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0394 Joint Legislative Sunrise and Sunset Review Committee



Joint Legislative

Sunrise and Sunset

Review Committee

Report to the
COLORADO
GENERAL ASSEMBLY

Colorado Legislative Council
Research Publication No. 394
November 1994

RECOMMENDATIONS FOR 1995

**JOINT LEGISLATIVE SUNRISE AND
SUNSET REVIEW COMMITTEE**

**Report to the
Colorado General Assembly**

**Research Publication No. 394
November 1994**

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November 15, 1994

To Members of the Fifty-Ninth Colorado General Assembly:

Submitted herewith is the final report for the Joint Legislative 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.).

At its meeting on October 11, the Legislative Council reviewed this report. A motion to forward the report and recommendations of the Joint Legislative Sunrise Sunset Committee to the Fifty-Ninth General Assembly was approved.

Respectfully Submitted,

/s/ Representative Paul Schauer
Chairman
Legislative Council

PDS/eg

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**JOINT LEGISLATIVE SUNRISE AND
SUNSET REVIEW COMMITTEE**

Members of the Committee

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Chairman
Representative Russell George
Representative Wayne Knox

Senator Bill Schroeder,
Vice Chairman
Senator Richard Mutzebaugh
Senator Bob Martinez

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JOINT LEGISLATIVE SUNRISE AND SUNSET REVIEW COMMITTEE

Statutory Authority and Responsibility

The Joint Legislative Sunrise and Sunset Review Committee was established in 1985 to perform the functions and duties relating to the termination of specified commissions, divisions, agencies, and citizens' advisory committees (sunset) and to consider proposals for the regulation of occupations and professions not presently regulated (sunrise) (Section 2-3-1201, et seq., C.R.S. and Rule 35 of the Joint Rules of the Senate and House of Representatives). In addition, the Department of Regulatory Agencies (DORA) is required to analyze and evaluate those professions seeking state regulation, and the performance of each division, board, agency or function of an agency that is scheduled for termination (Section 24-34-104, et seq., C.R.S.).

During the 1994 interim, the committee held seven days of meetings. The committee reviewed findings and recommendations prepared by the Office of Policy and Research in DORA. Concerned citizens, interest groups, and representatives of regulatory entities and advisory committees testified before the committee. The committee conducted eleven sunset reviews of existing state agency regulatory functions, six sunrise reviews of applications for state occupational regulation, and five advisory committee reviews. Thirteen bills are recommended for action during the 1995 session.

A. Sunset Reviews of Existing Regulatory Programs - Regulatory Functions

During their sunset analysis of each agency, the committee and DORA are required by statute to consider several factors regarding the need for reviewing the entity. The factors to be considered follow:

1. whether regulation by the agency is necessary to protect the public health, safety, and welfare;
2. whether the conditions which led to the initial regulation have changed;
3. whether other conditions have arisen which would warrant more, less, or the same degree of regulation;
4. if regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms;

5. whether agency rules enhance the public interest and are within the scope of legislative intent;
6. whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;
7. whether an analysis of agency operations indicates that the agency is performing its statutory duties efficiently and effectively;
8. whether the composition of the agency's board or commission adequately represents the public interest;
9. whether the agency encourages public participation in its decision rather than participation only by the people it regulates;
10. whether the agency stimulates or restricts economic competition through regulatory powers;
11. whether complaint, investigation, and disciplinary procedures adequately protect the public and whether disposition of complaints are in the public interest or self-serving to the profession;
12. whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
13. whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest (Section 24-34-104(9)(b), C.R.S.)

DORA prepares a report of its findings and distributes the report to the Joint Legislative Sunrise and Sunset Review Committee no later than July 1 of the year prior to the entity's termination date. The report provides the basis for discussion in public hearings which the Joint Legislative Sunrise and Sunset Review Committee conducts during the legislative interim.

The committee conducted sunset reviews of four state boards, and seven other regulatory programs during the 1994 interim. These were:

Board of Chiropractic Examiners
Board of Medical Examiners
Board of Nursing
Podiatry Board

Psychiatric Technician Licensing Program
Slaughter, Processing and Sale of Meat Animals Act
Controlled Atmosphere Storage of Apples
Farm Products Act and Commodity Handler Act
Measurement Standards Act
Egg Law
Asbestos Certification Program

**Summary of Committee
Activities and Recommendations**

Bill 1 — Board of Medical Examiners

Summary. Bill 1 extends the authority of the Colorado State Board of Medical Examiners to regulate the practice of medicine until July 1, 2010.

The bill:

- allows athletic trainers to screen athletes for physical limitations that may pose a risk of injury under the athletic trainers' exemption from the medical practice act;
- eliminates the procedure for licensing applicants who have completed their academic curriculum at a foreign medical school, known as a degree equivalence program;
- requires applicants for licensure to file their applications a longer period in advance of the required examination;
- empowers the board to grant a probationary license if it determines that the applicant has engaged in unprofessional conduct, is not qualified, or has a license suspended or revoked for disciplinary reasons in another jurisdiction;
- defines actions that constitute unprofessional conduct;
- addresses procedures regarding complaints against physicians;
- provides that review of board actions shall be governed by the state Administrative Procedures Act; and
- eliminates obsolete continuing education provisions.

Background. In its sunset review of the Board of Medical Examiners, DORA recommended that the board continue its regulation of the practice of medicine due to

the inability of the public to independently identify qualified physicians. The DORA report also made recommendations to improve the Medical Practice Act, administration of the article, and the board's effectiveness in protecting the public.

DORA recommendations included:

1. continuation of the State Board of Medical Examiners;
2. establishment of a uniform requirement that all applicants must complete two years of postgraduate training;
3. modification of licensing options for international medical graduates;
4. extension of the time limit by which applications for examination must be filed;
5. deletion of statutory language regarding the frequency with which applicants may take national licensing exams;
6. deletion of the post-graduate registration requirement;
7. inclusion in statute of a comprehensive list of circumstances in which the board may refuse to grant an applicant a license;
8. specification of deceitful conduct when applying for, securing, or seeking reinstatement of hospital privileges as actionable;
9. inclusion in statute of a deferred sentence as grounds for discipline;
10. inclusion in statute of a requirement that a physician refrain from sexual relations with a patient for a period of six months following the termination of their professional relationship;
11. amending the prescriptive power of physicians to prohibit their ability to self-prescribe certain drugs except on an emergency basis;
12. inclusion in statute of the failure to comply with required insurance, financial responsibility, and reporting requirements as unprofessional conduct;
13. imposition of a mandatory obligation upon licensees to respond in writing to a complaint issued by an individual or by the board;
14. defining in Colorado statute the disciplining of a physician's license in another jurisdiction as unprofessional conduct;
15. defining in statute acceptable public communications and advertisements;

16. defining unprofessional conduct in statute as "any act or omission which fails to meet generally accepted standards of medical practice";
17. reclassification and revision of statutory provisions which define substance abuse and other health impairment problems as unprofessional conduct to encourage diversion and rehabilitation;
18. addressing unprofessional conduct and health impairment;
19. elimination of the option of permitting an adviser from the hearings panel to assist an administrative law judge;
20. streamlining the complaint and investigation procedure;
21. requiring peer review committees to report all disciplinary action, findings, and conclusions to the board;
22. granting the board more flexibility in the manner in which the board may impose disciplinary actions;
23. amending the procedural safeguards relative to formal complaints to conform to the requirements of the Administrative Procedures Act;
24. amending the statutes to include the licensee's consent to produce medical records from other treaters for purposes of board ordered mental or physical exams;
25. repealing certain sections of statute;
26. updating procedures for the maintenance of licensee lists and the establishment of renewal fees;
27. relocating statutory language addressing the peer assistance program financing mechanism;
28. requiring the board to publish lists of disciplinary actions;
29. narrowing the scope of practice that addresses the diagnosis of preexisting conditions by qualified athletic trainers;
30. making physician assistants subject to health impairment requirements and able to participate in the peer assistance program; and
31. requiring physicians to disclose their interest in clinics, laboratories, or other health care facilities to which they refer their patients.

