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0306 Sunrise and Sunset Recommendations for 1987

Report to the Colorado General Assembly:

**Sunrise and Sunset Recommendations
For 1987**



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

**RESEARCH PUBLICATION NO. 306
December, 1986**

RECOMMENDATIONS FOR 1987

JOINT LEGISLATIVE SUNRISE AND
SUNSET REVIEW COMMITTEE

REPORT TO THE
COLORADO GENERAL ASSEMBLY

Research Publication No. 306
December, 1986

COLORADO GENERAL ASSEMBLY



JOINT LEGISLATIVE SUNRISE AND

SUNSET REVIEW COMMITTEE

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To Members of the Fifty-sixth 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. Two bills and one joint resolution were recommended by the committee. The Legislative Council did not approve one of the proposed bills -- a bill concerning the practice of occupations relating to mental health. This bill is not included in this report, but is on file in the Legislative Council Office or Legislative Drafting Office for review by any interested person. With the exception of this bill, and the joint resolution which was not considered, the Legislative Council approved a motion to forward the committees' recommendations to the Fifty-sixth General Assembly.

Respectfully submitted,

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

JM/pn

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JOINT LEGISLATIVE
SUNRISE AND SUNSET REVIEW COMMITTEE

Members of the Committee

Rep. James Moore, Chairman	Rep. Jerry Kopel
Sen. John Donley	Rep. Bill Owens
Sen. Steve Durham	
Sen. Bob Martinez	

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SUMMARY OF RECOMMENDATIONS

The Joint Legislative Sunrise and Sunset Review Committee was established in 1985 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).

The statutory sunset provisions require that the following boards and offices be reviewed this year:

- The Board of Psychologist Examiners;
- The Board of Social Work Examiners; and
- The Office of Regulatory Reform.

The following occupations requested licensure pursuant to the statutory sunrise provisions and presented proposals for legislation to the committee:

- Acupuncturists;
- Respiratory Therapists; and
- Professional Counselors.

In carrying out the statutory directives, the committee held eight days of meetings during the interim. Findings and recommendations prepared by the Department of Regulatory Agencies (DORA) were reviewed and the committee heard public testimony concerning regulation. The sunrise and sunset reports prepared by DORA are available in the Legislative Council Office. The committee's time was divided between consideration of the need to continue existing boards and agencies subject to sunset termination, and consideration of the need to establish regulation for professions or occupations applying for licensure.

Two bills and one joint resolution are recommended by the committee. Bill 1 recommends continuation of, and certain statutory changes for, the Office of Regulatory Reform.

Another bill was recommended which concerns the regulation of occupations relating to mental health. This bill continues the State Board of Psychologist Examiners and the State Board of Social Work Examiners to perform administrative duties relating to these professions. It also establishes the State Board of Counselor and Therapist Examiners to perform administrative duties related to the regulation of professional counselors and marriage and family therapists. It creates a separate grievance board for disciplinary actions for these four groups, and provides the board with injunctive authority over unlicensed practitioners and certified school

psychologists. This bill was not approved by the Legislative Council at its October 15 meeting, and is not included in this report. A copy of the proposed bill is available in the Office of the Legislative Council.

The sunrise application from the professional counselors was considered during the review of the psychology and social work board. As mentioned above, licensure for professional counselors and marriage and family therapists was incorporated in the bill on occupations relating to mental health.

The committee recommended that proposed legislation for licensure of respiratory therapists and acupuncturists not be approved. However, the committee did approve a joint resolution (Resolution No. 1) recommending that the practice of acupuncture be studied further.

OFFICE OF REGULATORY REFORM

The Office of Regulatory Reform (ORR) was established within the Department of Regulatory Agencies (DORA) on July 1, 1981. The major functions of the office involve services through their Business Information Center, regulatory reform activities and developing recommendations concerning regulatory flexibility in rule-making.

The Business Information Center provides license and permit information to new and expanding businesses. The center developed a business start-up kit which contains forms and information on state requirements (i.e. registering business trademarks, opening accounts for Colorado sales tax, withholding tax, unemployment insurance and workmen's compensation insurance) needed by most new businesses and conducts research on federal, state and local permitting requirements. This information has been provided to over 13,000 individuals in fiscal year 1985-86.

The ORR's activities involve administrative functions, such as reducing paperwork in executive departments, and making recommendations to the legislature on statutory reforms. Eighteen of the twenty-one legislative initiatives that the ORR has requested the legislature to consider have been adopted.

