulatory agencies for allocation to the office of the executive director, for the fiscal year commencing July 1, 1985, the sum of fourteen thousand eight hundred forty-four dollars (\$14,844), or so much thereof as may be necessary, for implementation of this act. Such sum shall be from indirect cost assessments to the divisions within the department of regulatory agencies.

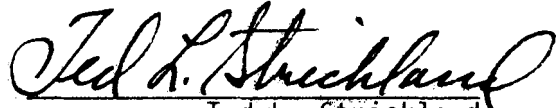
SECTION 5. Effective date. This act shall take effect upon signature of the governor.

SECTION 6. Safety clause. The general assembly hereby

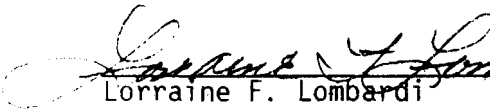
finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



Carl B. Bledsoe
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Ted L. Strickland
PRESIDENT OF
THE SENATE



Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Marjorie L. Nielson
SECRETARY OF
THE SENATE

APPROVED

11 May 23, 1985

8:39 AM



Richard D. Lamm
GOVERNOR OF THE STATE OF COLORADO

HOUSE JOINT RESOLUTION NO. 1009.

BY REPRESENTATIVES Armstrong, Bond, Fish, Herzog, Kopel, Mielke, Moore, Mutzebaugh, Neale, Taylor-Little, Tebedo, and Webb;
also SENATOR Durham.

Be It Resolved by the House of Representatives of the Fifty-fifth General Assembly of the State of Colorado, the Senate concurring herein:

That the Joint Rules of the Senate and House of Representatives are amended BY THE ADDITION OF A NEW JOINT RULE to read:

35. SUNRISE AND SUNSET REVIEW COMMITTEE


- (a) There is hereby established a joint legislative sunrise and sunset review committee composed of three senators appointed by the President of the Senate, two from one major political party and one from the other major political party, and three representatives appointed by the Speaker of the House of Representatives, two from one major political party and one from the other major political party. Members of the committee shall be chosen in each house according to the method prescribed by the rules of that house. The committee shall provide continuing legislative review of boards and agencies subject to termination under sunset provisions and boards and agencies which are seeking regulation under sunrise provisions pursuant to statute.
- (b) Members of the committee shall be appointed for terms of two years, and appointments shall be made no later than seven days after the convening of the first regular session of each General Assembly; except that the members of the first committee shall be appointed no later than seven days after the conclusion of the regular session of the General Assembly in 1985. The Speaker of the House of Representatives shall appoint a chairman for the 1985

and 1986 terms of the first committee appointed. The President of the Senate shall appoint a chairman for a term of two years for the committee appointed after the convening of the first regular session in 1987. On the expiration date of said term, the Speaker of the House of Representatives shall appoint a chairman for a term of two years. Thereafter, the procedure of appointments shall be repeated every two years. Any committee member who ceases to be a member of the General Assembly or who fails to attend seventy-five percent of the meetings of the committee in any six-month period shall be deemed to have resigned from the committee. Vacancies shall be filled for the remainder of the unexpired term in the same manner as for original appointments.

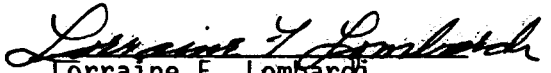
- (c) Members of the committee shall be reimbursed for necessary expenses incurred in the performance of their duties and shall be paid the same per diem compensation as provided by law for members of interim legislative committees for each day of attendance.



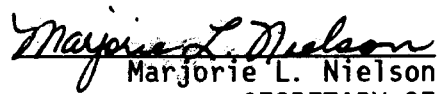
Carl B. Bledsoe
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Ted. L. Strickland
PRESIDENT OF
THE SENATE



Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Marjorie L. Nielson
SECRETARY OF
THE SENATE