Committee discussion centered on intimate relations between physicians and patients, unprofessional conduct of physicians, substance abuse by physicians, and the physician's peer assistance program. The committee also discussed removing athletic trainer exemptions from the Medical Practice Act.

The DORA report made numerous recommendations of which the committee adopted all or portions of 25 recommendations. Specifically, the committee adopted all or portions of recommendations 1, 3-9, 10, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30. (See DORA sunset review of the Board of Medical Examiners for a further explanation of the list of recommendations above.) The committee also adopted, at a subsequent meeting, additional language concerning athletic trainers.

Bill 2 — Board of Chiropractic Examiners

Summary. Bill 2 continues the Board of Chiropractic Examiners and their authority to regulate and license chiropractors through July 1, 2010.

The bill also:

- permits license applicants to complete their required course work by attending a course given by a board-approved provider;
- authorizes the board to issue a letter of admonition or impose conditions on a person's license, in addition to the other disciplinary actions already authorized;
- sets forth grounds for discipline;
- provides that disciplinary action taken against a practitioner's license to practice in another state shall constitute prima facie evidence of a violation in this state and grounds for discipline;
- authorizes the board, in its discretion, to require a chiropractor to take an examination when the chiropractor has been proven incompetent or negligent;
- authorizes the board to require a licensee to take a mental or physical examination if reasonable cause exists to believe he or she is unable to practice with reasonable skill and safety;
- authorizes the board to issue cease and desist orders and establishes requirements for their issuance;
- requires the recipients of letters of admonition to be advised that they have a specified time from the date of mailing of the letter to request that formal

disciplinary proceedings be initiated, (this procedure gives the recipient of the letter the option of adjudicating the propriety of the conduct upon which the letter of admonition is based); and

- requires licensed chiropractors to report to the board any chiropractor known or believed to have violated statutory provisions.

Background. In its sunset review of the Board of Chiropractic Examiners, DORA noted that chiropractic procedures may potentially expose patients to significant risk if performed incompetently, and that patients are generally unable to differentiate between competent and less than competent practitioners. Thus, in order to protect the public, DORA recommended that the regulation and licensing of chiropractors should continue. DORA suggested that the size of the board be increased from five to seven members, with four professional members and three consumer members. DORA's recommendations also addressed the disciplinary scope of the board, including recommendations for a statutory prohibition against sexual contact between chiropractors and patients.

A representative of the Board of Chiropractic Examiners was present to note the board's position on each of the 33 DORA recommendations. The board recommended changes to the DORA recommendations concerning sexual misconduct of chiropractors, strengthening the cease and desist authority of the board, that the board retain its present size of five members, and that closed meetings of the board be permitted for handling complaints and investigations of chiropractors.

A representative of the Colorado Chiropractic Association distributed a letter from the association noting the association's support of recommendations made by the Board of Chiropractic Examiners with some refinements, including the addition of the term "Chiropractic Physician" as an acceptable title, maintenance of continuing education requirements, and the authorization of "thank you" gifts to patients.

A representative of the Colorado Physical Therapy Association discussed the issue of chiropractors' advertising as physical therapists. Further testimony was given to the committee concerning the problem of allowing chiropractors to perform physical therapy for patients and then having these claims unrecognized by insurance companies as compensable. A total of 26 of the 33 DORA recommendations were adopted by the committee. Specifically, the committee adopted recommendations 1, 2, 3, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26-31, 32 and 33. (See DORA sunset review of the Board of Chiropractic Examiners.)

Bill 3 — Board of Nursing, Regulation of Psychiatric Technicians

Summary. Bill 3 extends the regulatory and licensing authority of the State Board of Nursing over psychiatric technicians until July 1, 2010.

The bill also:

- empowers the board to limit the scope of a licensee's practice within specified limitations;
- removes the limitation that a psychiatric technician must practice in a state-run institution if the technician performs certain duties;
- clarifies the grounds for which disciplinary action may be taken against a licensee;
- removes the specific subject areas which must be covered by a licensing examination;
- changes certain educational requirements for accreditation of a psychiatric technician educational program;
- changes the procedure for license renewal; and
- allows mental or physical examinations of licensees to be conducted by a qualified professional, who may or may not be a physician.

Background. In its sunset review of the Psychiatric Technician Licensing Program, DORA noted that the mentally ill and developmentally disabled are at great risk of inadequate care due to the extreme nature of their illnesses and that these patients require specialized care not always available in traditional medical settings. Therefore, DORA found that continuation of the licensing and regulation of psychiatric technicians is warranted. The second most significant recommendation made by DORA was that the practice restriction on licensed psychiatric technicians (LPT) be removed. This change would permit LPTs to practice outside of the state-run institutions, allow them to administer medications outside of a hospital setting, and enhance their employment opportunities. DORA also made recommendations to clarify portions of the statutes.

A representative of the Colorado Board of Nursing was present and stated that the board agreed with the DORA recommendation to remove practice restrictions placed on LPTs. The committee adopted the entirety of the DORA recommendations. (See DORA sunset review of the Psychiatric Technician Licensing Program.) The committee also adopted a motion permitting the Board of Nursing to issue temporary permits to psychiatric technicians.

Bill 4 — Board of Nursing - Regulation of Nursing

Summary. Bill 4 continues the authority of the State Board of Nursing to regulate professional nurses until July 1, 2010.

The bill also:

- requires licensees to carry out nursing functions in accordance with accepted practice standards;
- allows the board to adopt rules authorizing advanced practice nurses to prescribe certain medications;
- changes the professional experience required of certain members of the board;
- creates a new mode of discipline that allows the board to limit the scope of a license held by a licensee;
- changes certain existing grounds for disciplinary action against a licensee and adds new grounds, including improper dispensing of steroids;
- allows physical or mental examinations of licensees to be conducted by a qualified professional, who may or may not be a physician; and
- repeals the nursing peer health assistance diversion program.

Background. In its sunset review of the Board of Nursing, DORA noted that the provision of nursing care involves life endangering situations that require significant knowledge and skill and that incompetence in this area can have serious consequences for patients. Thus, DORA noted that public regulation of the field is justified and recommended continuation of the board and the regulation and licensing of nursing.

One of the more significant departures from current practice recommended by DORA was expansion of the prescriptive authority of nurses in Colorado. Current statute permits some prescriptive authority. DORA recommended greater latitude for advanced nursing practitioners. DORA also recommended that the board composition be altered and that the diversion program for individuals with substance abuse and mental health problems be modified and continued.

A representative of the Board of Nursing was present at the hearing and noted that the board is in agreement with the DORA recommendations concerning the continuation of the diversion program, monthly meetings of the board, technical changes in the Nursing Practice Act and other administrative recommendations. The board is not in agreement with the proposed alteration of the membership of the board and the DORA recommendation concerning prescriptive authority for Advanced

Practice Nurses. A representative of the Advanced Practice Nurses of Colorado Nurses Association testified in favor of expanded prescriptive authority. A representative of the Colorado Medical Society testified that procedures for prescribing medications should be evaluated prior to allowing advanced practice nurses to prescribe medications.

The committee adopted DORA recommendations 1, 1A, 1B, 1C, 1D, 1E, 1H, 1I, and 1J. (See DORA sunset review of the Colorado Board of Nursing). The committee also adopted a motion to change the membership of the nursing board, and a motion to eliminate the peer assistance program. At a later meeting the committee adopted language addressing the prescriptive authority of advanced practice nurses.