The major function of the ORR is to make recommendations to agencies concerning the elimination or revision of rules that have an adverse effect on small businesses. In fiscal year 1985-86, the ORR reviewed 586 rules from 36 agencies and testified at six rule-making hearings.

According to DORA, the ORR has made an impact on intergovernmental relations and a nationwide impact on regulatory reform. Through its efforts to make government more efficient, the ORR has brought local governments, state agencies, and federal agencies together to work on regulatory problems. The ORR has also provided information to other states, has provided materials to the federal Small Business Administration for regional and national conferences, and has received national publicity for its efforts in regulatory reform.

Committee Recommendation

The committee recommends Bill 1, which provides for the continuation of the Office of Regulatory Reform, based on the reasons set forth below.

- The office operates in the public interest (i.e. the Business Information Center).

- The office is efficient, effective, and is unique among such offices around the country both in its small size and varied responsibilities.
- There is public participation in the decision-making process through public hearings and public representation on the ORR's advisory council and various task forces.
- The office helps to stimulate competition in the market place by making it easier to start a new business through the elimination of unnecessary, restrictive regulations and statutes.

Major provisions of Bill 1, concerning the Office of Regulatory Reform, are set forth below.

- The ORR is continued for four years and will sunset on July 1, 1991, unless continued by action of the legislature. Thus, the office will be reviewed more frequently than other boards in order to maintain a high level of responsiveness.
- The statutory requirement for submitting rules affecting small business is changed. According to DORA, the change from twenty to ten days would allow agencies to submit such rules to the ORR at the same time that they are being submitted to the Secretary of State. This would reduce the time required for agencies to promulgate rules and regulations.
- The ORR is authorized to appoint an advisory committee to assist in the performance of its duties.
- The office is required to notify the Joint Legislative Sunrise and Sunset Review Committee of any proposed rule which the office believes is unnecessary for the administrative functions of a particular agency.
- A statutory requirement that the ORR develop a master application procedure is repealed, but the statutory authority which permits the development of such a procedure is retained. According to DORA, there have not been any requests for such assistance, and if a business project needs help in the future, the office could provide assistance through its general agency coordination role.

OCCUPATIONS RELATING TO MENTAL HEALTH

During the 1985 interim, professional counselors and marriage and family therapists sought legislation to require licensure of those professions. While the scope of the practice of such professions is very similar to the practice of licensed psychologists and social workers, it was pointed out that professional counselors and marriage and family therapists are often restricted in their trade because they are not licensed and regulated. The committee found that the mental health care profession is subject to varying degrees of regulation and that regulation is very limited in the area of psychotherapy. "Psychotherapy" is defined as "the treatment, assessment, or counseling in a professional relationship to assist persons to modify feelings, attitudes, and behaviors which are intellectually, socially, or emotionally maladjustive or ineffectual."

Because the Board of Psychologist Examiners and the Board of Social Work Examiners were both scheduled for sunset review in the 1986 interim, the 1985 committee determined to delay consideration of the sunrise request of the unregulated groups until those requests could be considered in conjunction with the sunset review of the psychology board and the social work board. This would provide the committee with a broader evaluation of the need for regulation of the mental health care profession and the practice of psychotherapy. As a result, the committee spent a substantial portion of this interim examining the broad area of occupational licensing of mental health care professionals.

The Practice of Psychology and Social Work

Testimony by DORA representatives pointed out that the clinical practice of both psychology and social work involves a dependent relationship between the client and the therapist, which can create a situation in which the client is vulnerable to abuse. To insure that persons entering the disciplines of psychology and social work meet a minimum level of competency and continue to practice in a safe manner, DORA recommended the continuation of the Colorado State Board of Psychologist Examiners and the State Board of Social Work Examiners.

The State Board of Psychologist Examiners was created in 1961. The board's authority includes, but is not limited to, examining prospective licensees, renewing, suspending or revoking licenses, disciplining licensees, and conducting hearings. The profession of psychology is now regulated in all 50 states and the District of Columbia.

The State Board of Social Work Examiners was established in 1975. The board is empowered to examine for, deny, approve, revoke, suspend, or review the licensure and the registration of social workers. Testimony by DORA representatives indicated that approximately 37 states regulate social work to some degree.