Bill 5 — Department of Agriculture, Regulatory Authority Under the "Measurement Standards Act of 1983"

Summary. Bill 5 continues, through July 1, 2010, the licensing functions of the Department of Agriculture under the Measurement Standards Act of 1983.

The bill also:

- adopts standards for evaluation and inspection of weighing and measuring devices, and eliminates the statutory provisions that apply to moisture-testing devices;
- requires that all commercial devices have a certificate of conformance issued by the National Institute of Standards and Technology;
- eliminates, as conditions for qualification as a certified weigher, the requirements that a person be a U.S. citizen and have good moral character;
- grants the commissioner of agriculture authority to deny applications for licensure and certification and to discipline holders of licenses and certificates;
- replaces provisions for licensure of weighing and measuring device salesmen with certification provisions; and
- requires the Commissioner of the Department of Agriculture to establish metrology service fees based on the cost of providing such services.

Background. In its sunset review of the licensing function of the Commissioner of the Department of Agriculture with regard to the Measurement Standards Act, DORA recommended that the licensing of measuring and moisture testing devices and the certification of weighmasters be continued. DORA found that the licensing and certification programs protect consumers and promote fairness in commercial transactions.

DORA also made recommendations for improving the Measurement Standards Act, including the elimination of certain sections of the Act, and recommended that licensing and testing fees that are set in statute be removed from statute and be set by the Agricultural Commission.

The committee adopted DORA recommendations 1, 2, 3, 5, 6, 7A, 7B, and 8 (portions). (See DORA sunset review of the Measurement Standards Act.) Finally, the committee adopted a recommendation to correct statutory references to the National Bureau of Standards to read "National Institute of Standards and Technology."

Bill 6 — Department of Agriculture, Regulation of Eggs

Summary. Bill 6 continues the licensing functions of the Department of Agriculture with respect to egg production, handling, and sale.

The bill:

- amends the definition of "edible egg" to conform to U.S. Department of Agriculture requirements;
- eliminates the licensing of egg breakers;
- excludes the sale of gasoline from the definition of "total annual gross sales," which must be reported to determine the license fee paid by a retailer;
- allows the agricultural commission to specify the temperature at which eggs must be refrigerated;
- deletes certain provisions dealing with invoices, advertisements, sale of eggs, and placement of certificates on cases;
- deletes license requirements for egg candlers, out-of-state wholesalers, and other sellers of eggs in Colorado;
- gives enforcement authority and access to business places and records to the Commissioner of Agriculture; and
- gives the commissioner the authority to impose civil penalties and to deny licensure, place a licensee on probation, or restrict or refuse to renew the license of a person found to be in violation of the article.

Background. In its sunset review of the egg licensing functions of the Department of Agriculture, DORA recommended that the candler's (those who test eggs for quality) license be discontinued but that the wholesaler's and retailer's license be

continued. The DORA study found that government regulation and oversight of egg wholesalers is necessary to protect the public health. DORA also recommended that the licensing fees section of the law be repealed, that the authority to set license fees through regulation be given to the state Agriculture Commission, and that certain other sections of the egg law be repealed and put into regulation. A final recommendation from DORA addressed determination of the classes of retail egg license which must be purchased by an establishment.

The committee adopted DORA recommendations 1, 2, 3A through D, 4, 5, 6, 7, 8, 10, and 11. (See DORA sunset review of the Egg Law.)

Bill 7 — Department of Agriculture, Regulation of Persons Dealing in Agricultural Products

Summary. Bill 7 continues the regulatory and licensing authority of the Department of Agriculture over certain handlers of farm products through July 1, 2010.

The bill also:

- deregulates transporters of farm products;
- amends the grounds for which a licensee or an applicant may be disciplined;
- adds new definitions to the Farm Products Act and the Commodity Warehouse Act;
- requires persons who act as agents for commodity handlers to be licensed;
- addresses bonding requirements under the Farm Products Act and the Commodity Warehouse Act;
- eliminates the licensing requirements for apple storage; and
- allows the Commissioner of Agriculture to adopt rules for the voluntary inspection of apples.

Background. In its sunset review of the licensing function of the Commissioner of the Department of Agriculture in regard to the Farm Products Act and Commodity Handler Act, DORA noted that farm product dealers and commodity handlers are in a position to cause tremendous financial hardship to farm producers and owners of agricultural products. The DORA report also noted that an unregulated free market does not ensure security for producers and owners of agricultural products.

DORA recommended that the Department of Agriculture educate licensees and producers as to the goals of these regulatory programs. DORA also recommended changes in statutory definitions as well as technical amendments to the acts for clarification and conformity. A representative of the Colorado Grain and Feed Association was present at the hearing to discuss an exemption for small feed lots and to express the association's concern regarding discontinuance of the licensing program for transporters. The committee adopted DORA recommendations 1, 2, 4A, 4B, 4C, 4D, 4E, 4G, 5, and 7. (See DORA sunset review of the Farm Products Act and the Commodity Handler Act.)

DORA also presented to the committee the results of its sunset review of the controlled atmosphere storage of apples and recommended that the licensure of persons operating a controlled atmosphere storage facility be discontinued. Other portions of the statute permitting the department to develop rules concerning the controlled atmosphere storage of apples are unaffected by the abolition of licensure. The committee adopted a motion to include provisions regarding apple storage in Bill 7. (See DORA sunset review of the Controlled Atmosphere Storage of Apples.)

Bill 8 — Department of Agriculture, Licensing of the Slaughter, Processing, and Sale of Meat Animals

Summary. Bill 8 continues the licensing function of the Department of Agriculture with respect to the slaughter, processing and sale of meat animals through July 1, 2010.

The bill also:

- removes from statute certain temperature requirements for storage of meat and allows the department to specify temperature requirements by rule;
- authorizes the department to adopt rules concerning the sale of meat, and rules concerning food plan operators; and
- prohibits the sale of adulterated meat and sets out the penalties for such sale.

Background. In its sunset review of the licensing functions of the Colorado Department of Agriculture pursuant to the Slaughter, Processing and Sale of Meat Animals Act, DORA recommended that licensing continue for food plan operators, meat processors, and locker plants. DORA found that the licensing programs are necessary to protect consumers from fraudulent business practices and to ensure that businesses that serve the public use sanitary procedures. Licensing permits the department to investigate applicants and to exclude those who have a history of defrauding consumers, to take action on current instances of fraud, and to regulate businesses that can endanger the public health. DORA recommended that the Agricultural Commission be given the authority to promulgate regulations governing

the sale of meat and other regulated products as well as the authority to set license fees in regulation rather than having these fees set in statute. DORA also recommended the repeal of certain sections of statute and the addition of a definition of adulterated meat.

The committee adopted DORA recommendations 1, 2, 3, and 4. (See DORA sunset review of the Slaughter, Processing and Sale of Meat Animals Act.)

Bill 9 — Colorado Podiatry Board, Regulation of Podiatrists

Summary. Bill 9 extends the regulatory authority of the Colorado Podiatry Board over the practice and licensure of podiatrists to July 1, 2010.

The bill also:

- requires persons to purchase professional liability insurance in specified amounts to lawfully practice podiatry, with some exceptions;
- expands the definition of unprofessional conduct;
- provides that letters of concern shall be confidential;
- eliminates the provisions that empower the Director of the Department of Regulatory Agencies to order the Podiatry Board to investigate a complaint whenever one is received by the Department;
- eliminates current continuing education requirements; and
- empowers the board to establish by rule the requirements for license reinstatement when the applicant has been unlicensed for more than two years.

Background. In its sunset review of the Colorado Podiatry Board, DORA found that the regulation of podiatrists is necessary due to the invasive and potentially injurious techniques which are part of their practice and because consumers will probably not have access to information regarding the competency of the various practitioners. DORA recommended that the regulation of podiatry practice and the licensure of podiatrists continue.

A representative of the Colorado Podiatry Association was present at the hearing on this sunset review and noted the Association's objections to DORA recommendation 2, concerning the addition of language to the statute updating the prohibition against alcohol and drug abuse by podiatrists. He stated the association's support of continuing education requirements. He also requested that if the committee adopted the DORA recommendation concerning a requirement to purchase professional liability insurance, that this requirement be waived for podiatrists who do not perform surgery.

The committee adopted DORA recommendations 1, 3, 4, 5 with amendments, 6, 7, 8 with amendments, 9, and 10. (See DORA sunset review of the Colorado Podiatry Board.)

Bill 10 — Air Quality Control Commission, Asbestos Certification Program

Summary. Bill 10 continues the authority of the Air Quality Control Commission created in the Department of Public Health and Environment to regulate asbestos abatement certification through July 1, 2010.

The bill also:

- allows the commission to adopt rules requiring certain training for persons seeking certification, recertification, or renewal of a certificate;
- requires annual refresher courses;
- reduces the time within which a certificate holder may reinstate a certificate after it expires;
- sets requirements for the renewal of certificates;
- adds the plea of nolo contendere to a violation of asbestos abatement law or regulation in another jurisdiction as a basis for taking disciplinary action against a certificate holder;
- changes the basis for issuance of a letter of admonition from conduct that does not warrant formal action to conduct that does not warrant suspension or revocation; and
- lengthens the waiting period for reapplication after a certificate is revoked.

Background. In its sunset review of the asbestos certification program of the Colorado Department of Public Health and Environment, DORA noted that harm to the public health and to the environment can result from the improper removal of asbestos. DORA recommended that the regulatory program continue and made several recommendations to strengthen the enforcement of the program. These recommendations included a recommendation to increase the authority of the Department of Public Health and Environment "to discipline certificants who have been disciplined in other states if the action would have been actionable under Colorado law." Another recommendation would establish letters of admonition as a formal disciplinary action.

At this sunset hearing, a representative of the Air Pollution Control Division of the Colorado Department of Public Health and Environment was present and stated that

the program is necessary to protect the health of residents of the state. Representatives of the American Lung Association of Colorado, the American Industrial Hygienist Association, and the Colorado Association of Commerce and Industry testified in support of the program. A representative of the Environmental Protection Agency informed the committee that if the state repealed the certification program, the training programs for those removing asbestos in the state would no longer be accredited.

The committee adopted DORA recommendations 1, 2, 3, 4, 5 with amendments, and 6. (See DORA sunset review of the Air Quality Control Commission Asbestos Certification Program.) Motions permitting the department flexibility to require recertification training programs as necessary were adopted. The committee also adopted a motion requiring that an asbestos removal certificate be renewed every three years, and that the person being certified notify the department every year of the completion of an asbestos recertification class. A motion was adopted to permit the department to test persons being recertified only if new regulations have been promulgated or if new information concerning asbestos becomes available.

B. Sunrise Review of Occupations Requesting State Regulation

During the 1994 interim, the committee reviewed six applications for licensure, registration, or other forms of state regulation submitted pursuant to Section 24-34-104.1(2), C.R.S. When considering whether or not to regulate a profession or occupation, the committee must consider the following criteria:

1. whether the practice of the unregulated profession or occupation clearly harms or endangers the health, welfare, or safety of the public;
2. whether the potential for harm is easily recognizable, rather than remote or dependent on tenuous argument;
3. whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence; and
4. whether the public can be adequately protected by other means in a more cost-effective manner.

The committee conducted six sunrise reviews. Two sunrise applications were withdrawn prior to a public hearing.

Summary of Committee Activities and Recommendations

Bill 11 — Audiologists and Hearing Aid Dealers

Summary. Bill 11 requires the registration of audiologists and hearing aid dealers by the director of the Division of Registrations in the Department of Regulatory Agencies.

The bill:

- sets forth the filing requirements for applicants for registration;
- states that a person who registers as an audiologist may also practice as a hearing aid dealer without registering as a hearing aid dealer;
- requires applicants to submit to the director proof that they have obtained a surety bond;
- allocates registration fees to the Division of Registrations Cash Fund;
- provides for future repeal of the registration provisions;
- empowers the director to discipline registered hearing aid dealers and audiologists after giving notice and holding a hearing;
- increases the period during which a hearing aid dealer must refund the purchase price of a hearing aid;
- tolls such rescission period for any period during which a hearing aid dealer takes possession of a hearing aid after its original delivery;
- requires dealers to include in contracts of sale a statement that if a hearing aid is not delivered within a specified period of time after the sale, the purchase price shall be fully refunded; and
- directs that fines collected pursuant to Consumer Protection Act provisions be distributed to state and local law enforcement agencies and to the General Fund.

Background. In their application for regulation of audiologists and hearing aid dispensers, the applicants sought licensure to protect consumers from unqualified practitioners, and to prevent unethical practitioners from operating in Colorado. Clients of such practitioners are at risk of physical, mental, and financial harm.

DORA conducted a sunrise review of this application for regulation and found that some relief to the potential risk of unqualified practitioners is provided by the Colorado Consumer Protection Act but that this protection is generally believed to be insufficient. DORA reported that in other states with licensing programs these programs have not provided sufficient benefit to justify state regulation. DORA recommended an increase in funding to the Office of the Attorney General earmarked for enforcement of the Consumer Protection Act. DORA recommended that the thirty day trial period after a hearing aid purchase should be tolled for any period in which a hearing aid dealer has taken possession of a hearing aid after its original delivery, for example, to have repairs made to the device. DORA also recommended that the Consumer Protection Act be amended to provide that refunds be made for hearing aids that are not delivered in a timely manner, that fines collected in enforcement of the law be divided between the General Fund and local, state and federal law enforcement agencies, and that a registration program for hearing aid dealers be created. Finally, DORA recommended that a bonding requirement or a recovery fund be established for hearing aid dealers.

A representative of the Colorado Academy of Audiology testified that the Consumer Protection Act is not sufficiently protecting the public and that a registration process would be an insufficient response to the problem. He expressed concern with medical misdiagnosis and financial harm. He said that he supports licensure and a minimum standard of practice. Many other persons testified in support of licensure of audiologists and hearing aid dealers.

A representative of the Attorney General's Office of Consumer Protection testified that most of the complaints that are received by the Attorney General are against dispensers of hearing aids who are not audiologists and noted that there are no dedicated funds at the Attorney General's office for fighting this kind of fraud. She noted her support for a bonding requirement. She also stated that many contracts for hearing aid purchases routinely include a waiver of the purchaser's right to have a medical exam prior to the purchase and commented that the federal government is reviewing this waiver.

The committee adopted motions to strengthen the Colorado Consumer Protection Act, to permit a 60 day trial period, and to toll this trial period for any time during which the device is in the possession of the hearing aid dealer. Motions were also adopted to require that revenues from fines collected for violations be divided between the General Fund and local and state law enforcement officials. A final motion passed which adds language to require a registration program and a \$25,000 surety bond for both audiologists and hearing aid dealers.

Additional Sunrise Reviews Conducted

Hemodialysis Technicians

In its sunrise review of hemodialysis technicians DORA found that "there is no evidence to indicate that the training technicians receive is inadequate and thereby places the patient's care at risk." In 1992, DORA recommended that the Colorado Department of Health establish standardized training requirements for hemodialysis technicians and that the General Assembly provide authority to the department to promulgate regulations in this regard. A motion to adopt this 1992 recommendation failed at the August 18, 1994 meeting of the Joint Legislative Sunrise and Sunset Review Committee. Public testimony was provided indicating that federal regulations in this area are being developed.