The Department of Regulatory Agencies recommended a number of statutory changes relevant to the practice of social work and psychology. The recommendations included separating the boards from board staff selection, setting passing scores to reflect minimal competence, requiring exams to be administered at least twice per year, allowing the boards to issue letters of admonition without a hearing, authorizing the boards to use hearing officers and to subpoena records in investigations, and expanding the grounds for disciplinary action. Testimony by DORA representatives revealed that in both the psychology and social work statutes, the Colorado licensure requirements are significantly more restrictive than those of most other states. The department recommended that LSW (licensed social worker) II's be required to have two years of supervised experience rather than five and that psychologists be required to have one rather than two years of supervised experience.

Representatives of the State Board of Psychologist Examiners and the Colorado Psychological Association reviewed the activities of the board and the effectiveness of the Psychology Practice Act. Support was voiced for most of the DORA recommendations relevant to the psychology board. The representatives of the Colorado Psychological Association enumerated the following benefits of licensure:

- consumers are assured that a psychologist has met the minimal training and experience requirements necessary to provide competent service;
- consumers are assured that a practitioner is held to strict ethical and professional standards;
- consumers are protected by statutory requirements that psychologists operate within their area of competence and training; and
- consumers know that through the Board of Psychologist Examiners a psychologist will be held accountable for non-professional behavior.

A representative of the State Board of Social Work Examiners and a number of licensed social workers commented on the effectiveness of the board and the "Social Work Practice Act". The importance of continued licensure for social workers was emphasized. Concern was expressed regarding the adequacy of the board's existing disciplinary authority. The board has authority to discipline a licensee who has been grossly negligent in practice; however, the board cannot discipline for acts constituting substandard care. It was suggested that the "Social Work Practice Act" be amended to allow the board to take disciplinary action on the basis of any act which fails to meet generally accepted standards of social work practice. It was also pointed out that the board does not have the authority to issue subpoenas when conducting investigations. As a result, records of practitioners being investigated cannot be subpoenaed.

The Regulation of Unlicensed Mental Health Professions

Testimony by DORA representatives indicated that there are hundreds of persons practicing psychotherapy who are not licensed or regulated, including marriage and family therapists, pastoral counselors, and professional counselors. Clients of unlicensed practitioners may be subject to abuse, such as sexual exploitation, fraud, breach of confidentiality, incompetent counseling, and misdiagnosis. The department concluded that the current system of regulation of psychotherapists, which does not regulate professional counselors and marriage and family therapists, does not adequately protect the public and is inequitable to unregulated practitioners. To address these concerns, the department submitted proposed legislation which would create a psychotherapy board. Major provisions of the proposed legislation include:

- a mandatory certification for any practitioner who is not licensed or certified;
- the creation of a board to handle disciplinary matters;
- a requirement that each registrant disclose information on his or her qualifications and patients' rights to potential clients;
- a prohibition of any registrant disclosing confidential information about clients; and
- an open complaint process to provide consumers information on registrants about whom consumers are complaining, unless the board has determined that it was in the client's interest to keep the proceedings closed.

Representatives of the Colorado Association for Marriage and Family Therapy (CAMFT) concurred with the DORA findings that there are inequities in the current system of psychotherapy regulation. The CAMFT voiced its objections to the DORA proposal to register psychotherapists and suggested, in lieu of that proposal, that marriage and family therapists be granted licensure. Although CAMFT has rigorous qualifications for education and training for membership, not all individuals claiming to be marriage and family therapists are members of the association. Therefore, any person could claim to be a marriage and family therapist because there are no state educational or training requirements. According to CAMFT representatives, the licensure of their profession is needed to provide protection against client exploitation. A CAMFT spokesman pointed out that licensure would give the public a means of filing grievances for incompetence with the possible result of suspension or revocation of the license. Finally, it was suggested that many insurance companies will not reimburse patients who receive care from unlicensed practitioners.

The Colorado Association for Counseling and Development (CACD), which has approximately 800 members, expressed opposition to the proposal to register psychotherapists and testified in support of licensure for professional counselors. There currently are no restrictions on the offering of counseling services by any individual, regardless of training, experience, or competence. Listed below are some of the reasons why CACD considered licensure necessary for professional counselors.

- Currently, there is no legal definition of counseling services and no entity that has responsibility for regulating the profession. If counselors were licensed, the individual practitioner could be held accountable.
- Licensure would protect the right of the public to be served by qualified counselors and the freedom of choice in selecting counselors' services instead of similar services from other professions.
- Licensure could provide the public with more information for evaluating the qualifications of those providing counselor services.