Regulation of Bed and Breakfasts

In its sunrise review of the bed and breakfast industry DORA recommended against regulation of the industry. The committee adopted a motion against recommending a bill to regulate the industry. There was no public testimony.

Veterinary Technicians

In its sunrise review of veterinary technicians DORA recommended that no licensing or other regulation of veterinary technicians be promulgated. The committee took no action in regard to the regulation of veterinary technicians. There was no public testimony on the DORA sunrise report or recommendation.

Electrologists

In its sunrise review of electrologists, DORA recommended that the General Assembly should not regulate the practice of electrology due to a small danger of harm to the consumer. The committee opted against recommending legislation to regulate electrologists. The committee received testimony both in favor of and against regulation of the industry.

Mortgage Brokers and Bankers

In its sunrise review of mortgage brokers and bankers DORA recommended that a registration requirement be created for the industry. A motion to recommend legislation which would regulate the industry failed at the committee hearing of October 6, 1994. The committee heard significant testimony in favor of regulation.

Code Enforcement Officials and Lead Abatement Industry

The code enforcement officials sunrise application and the lead abatement industry sunrise application were submitted to the committee and were later withdrawn by the applicants prior to a public hearing.

C. Sunset Review of Advisory Committees

Section 2-3-1203, C.R.S., requires the Sunrise Sunset Committee to review advisory committees for their effectiveness. Advisory committees involve private citizens in the daily operations of government, thereby allowing government to utilize the expertise of its citizens. When reviewing information submitted by the advisory committees, the Sunrise Sunset Committee ascertains whether the advisory committees remain useful to government.

The following information submitted by the advisory committee helps the committee determine whether or not to continue the functions of the advisory committee:

- the names of the current members of the advisory committee;
- revenues and expenditures of the advisory committee, including per diem paid to members, and any travel expenses;
- the dates that the advisory committee held meetings and the number of members who attended;
- a listing of all advisory proposals made by the advisory committee, together with an indication as to whether or not each proposal has been acted on, implemented, or enacted into statute; and
- the reasons why the advisory committee should be continued.

If an advisory committee remains useful, the Sunrise Sunset Committee recommends its continued existence no longer be subject to sunset review. If an advisory committee no longer benefits government operations, it is allowed to terminate.

Summary of Committee Activities and Recommendations

Bill 12 — Continuation of Advisory Bodies

Summary. Bill 12 continues the following advisory bodies scheduled for repeal July 1, 1995:

Private Occupational School Policy Advisory Committee;
Pollution Prevention Advisory Board;

Underground Storage Tank Advisory Committee; and
Homeless Prevention Advisory Committee.

Background. During the 1994 interim, the committee conducted sunset reviews of seven advisory committees and advisory boards. These were the:

Underground Storage Tank Advisory Committee;
Private Occupational School Policy Advisory Committee;
Homeless Prevention Advisory Committee;
Health Data Commission's Publications Advisory Committee;
Pollution Prevention Advisory Board;
Telecommunications Advisory Commission; and
Travel Reduction Program Advisory Board.

In the case of the Health Data Commission's Publications Advisory Committee, the Sunrise Sunset Committee recommended that if a bill to continue the Health Data Commission is introduced at the 1995 session of the General Assembly, that this bill also continue the Publications Advisory Committee

D. Additional Committee Reviews

Bill 13 — Concerning the One-Year Extension of Certain Functions Subject to Review by the Joint Legislative Sunrise and Sunset Review Committee

Summary. Bill 13 continues the licensing authority of the Department of Public Health and Environment for persons who manufacture or distribute drug precursors, and continues the regulatory authority of the Coal Mine Board of Examiners for persons required to be certified to work in coal mines. Bill 13 was brought to the committee by DORA and provides additional time for the Sunrise Sunset Committee to consider this licensing and regulatory authority.

DORA Report Concerning Discrimination in Mortgage Lending

DORA was asked to investigate allegations of discrimination in mortgage lending by the Sunrise Sunset Committee in the summer of 1993. DORA presented the results of this study at the Sunrise Sunset committee meeting of October 6, 1994. (The report is on file at the offices of the Legislative Council.) DORA recommended an array of voluntary efforts and actions involving government intervention to address discrimination in mortgage lending. Recommendations involving government intervention include:

- putting commercial banks, savings and loan institutions, credit unions, and non-depository institutions on an equal regulatory basis;

- requiring in statute that depository and non-depository institutions adhere to anti-discrimination and community reinvestment provisions;
- taking advantage of federal disclosure requirements to publicize data showing lending rates to minority and non-minority borrowers;
- enacting community reinvestment provisions as part of the state's interstate banking law;
- giving the Colorado Division of Civil Rights the authority to bring a class action suit against lenders who engage in discriminatory mortgage practices;
- creating a linked deposit program for state funds;
- imposing fair lending practice educational requirements as part of state licensing laws for all regulated professions involved in mortgage lending; and
- requiring that Home Mortgage Disclosure Act reports be filed with the state to close reporting gaps that hinder the efforts of consumers and government agencies to ensure that discrimination is not occurring by lending institutions.

Rather than choosing to recommend legislation from the Sunrise Sunset Committee on this topic, the committee accepted a suggestion from Senator Bob Martinez that this matter be addressed in a non-committee bill.

MATERIALS AVAILABLE

Summary of Meetings

Summaries of the following meetings are available from the Legislative Council staff.

- July 13* - **Advisory Committees** - Travel Reduction Program Advisory Board, Advisory Committee for Underground Storage Tanks, Private Occupation School Policy Advisory Committee, Homeless Prevention Advisory Committee, Publications Advisory Committee to the Health Data Commission, Pollution Prevention Advisory Board, Telecommunications Advisory Commission
Sunset Review - Psychiatric Technician Licensing Program, Sunset Review Colorado Board of Nursing
- July 14* - Sunset Review of the Board of Medical Examiners, Sunset Review of the Board of Chiropractic Examiners
- August 17* - Sunset Review of Slaughtering, Processing, and Sale of Meat Animals, Sunset Review of Controlled Atmosphere Storage of Apples, Sunset Review of Farm Products and Commodity Handlers, Sunset Review of the Measurement Standards Act, Sunset Review of the Egg Law
- August 18* - Sunset Review of the Colorado Podiatry Board, Sunrise Review of Hemodialysis Technicians, Sunrise Review of the Regulation of Bed and Breakfasts
- September 14* - Sunrise Review - Veterinary Technicians, Sunset Review - Colorado Board of Nursing, Prescriptive Authority, Sunset Review - Board of Medical Examiners, Sunrise Review Audiologists and Hearing Aid Dealers
- September 15* - Sunset Review - Asbestos Certification Program, Sunrise Review - Electrologists
- October 6* - Sunrise Review - Electrologists, Discussion of Regulation #9, Report from the Discrimination in Mortgage Lending Task Force, Sunrise Review - Mortgage Brokers/Bankers, Review of Proposed Legislation

DORA Reports

Detailed reports on all sunrise and sunset issues, prepared and submitted by the Office of Policy and Research, DORA, are available at the LCS Library.

Advisory Committee Reports

Information submitted by all advisory committees is available from the Legislative Council staff.