Representatives of the Colorado Society of School Psychologists (CSSP), which has approximately 270 members, explained to the committee the title restrictions found in the Psychology Practice Act as they apply to certified school psychologists. A specific restriction is found in section 12-43-114 (2), C.R.S., which provides that school psychologists may practice their profession at their place of "institutional employment" or a "private non-profit school", but are prohibited from offering their services under the title of "school psychologists" in any other arena. The CSSP explained its commitment to the goal of licensed private practice for certified school psychologists under their title. Testimony by the CSSP noted that school psychologists are trained primarily as psychologists. Minimal certification requirements for school psychologists include the completion of an approved two-year Masters or Specialist degree from a nationally accredited institution with graduate study in psychology and education plus a supervised internship.

Committee Recommendation

In view of testimony given to the committee on the need for licensure of psychologists, social workers, professional counselors, and marriage and family therapists, the committee recommended a bill to provide for the continuation of the Colorado State Board of Psychologist Examiners and the State Board of Social Work Examiners and to provide for the creation of the State Board of Counselor and Therapist Examiners to test and license professional counselors and marriage and family therapists. The functions of the above listed boards are limited to the administrative duties of determining whether

applicants for licensure have met the threshold educational requirements, giving and grading tests, issuing or denying original licenses and renewals of licenses. A separate grievance board is established composed of four lay persons and one social worker, one psychologist, and either a professional counselor or a marriage and family therapist.

As noted earlier in this report, the bill recommended by the committee was not approved by the Legislative Council at its October 15 meeting and is therefore not included in this report. However, because the committee devoted much of its efforts to the development of this proposed bill, a discussion of the key provisions of the bill is set forth below.

Part 2 - General Provisions

Part 2 of the bill includes the common provisions relevant to psychologists, licensed social workers, and licensed counselors and therapists. Examples of uniform requirements for the aforementioned professions are the following:

- requirements pertaining to fees and license renewals;
- records to be kept by the boards;
- provisions allowing the formation of professional service corporations;
- procedures pertinent to the withholding, denial, or renewal of a license;
- provisions allowing the establishment of privileged communication between a licensee or school psychologist and a patient;
- specific requirements for disclosure of information to clients on the licensee's or non-licensee's qualifications and patients' rights;
- provisions allowing licensure by endorsement if the person's qualifications at the time of application are substantially equivalent to those in Colorado, and
- title protection provisions to licensees rather than practice protection. However, professional counselors who have not reached a specified training period are restricted in their scope of practice.

Part 3 - Psychologists

Statutory provisions relating to psychologists are repealed and reenacted by Part 3 of the bill. Major revisions to statutes governing the Colorado State Board of Psychologist Examiners include the following:

- the board will consist of seven members composed of five licensed psychologists and two public members rather than a nine-member board;
- the requirement of two years postdoctoral supervised experience is reduced to one year; and
- psychiatrists, as well as psychologists, will be permitted to administer and perform psychological tests.

Part 3 will also permit school psychologists to provide treatment outside of school to their in-school clients with the use of their title "school psychologist."

Part 4 - Social Workers

Part 4 is a repeal and reenactment of statutory provisions relating to social workers. Major revisions and additions to the "Social Work Practice Act" include the following:

- any person possessing a valid unsuspended and unrevoked certificate as a licensed social worker has the right to use the title "licensed social worker" and the abbreviation "LSW" (no other person may assume these titles or use these abbreviations to indicate that the person using the same is a licensed social worker);
- registered and licensed social workers who are not LSWII's under the old statute will have one year to meet the requirements for licensure under the new statute;
- licensed social workers shall be required to have two years of post-master's experience under appropriate supervision rather than the existing five-year experience requirement; and
- the mandatory continuing education requirements are repealed.

Part 5 - Counselors and Therapists

Part 5 creates the State Board of Counselor and Therapist Examiners to regulate professional counselors and marriage and family therapists. The seven member board includes three members of the

general public, two professional counselors, and two marriage and family therapists. Requirements for licensure as a professional counselor include the following:

- the applicant shall hold a master's degree from an accredited school or college in professional counseling or its equivalent as determined by the board;
- at least two years of post-master's practice or one year of postdoctoral practice under supervision approved by the board is required for a professional counselor; and
- the applicant has demonstrated professional competence by passing an examination in professional counseling.

Requirements for licensure as a marriage and family therapist include the following:

- the applicant shall hold a Masters degree from an accredited school or college in marriage and family therapy or its equivalent as determined by the board;
- marriage and family therapy applicants are required to have two years of practice in individual and marriage and family therapy, including at least 1,000 hours of face-to-face contact with couples and families for the purpose of assessment and intervention, under board-approved supervision; and
- the applicant has demonstrated professional competence by passing an examination in marriage and family therapy.

Under the proposed State Board of Counselor and Therapist Examiners, no one is "grandfathered" in to the board. All applicants for licensure must take the test to be licensed. The "start-up" examination is prepared and administered by the director of the Division of Registrations within DORA.

Part 6 - State Grievance Board

Concern was expressed by committee members regarding the lack of disciplinary activities of the psychology and social work boards. Since its creation, the psychology board has revoked only one license. The social work board has never revoked or suspended a license since it was first created. In addition, the committee was concerned with the statutory deficiencies relating to the disciplinary authority of the two boards. Therefore, the committee included in the bill a provision that all disciplinary powers be removed from the psychology board and the social work board and placed in the State Grievance Board.

Part 6 of the bill creates a State Grievance Board, similar to that used in the legal profession, to determine discipline and violations for psychologists, social workers, professional counselors, marriage and family therapists, certified school psychologists and unlicensed psychotherapists. The seven-member board, appointed by the Governor, includes four members of the general public, one licensed social worker, one licensed professional counselor or marriage and family therapist, and one licensed psychologist.

The board is granted the authority to:

- deny, revoke, suspend, or refuse to renew any license, to issue a letter of admonition to a licensee, or to place a licensee on probation;
- issue subpoenas to compel the attendance of witnesses and the production of books, client records, and papers; and
- apply for an injunction in any court of competent jurisdiction to enjoin any person including licensees, non-licensed persons who practice psychotherapy, and certified school psychologists from committing any act prohibited by the provisions of the bill.

Other major provisions of Part 6 are set forth below.

- Licensees, psychotherapists, and certified school psychologists are required to report to the board any psychotherapist, licensee or certified school psychologist known or believed to have violated any of the provisions of section 12-43-604 (grounds for discipline) of the bill. This provision is not applicable if such reporting would violate the provision against disclosure of confidential information without client consent as provided in section 12-43-213 (privileged communications) of the bill.
- The Court of Appeals is authorized to judicially review final actions taken by the board.
- Disciplinary proceedings are to be conducted in the manner prescribed by the "State Administrative Procedure Act".
- Unlawful acts for all licensed psychologists and social workers and for anyone who practices psychotherapy, whether they are licensed or unlicensed, are made uniform.
- Sexual activity between a licensee or school psychologist and an emotionally dependent present or former client constitutes a crime.
- Board expenses are to be paid from a surcharge on fees paid by licensees. Such surcharge shall be determined by the director of the Division of Registrations.

ACUPUNCTURE

Representatives of the Acupuncture Association of Colorado (AAC) appeared before the committee seeking licensure of the acupuncture profession. According to the AAC, acupuncture is "the adjustment of body energy by the use of fine needles, heat or electrical devices to treat energetic imbalances for the maintenance of health and the relief of pain and discomfort."

Acupuncture has been practiced in China for over 2,000 years and, while it is considered new in this country, many attest that it is a positive, useful alternative to standard medical practices. It is a treatment that has become increasingly popular over the past ten years.

The AAC noted the following reasons for seeking regulation: 1) to protect the public from abuses from unprofessional practitioners; 2) to insure professional standards of practice for a growing profession; and 3) to allow acupuncture to be practiced legally in Colorado in a manner which allows qualified practitioners to work openly.

The Department of Regulatory Agencies supports licensure of acupuncturists based primarily on the finding that there is clear public harm without regulation. Harm can result from improper acupuncture procedures including puncturing of nerves, tendons, blood vessels or organs and infection can be spread through the use of unsterile needles. In presenting its case for regulation, the AAC had evidence of at least two cases in which patients were harmed by incompetent practitioners in Colorado. In both cases, the practitioner punctured one of the patient's organs. In addition, medical journals discussed cases involving patients being harmed (in one case killed) by vital organs being punctured and infections being spread by the use of unsterile needles.

Other reasons given for the need for licensure of acupuncturists include the following:

- acupuncturists are generally primary health care providers;
- acupuncturists are usually unsupervised and operate in independent clinical settings; and
- regulation would increase competition and consumer choice and access.