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APPENDIX A
SUNSET TERMINATION SCHEDULE
(Sunset reviews are conducted one year prior to termination)

JULY 1, 1994

The Division of Banking
The Division of Financial Services
The Division of Securities
Board of Registration for Professional
Engineers and Professional Land
Surveyors
Licensing of Commercial Driving
Schools
Licensing of Debt Management
Companies
Licensing of Persons to Sell or Issue
Money Orders
Licensing of Pet Animal or Psittacine
Bird Dealerships
Licensing of Kennels
Licensing of River Outfitters

JULY 1, 1995

Board of Chiropractic Examiners
Board of Medical Examiners
Board of Nursing
Podiatry Board
Licensing of Slaughter, Processing,
and Sale of Meat
Licenses Related to Measurement
Standards
Licensing Relating to Poultry Eggs
Apple Storage Facilities
Commodity Warehouses
Frozen Food Provisioners
Psychiatric Technicians
Asbestos Control Functions of the
Department of Health

JULY 1, 1996

The Functions of the Workers'
Compensation Medical Care
Accreditation Commission and the
Accreditation of Health Care
Providers Under the Workers'
Compensation System
Licensing of Functions Relating to
Fireworks
Permitting for Specific Weather
Modifications Operations
Underground Storage Tank Installers
Board of Dental Examiners
Board of Pharmacy
Colorado Joint Review Process
Motor Clubs
Plant Operators' Certification
Board
Vessel Registration
Snowmobile Registration
Commercial Pesticide Applicators
Qualified Supervisors and Certified
Operators
Board of Real Estate Appraisers

JULY 1, 1997

The Office of Regulatory Reform
The Division of Insurance
The Functions of The Department of
Social Services Relating to the
Expending of Moneys from the
Central Fund for State and
Veterans Nursing Homes created
by section 26-12-106, C.R.S.

JULY 1, 1998

**Board of Examiners of Architects
State Electrical Board
Examining Board of Plumbers
Public Utilities Commission
Utility Consumers' Board
Office of Consumer Council
State Board of Marriage and Family
Therapists Examiners
State Board of Licensed Professional
Counselor Examiners
State Board of Psychologist Examiners
State Board of Social Work Examiners
Notaries Public
The Motor Vehicle Dealer Board and
the Licensing Functions of the
Executive Director of the
Department of Revenue
The Fire Suppression Program of the
Division of Fire Safety
Licensing of Bingo and Games of
Chance
Program for the Administration and
Monitoring of Medications in
Facilities
Exemption from Licensure under the
"Colorado Controlled Substance
Act" pursuant to section 12-22-
304 (5)(e)(I), C.R.S., for
Persons who Administer or
Monitor Medications in
Facilities.
Exemption from Licensure under the
"Colorado Medical Practice Act"
pursuant to section 12-36-106
(3)(o)(I), C.R.S., for Persons
who Administer and Monitor
Medications in Facilities.
Exemption from Licensure under the
"Nurse Practice Act" pursuant
to section 12-38-125 (1)(h)(I),
C.R.S., for Persons who
Administer and Monitor
Medications in Facilities.**

JULY 1, 1999

**Division of Civil Rights
Real Estate Division/
Real Estate Commission
Division of Racing Events
Board of Examiners of Nursing
Home Administrators
Colorado Seed Act**

JULY 1, 2000

**State Board of Accountancy
State Board of Barbers and
Cosmetologists
Collection Agency Board
Licensing of Debt Management
Companies**

JULY 1, 2001

**The State Board of Veterinary
Medicine
Passenger Tramway Safety Board
The Licensing of Slaughterers of
Livestock through the
Department of Agriculture
Licensing of Public Livestock Markets
Physical Therapists**

JULY 1, 2002

**Board of Optometric Examiners
Licensing of Massage Parlors
Registration of Acupuncturist**

JULY 1, 2003

**Certification of Nurse Aides
Outfitters**

JULY 1, 2004

Division of Banking
Division of Financial Services
State Board of Registration for
Professional Engineers and
Professional Land Surveyors
Division of Securities
Licensing of Persons to Sell or Issue
Money Orders
Licensing of River Outfitters

APPENDIX B
BOARDS AND COMMISSIONS REVIEWED BY THE JOINT LEGISLATIVE SUNRISE SUNSET REVIEW
COMMITTEE

(Reviews are conducted one year prior to sunset date)

AGENCY (alphabetical)	YEAR REVIEWED	STATUS AFTER SUNSET REVIEW	NEXT SUNSET DATE IS JULY 1 OF
State Board of Accountancy	1980 1989	modified and continued; modified and continued;	2000
State Board of Examiners of Architects	1980 1987	modified and continued; modified and continued;	1998
Division of Banking	1980 1983 1993	modified and continued; modified and continued; modified and continued;	2004
State Board of Barbers and Cosmetologists (created in 1977 by consolidation of state board of barbers and state board of cosmetology)	1980 1989	modified and continued; modified and continued;	2000
State Board of Chiropractic Examiners	1977 1984	modified and continued; modified and continued;	1995
Division of Civil Rights and Colorado Civil Rights Commission	1978 1988	modified and continued; modified and continued;	1999
Collection Agency Board	1977 1989	modified and continued; modified and continued;	2000
Office of Consumer Counsel	1987 1992	modified and continued; modified and continued;	1998
State Board of Dental Examiners	1978 1985	modified and continued; modified and continued; independent practice for dental hygienists authorized;	1996
State Electrical Board	1977 1980 1987	modified and continued; modified and continued; modified and continued;	1998

NEXT SUNSET DATE IS JULY 1 OF	STATUS AFTER SUNSET REVIEW	YEAR REVIEWED	AGENCY (alphabetical)
2004	modified and continued; modified and continued; modified and continued;	1980 1983 1993	Division of Financial Services (Pre-1989 Division of Savings and Loans)
2002	modified and continued;	1991	Grievance Board (created 1988)
1997	modified and continued; modified and continued; modified and continued;	1977 1982 1991	Colorado Division of Insurance
1998	modified and continued;	1991	State Board of Marriage and Family Therapist Examiners (created 1988)
1995	modified and continued; modified and continued;	1978 1984	State Board of Medical Examiners
1998	modified and continued;	1991	Motor Vehicle Dealer Licensing Board (Dept. of Revenue)
1995	modified and continued; modified and continued;	1978 1984	State Board of Nursing (practical nursing board merged with nursing board, effective 7/1/80)
1999	modified and continued; modified and continued;	1977 1982	Board of Examiners of Nursing Home Administrators
1995	modified and continued; modified and continued;	1978 1984	State Board of Optometric Examiners
2001	modified and continued; modified and continued; modified and continued;	1977 1982 1992	Passenger Tramway Safety
1996	modified and continued; modified and continued;	1978 1985	State Board of Pharmacy
1998	modified and continued; modified and continued;	1980 1987	State Board of Plumbing Examiners
1995	separated from medical board, effective 7/1/85; modified and continued;	1984 1989	Colorado Podiatry Board

AGENCY (alphabetical)	YEAR REVIEWED	STATUS AFTER SUNSET REVIEW	NEXT SUNSET DATE IS JULY 1 OF
State Board of Licensed Professional Counselor Examiners (created 1988)	1991	modified and continued;	1998
State Board of Registration for Professional Engineers and Professional Land Surveyors	1980 1987 1993	modified and continued; modified and continued; modified and continued;	2004
State Board of Psychologist Examiners	1980 1986 1991	modified and continued; board re-established as part of mental health practice law; modified and continued;	1998
Public Utilities Commission	1977 1982 1992	modified and continued; modified and continued; modified and continued;	1998
Division of Racing Events (Dept. of Revenue)	1977 1982 1992	modified and continued; modified and continued; modified and continued;	1999
Board of Real Estate Appraisers (created 1990)			1996
Real Estate Commission	1978 1988	modified and continued; modified and continued;	1999
Office of Regulatory Reform	1982 1986 1990	modified and continued; modified and continued; modified and continued;	1997
Division of Securities	1980 1983 1993	modified and continued; modified and continued; modified and continued;	2004
State Board of Social Work Examiners	1980 1986 1991	modified and continued; board re-established as part of mental health practice law; modified and continued;	1998
State Board of Veterinary Medicine	1978 1990	modified and continued; modified and continued;	2001