Consumer access would be increased by changing the current legal situation in which: 1) only physicians, dentists, veterinarians and some chiropractors are clearly allowed to practice acupuncture; 2) few, if any veterinary, medical, dental and chiropractic schools teach acupuncture; and 3) the vast majority of acupuncturists are not physicians, dentists, veterinarians or chiropractors. For example, of

the approximately 50 members of the AAC, only one physician and one veterinarian are full members and two more medical doctors are associate members.

Presently, in Colorado, acupuncturists can be registered as physician extenders. However, few acupuncturists are able to utilize this arrangement because: 1) few physicians are trained in acupuncture, and are therefore not able to supervise its practice adequately; and 2) few physicians want the liability of another practitioner in a different field.

With licensure, the AAC hopes to create uniform standards and training since acupuncturists may have widely divergent backgrounds. Some acupuncturists are trained at colleges in this country. Others are trained at schools abroad or complete a traditional oriental apprenticeship.

Sterilization of needles. Because of the health risks associated with the use of improperly sterilized needles, the committee also considered establishing Department of Health standards or statutory guidelines requiring competence in the "clean needle" technique for the sterilization of acupuncture needles. Very little information on regulation, and no statutory precedents, were found in Colorado or any other state which addressed this issue. Because of the lack of information in this area, the committee did not recommend standards.

The committee concluded that acupuncture may need to be regulated, but the committee was not prepared to make a decision on licensure after such a short period of consideration. Many questions need to be answered -- such as the type of regulation necessary, the level of training and education that should be required, the formulation of appropriate occupational testing, and proper standards for sterilization of needles. Therefore, the committee proposed that further study be conducted to adequately address the questions which remain unanswered.

Committee Recommendation

Joint Resolution Concerning the Practice of Acupuncture -- Joint Resolution 1

The committee recommends Joint Resolution 1 which provides for the establishment of an independent task force, composed of five legislative members, to make a comprehensive analysis of the practice of acupuncture with respect to possible regulation of the practice, and to report their findings to the Joint Legislative Sunrise and Sunset Review Committee by September 1, 1987, or at such other time as may be determined by the General Assembly. Three members of the task force will be appointed by the Speaker of the House and two members by the Senate President. The task force will terminate upon submission

of the recommendations of the Joint Legislative Sunrise and Sunset Review Committee to the Joint Budget Committee and the General Assembly. Expenses of the task force shall be met through an appropriation to the Department of Regulatory Agencies.

RESPIRATORY THERAPISTS

The Colorado Society for Respiratory Therapy submitted to the committee proposed legislation for licensure for the estimated 1,000 respiratory therapists currently practicing in Colorado. Respiratory care services are provided by respiratory therapists in the hospital or clinical setting and the home care setting. The society defined respiratory care or therapy as a practice that provides "therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions."

Testimony from the respiratory therapists noted that respiratory therapy is a specific discipline which has been an emerging science for 20 years and should be regulated for the following reasons: 1) there is supervision of therapists in hospitals, but additional safeguards would be provided by licensure; 2) therapists practicing in small communities are not regulated; and 3) respiratory therapy in the home setting is more cost effective than hospital care, but may be dangerous due to the lack of supervision or regulation in the home.

According to DORA, the potential for harm is recognizable but actual documented harm to patients in Colorado has not been produced by the society. Hospitals, which employ 80 percent or more of the respiratory therapists, minimize the opportunity for harm to occur by using their own quality control measures. In addition, hospitals generally hire only credentialed therapists (through the National Board for Respiratory Care), and some require additional training programs before therapists practice on patients.

The committee was concerned that increased regulation could make it more difficult to procure health care in rural areas by increasing costs of small home health care organizations or medical equipment supply companies that serve rural communities. The licensure provisions supported by the applicant group would require respiratory health care organizations to employ a medical director and to have medical sponsorship by a consulting physician. DORA noted that other states have been burdened by these requirements, because they often necessitate the acquisition of malpractice insurance and administrative liability coverage (many small businesses are having difficulty meeting these costs).

An additional cost could be created by restricting the practice of respiratory therapy to only licensed practitioners. Home health care organizations and medical equipment supply companies would be required to employ respiratory therapists to assume duties that trained service representatives are able to perform. As noted in the DORA sunrise report, DORA licensure of respiratory therapists would have the effect of requiring the use of respiratory therapists in ways that are inefficient and medically unnecessary.

Committee Recommendation

The committee recommends, based on testimony from the respiratory therapists and the Department of Regulatory Agencies, that the proposed legislation for licensure of respiratory therapists not be approved for the reasons set forth below.