**APPENDIX C
BOARDS AND COMMISSIONS ALLOWED TO SUNSET**

AGENCY	YEAR REVIEWED	STATUS AFTER SUNSET REVIEW
Board of Abstractor Examiners	1980	terminated , effective 7/1/82
Colorado Hospital Commission	1979	terminated , effective 3/1/80
Colorado Outfitter's Licensing Board	1987	terminated , licensing functions transferred to the Director of the Division of Registrations
State Athletic Commission of Colorado	1977	terminated , effective 7/1/77
State Board of Examiners of Barbers	1977	consolidated with cosmetology and continued, effective 7/1/77.
State Board of Cosmetology	1977	consolidated with barber board, effective 7/1/77;
State Board of Hearing Aid Dealers	1980 1985	modified and continued; terminated , effective 4/17/86; a thirty-day rescission period for purchases of hearing aids enacted
Life Care Institutions Board of Examiners of Institutions for Aged Persons	1977 1980	name changed to Board of Examiners of Life Care Institutions and continued; terminated ; modified statutory functions transferred to Division of Insurance, effective 5/22/81
CO Manufactured Housing Board (Pre-1988 Mobile Home Licensing Board)	1980 1987 1991	modified and continued; modified and continued, name change; terminated by General Assembly ;
Board of Mortuary Science	1977 1980	modified and continued; terminated , effective 7/1/82;
State Board of Physical Therapy	1978 1985	modified and continued; terminated , effective 7/1/86; licensing functions transferred to the Director of the Division of Registrations
State Board of Practical Nursing	1978	terminated and consolidated with nursing board, effective 7/1/80
Board of Registration for Professional Sanitarians	1977	terminated , effective 7/1/78
State Board of Shorthand Reporters	1977	terminated , effective 7/1/77; standards administered by state court administrator
Commission on the Status of Women	1978	terminated , effective 7/1/80

APPENDIX D
Licensing Functions Eliminated

1. Licensing and regulation of landscape architects (1977);
2. State licensing of beekeepers (1990)
3. Licensing and examination requirements for artificial inseminators (1991)
4. Regulation of motor clubs (1992)
5. State regulation of cemeteries (1992)
6. Nursing home penalty cash fund (1993)
7. Licensing of Commercial Driving Schools (1994)

APPENDIX E

STATE DEPARTMENT FUNCTIONS REVIEWED

The following list shows those licensing functions of state departments, not listed in Appendix B, reviewed by the Joint Legislative Sunrise Sunset Review Committee.

Department of Agriculture

1. Licensing of slaughter, processing, and sale of meat
2. Licenses related to measurement standards
3. Licensing relating to poultry eggs
4. Licensing of operators of apple storage facilities
5. Licensing of dealers, agents and transporters of farm products and commodity warehouses
6. Licensing of butchers and slaughters of livestock, State Board of Stock Inspection Commissioners
7. Registration relating to nurseries
8. Licensing of public livestock markets, State Board of Stock Inspection Commissioners
9. Licensing of commercial pesticide applicators, qualified supervisors and certified operators
10. Colorado Seed Act

Department of Labor and Employment

1. Underground storage tank installers (State Inspector of Oils)
2. The functions of the workers' compensation medical care accreditation commission

Department of Natural Resources

1. Joint Review Process

Division of Parks and Outdoor Recreation

1. Vessel registration
2. Snowmobile registration
3. Licensing of River Outfitters
4. Permitting for specific weather modifications operations

Department of Public Health & Environment

1. Licensing of pet animal or psittacine bird dealerships
2. Licensing of kennels
3. Asbestos control functions
4. Specific regulations promulgated by the Air Quality Control Commission
5. Medication Aide Program
6. Water and waste-water treatment plant operators certification board
7. Administration and monitoring of medications in facilities
8. Exemption from Licensure under the "Colorado Controlled Substance Act" pursuant to section 12-22-304 (5)(e)(I), C.R.S., for Persons who Administer or Monitor Medications in Facilities.

9. Exemption from Licensure under the "Colorado Medical Practice Act" pursuant to section 12-36-106 (3)(o)(I), C.R.S., for Persons who Administer and Monitor Medications in Facilities.
10. Exemption from Licensure under the "Nurse Practice Act" pursuant to section 12-38-125 (1)(h)(I), C.R.S., for Persons who Administer and Monitor Medications in Facilities.

Department of Public Safety

1. Licensing of functions relating to fireworks
2. Fire Suppression Program

Department of Regulatory Agencies

Division of Banking

1. Licensing of debt management companies
2. Licensing of persons to sell or issue money orders

Division of Civil Rights

1. Subpoena powers granted to the Director of the Division of Civil Rights

Division of Insurance

1. Licensing of professional bondsmen

Division of Registrations

1. Outfitter registration
2. Registration of acupuncturist
3. Licensing of physical therapists

State Board of Nursing

1. Psychiatric technicians
2. Certification of nurse aides

Secretary of State

1. Licensing of bingo and games of chance
2. Notaries Public

Department of Social Services

1. The functions of the department of social services relating to the expenditure of moneys from the central fund for state and veterans nursing homes

Local Licensing Authorities

1. Licensing of massage parlors

APPENDIX E STATE DEPARTMENT FUNCTIONS REVIEWED

The following list shows those licensing functions of state departments, not listed in Appendix B, reviewed by the Joint Legislative Sunrise Sunset Review Committee.

Department of Agriculture

1. Licensing of slaughter, processing, and sale of meat
2. Licenses related to measurement standards
3. Licensing relating to poultry eggs
4. Licensing of operators of apple storage facilities
5. Licensing of dealers, agents and transporters of farm products and commodity warehouses
6. Licensing of butchers and slaughters of livestock, State Board of Stock Inspection Commissioners
7. Registration relating to nurseries
8. Licensing of public livestock markets, State Board of Stock Inspection Commissioners
9. Licensing of commercial pesticide applicators, qualified supervisors and certified operators
10. Colorado Seed Act

Department of Labor and Employment

1. Underground storage tank installers (State Inspector of Oils)
2. The functions of the workers' compensation medical care accreditation commission

Department of Natural Resources

1. Joint Review Process

Division of Parks and Outdoor Recreation

1. Vessel registration
2. Snowmobile registration
3. Licensing of River Outfitters
4. Permitting for specific weather modifications operations

Department of Public Health & Environment

1. Licensing of pet animal or psittacine bird dealerships
2. Licensing of kennels
3. Asbestos control functions
4. Specific regulations promulgated by the Air Quality Control Commission
5. Medication Aide Program
6. Water and waste-water treatment plant operators certification board
7. Administration and monitoring of medications in facilities
8. Exemption from Licensure under the "Colorado Controlled Substance Act" pursuant to section 12-22-304 (5)(e)(I), C.R.S., for Persons who Administer or Monitor Medications in Facilities.

9. Exemption from Licensure under the "Colorado Medical Practice Act" pursuant to section 12-36-106 (3)(o)(I), C.R.S., for Persons who Administer and Monitor Medications in Facilities.
10. Exemption from Licensure under the "Nurse Practice Act" pursuant to section 12-38-125 (1)(h)(I), C.R.S., for Persons who Administer and Monitor Medications in Facilities.

Department of Public Safety

1. Licensing of functions relating to fireworks
2. Fire Suppression Program

Department of Regulatory Agencies

Division of Banking

1. Licensing of debt management companies
2. Licensing of persons to sell or issue money orders

Division of Civil Rights

1. Subpoena powers granted to the Director of the Division of Civil Rights

Division of Insurance

1. Licensing of professional bondsmen

Division of Registrations

1. Outfitter registration
2. Registration of acupuncturist
3. Licensing of physical therapists

State Board of Nursing

1. Psychiatric technicians
2. Certification of nurse aides

Secretary of State

1. Licensing of bingo and games of chance
2. Notaries Public

Department of Social Services

1. The functions of the department of social services relating to the expenditure of moneys from the central fund for state and veterans nursing homes

Local Licensing Authorities

1. Licensing of massage parlors

APPENDIX F SUNRISE APPLICATION HISTORY

The following chronological table summarizes the sunrise actions of the Sunrise Sunset Committee from 1985 to November 1994.