- The majority of respiratory therapists practice in supervised settings. It is not the general consumer who hires respiratory therapists but health care institutions and related businesses which should be able to evaluate the qualifications of therapists.
- Respiratory therapists receive the least supervision in home care situations. However, much of that home care involves teaching patients and families to use equipment. The most complicated respiratory therapy tasks are performed in institutions where respiratory therapists are supervised and are a part of the medical team.
- According to DORA, the national credentialing process is a rigorous screening procedure which identifies for any employer those who have met these requirements. Since credentialing is available to the therapists, title protection would be of little benefit.
- The Colorado Society for Respiratory Therapists did not provide any documentation of harm to patients under the care of unlicensed practitioners.
- The Department of Regulatory Agencies did not recommend licensure noting that the current health care system has provided sufficient quality control over these practitioners and there is little evidence that consumers are being harmed by respiratory care practitioners.

PHARMACY INTERNSHIPS

During the 1986 legislative session, the General Assembly adopted a bill concerning the practice of pharmacy which continued the pharmacy board but included a provision to repeal the pharmacy internship requirement in section 12-22-111, C.R.S., effective July 1, 1987. The 1985 interim Sunrise and Sunset Review Committee had recommended termination of the pharmacy internship since the pharmacy board had not developed internship guidelines requiring substantial pharmacy training. In response to this provision, the pharmacy board attempted to improve the internship guidelines by developing an intern training manual. Representatives of the pharmacy board appeared before the committee to review the training manual and to support continuation of the internship requirement. They explained that the internship provided students with an opportunity to apply their educational experience in a practical work setting.

The committee questioned the quality of the internship training, citing reports that interns were often asked to perform menial tasks not related to the actual practice of pharmacy. It was pointed out during testimony that nonprofessional duties, such as sweeping floors, may be given to interns because these are duties that are required in the daily operation of a pharmacy. These types of duties would probably count towards the student's 1800 hour intern requirement.

Several pharmacists also testified that interns earn considerably less money than practicing pharmacists. Committee members suggested that the internship provided a method for pharmacies to hire employees at a low cost.

The current pharmacy regulations, as published in the Colorado Code of Regulations, prohibit completion of the internship requirement outside of Colorado. Committee members questioned the rationale of this restriction and suggested that the restriction may interfere with the upgrading of quality in the pharmacy profession by excluding qualified people.

Committee Recommendation

Several proposals were presented to modify the internship requirements. However, the committee decided not to recommend a bill which would delete the sunset provision relating to the pharmacy internship requirement.

BILL 1

A BILL FOR AN ACT

1 CONCERNING THE OFFICE OF REGULATORY REFORM, AND PROVIDING FOR
2 THE CONTINUATION OF SAID OFFICE AND RELATING TO THE
3 POWERS AND DUTIES THEREOF.

Bill Summary

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

Increases the time an agency has to submit a proposed rule to the office of regulatory reform. Repeals the requirement that the office of regulatory reform develop a master application procedure, but continues the statutory authority which permits the development of such a procedure. Extends the sunset date for the office of regulatory reform. Authorizes the office of regulatory reform to appoint an advisory committee. Authorizes the office of regulatory reform to inform the joint legislative sunrise and sunset committee of problems with rules the office reviews.

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

5 SECTION 1. 24-4-103.5 (1), Colorado Revised Statutes,
6 1982 Repl. Vol., is amended to read:

7 24-4-103.5. Rule-making affecting small business -
8 procedure. (1) Not less than twenty TEN days before
9 publication of notice of proposed rule-making pursuant to

1 section 24-4-103, the agency making a rule which will affect
2 small businesses shall submit such proposed rule to the office
3 of regulatory reform created in part 9 of article 34 of this
4 title for comment on compliance flexibility for small
5 businesses. In no event will lack of comment from the office
6 of regulatory reform affect the validity of the rule.

7 SECTION 2. 24-34-104 (20), Colorado Revised Statutes,
8 1982 Repl. Vol., as amended, is amended to read:

9 24-34-104. General assembly review of regulatory
10 agencies for termination, continuation, or reestablishment.

11 (20) (a) The following board in the division of registrations
12 shall terminate on July 1, 1991: The state board of veterinary
13 medicine, created by article 64 of title 12, C.R.S.

14 (b) THE FOLLOWING OFFICE IN THE OFFICE OF THE EXECUTIVE
15 DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES SHALL
16 TERMINATE ON JULY 1, 1991: THE OFFICE OF REGULATORY REFORM,
17 CREATED BY PART 9 OF THIS ARTICLE.

18 SECTION 3. 24-34-902 (1), Colorado Revised Statutes,
19 1982 Repl. Vol., is amended to read:

20 24-34-902. Definitions. (1) "Affected agency" means a
21 federal, state, or local agency which requires ISSUES a permit
22 for a business project. ~~and which participates in the master~~
23 ~~application procedure developed by the office pursuant to~~
24 ~~section 24-34-906.~~

25 SECTION 4. 24-34-904 (1), Colorado Revised Statutes,
26 1982 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH
27 to read:

1 24-34-904. Powers and duties. (1) (1) To appoint an
2 advisory committee to assist in the performance of its duties.

3 SECTION 5. 24-34-909, Colorado Revised Statutes, 1982
4 Repl. Vol., is amended to read:

5 24-34-909. Informal conferences. ~~After--the--submission~~
6 ~~of-a-master-application,~~ The office, on its own motion or upon
7 the request of the applicant or any affected agency, may
8 conduct, at any time, an informal conference, in which the
9 affected agencies shall clarify the nature and scope of their
10 interest, to determine the permits which the affected agencies
11 will require and the standards and conditions which need to be
12 met in order to obtain such permits, to provide guidance to
13 the applicant in relation to permit application review
14 processes, and to coordinate agency actions and data
15 compilation or submission regarding permit requirements.

16 SECTION 6. 24-34-913, Colorado Revised Statutes, 1982
17 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
18 read:

19 24-34-913. Rules affecting small business. (4.5) The
20 office shall notify the joint legislative sunrise and sunset
21 committee of any proposed rules which the office believes are
22 unnecessary for the administrative functions of a particular
23 agency.

24 SECTION 7. Repeal. 24-34-104 (16) (b) and 24-34-906,
25 Colorado Revised Statutes, 1982 Repl. Vol., as amended, are
26 repealed.

27 SECTION 8. Safety clause. The general assembly hereby

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

RESOLUTION 1

1 CONCERNING A TASK FORCE ON THE PRACTICE OF ACUPUNCTURE, AND
2 RELATING TO THE POWERS AND DUTIES THEREOF.

3 WHEREAS, The practice of acupuncture is a branch of the
4 healing arts which has become a more integral part of accepted
5 health care programs; and

6 WHEREAS, Acupuncture has been an unregulated practice in
7 the state of Colorado; and

8 WHEREAS, The joint legislative sunrise and sunset review
9 committee has received testimony relating to the possible
10 regulation by the state of Colorado of the practice of
11 acupuncture; and

12 WHEREAS, The committee has determined that further study
13 by an independent task force is necessary in order to
14 adequately address the issues raised by the potential
15 regulation of the practice of acupuncture; now, therefore,

16 Be It Resolved by the Senate of the Fifty-sixth General
17 Assembly of the State of Colorado, the House of
18 Representatives concurring herein:

19 (1) That it is hereby recommended to the general
20 assembly that there be established the task force on the
21 practice of acupuncture. The task force shall consist of five
22 members. Three shall be representatives appointed by the
23 speaker of the House of Representatives and two shall be
24 senators appointed by the president of the Senate.

25 (2) That the purpose of the task force shall be to make
26 a comprehensive analysis of the practice of acupuncture with
27 respect to the possible regulation of the practice of
28 acupuncture and to report any findings and recommendations
29 based on such analysis to the joint legislative sunrise and
30 sunset review committee no later than September 1, 1987, or at
31 such other time as may be determined by the general assembly.

1 (3) That the task force shall meet as often as
2 necessary, may consult with such experts as may be necessary,
3 and may request staff assistance from the Legislative Council
4 and the Department of Regulatory Agencies.

5 (4) That the joint legislative sunrise and sunset review
6 committee shall issue recommendations to the joint budget
7 committee and the general assembly by January 1, 1988,
8 concerning regulation of the practice of acupuncture.

9 (5) That the task force shall terminate upon the
10 submission of the recommendations of the joint legislative
11 sunrise and sunset review committee to the joint budget
12 committee and the general assembly.

13 (6) That the expenses of the task force shall be met
14 through an appropriation to the Department of Regulatory
15 Agencies, directing that such moneys be specifically expended
16 only for the purposes of the task force authorized by this
17 resolution.