<u>Year Reviewed</u> <u>Introduced</u>	<u>Outcome/ Legislation</u>
<u>1985</u>	
1. Dietitians	No licensure recommended
2. Lay Midwives	No licensure recommended
3. Marriage and Family Therapists	No licensure recommended
4. Modeling Agencies	No licensure recommended
5. Private Investigators	No licensure recommended
6. Professional Counselors	No licensure recommended
7. Commercial Health and Fitness Club Managers	No licensure recommended
<u>1986</u>	
1. Acupuncturists	Committee recommended additional study
2. Respiratory Therapists	No licensure recommended
3. Professional Counselors	Legislation recommended but not approved by the Legislative Council
<u>1987</u>	
1. Athletic Trainers	No licensure recommended
2. Community Living Specialists	No licensure recommended (HB 1065, Persons Who Administer Medications, adopted)
3. Hearing Aid Dealers	Application withdrawn
4. Occupational Therapists	No licensure recommended
5. Private Investigators	No licensure recommended
6. Respiratory Therapists	Application withdrawn

Year Reviewed
Introduced

Outcome/ Legislation

1988

- | | |
|--|---|
| 1. Acupuncturists | Licensure legislation enacted (SB 9) |
| 2. Creative Arts Therapists | No licensure recommended |
| 3. Repossessor | No licensure recommended (SB 14, Repossession of Collateral, adopted) |
| 4. Underground Storage Tank Installers | Licensure legislation enacted (HB 1299) |

1989

- | | |
|--|--|
| 1. Asbestos Air Samplers | No licensure recommended |
| 2. Creative Arts Therapists | No licensure recommended |
| 3. Dietitians | No licensure recommended |
| 4. Fire Supressional System Installers | No licensure recommended (SB 90-4, Fire Suppression Program, adopted) |
| 5. Interior Designers | No licensure recommended |
| 6. Landscape Architects | No licensure recommended |
| 7. Locksmiths | No licensure recommended |
| 8. Massage Therapists | No licensure recommended (SB 90-37, Define Massage Therapists, adopted) |
| 9. Pesticide Dealer/Managers | No licensure recommended |
| 10. Real Estate Appraisers | Licensure enacted (SB 90-34) |
| 11. Security Guards | No licensure recommended |
| 12. X-Ray Assistants | No licensure recommended (HB 90-1006, X-ray Assistants Qualifications, Postponed Indefinitely) |

Year Reviewed
Introduced

Outcome/ Legislation

1990

- | | |
|-----------------------------------|---|
| 1. Athletic Trainers | No licensure recommended (HB 91-1127, Athletic Trainers Exception, adopted) |
| 2. Dietitians | No licensure recommended |
| 3. Locksmiths | No licensure recommended |
| 4. Massage Therapists | No licensure recommended |
| 5. Mortuary Science Practitioners | No licensure recommended |
| 6. Occupational Therapists | No licensure recommended |
| 7. Private Security Officers | No licensure recommended (HB 91-1014, Security Guard Criminal Data by CBI, adopted) |

1991

- | | |
|--|--|
| 1. Lay Midwives | Recommendation for licensure failed (HB 92-1010) |
| 2. Financial Planners | Recommendation for licensure failed (HB 92-1005) |
| 3. Hearing Aid Dealers, Speech-Language Pathologists, Audiologists | No licensure recommended (SB 92-83, Code Violation on Sale of Hearing Aids, adopted) |
| 4. Property Managers | No licensure recommended (SB 92-100, Manage Common Interest Communities, adopted) |
| 5. Plumbing Contractors | No licensure recommended (SB 92-98, Term Plumbing Contractor, adopted) |
| 6. Tanning Facilities | No licensure recommended |
| 7. Professional Boxing | No licensure recommended |
| 8. Domestic Violence Counselors | No licensure recommended |
| 9. Sign Language Interpreters | No licensure recommended |

**Year Reviewed
Introduced**

Outcome/ Legislation

1992

- | | |
|---|---|
| 1. Private Utilization Review | No licensure recommended (SB 93-21, Health Care Coverage Entities, adopted) |
| 2. Colorado Seed Sellers | Licensure legislation enacted SB 93-17 |
| 3. Direct-Entry Midwives | Licensure legislation enacted HB 93-1051 |
| 4. Interpreters for the Deaf | Recommendation for licensure failed (HB 93-1044) |
| 5. Radon Service Providers | No licensure recommended (SB 93-58, Procedures for Presence of Radon, Postponed Indefinitely) |
| 6. Hemodialysis Technicians | No licensure recommended |
| 7. Consumer Electronics Service Technicians | No licensure recommended |

1993

- | | |
|-----------------------------------|--|
| 1. Third Party Administrators | Application withdrawn |
| 2. Naturopathic Physicians | Recommendation for licensure failed (HB 94-1022) |
| 3. Dieticians | Title protection legislation enacted HB 94-1102 |
| 4. Respiratory Care Practitioners | Recommendation for certification failed (HB 94-1016) |

1994

- | | |
|---|--------------------------|
| 1. Audiologists and Hearing Aid Dealers | Registration Recommended |
| 2. Hemodialysis Technicians | No licensure recommended |
| 3. Bed and Breakfasts | No licensure recommended |
| 4. Veterinary Technicians | No licensure recommended |
| 5. Electrologists | No licensure recommended |
| 6. Mortgage Brokers and Bankers | No licensure recommended |

7. Code Enforcement Officials

Application withdrawn

8. Lead Abatement Industry

Application withdrawn

Joint Legislative Sunrise and Sunset Review Committee
November 17, 1994

A BILL FOR AN ACT

101 CONCERNING THE REGULATORY AUTHORITY OF THE BOARD OF
102 MEDICAL EXAMINERS.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.
Extends the authority of the Colorado state board of medical examiners ("board").

Eliminates board members' immunity from criminal actions based on a disciplinary proceeding or other official act performed in good faith, while retaining members' civil immunity in such cases.

Allows athletic trainers to screen athletes for physical limitations that may pose a risk of injury under the athletic trainers' exemption from the medical practice act.

Eliminates the procedure for licensing applicants who have completed their academic curriculum at a foreign medical school, known as a degree equivalence program. Requires applicants for licensure to file their applications a longer period in advance of the required examination. Eliminates the special procedure for applicants who fail their second and subsequent examinations.

Empowers the board to grant a probationary license if it determines that the applicant has engaged in unprofessional conduct, is not qualified, or has had a license suspended or revoked for disciplinary reasons in another jurisdiction. Defines "disciplinary reasons" for this purpose. States that if an application is denied or granted subject to probation, the applicant may seek review pursuant to the state administrative procedure act unless the applicant elects to accept the license subject to probation.

Defines the following actions as unprofessional conduct: using fraud in applying for hospital privileges, a license to practice in any state, or professional liability insurance coverage; being convicted of an offense of mortal turpitude or a crime that

would constitute a violation of the medical practice act; engaging in a sexual act with a patient during a physician's professional relationship with the patient or for a specified period thereafter; failing to establish financial responsibility or respond to a written complaint; and using deceptive advertising.

Eliminates the provision allowing a hearings panel to appoint an advisor to assist an administrative law judge. Increases the period during which a physician must respond to a written complaint. Empowers an inquiry panel to conduct a further investigation upon receiving a physician's answer to such a complaint. Requires that disciplinary actions taken as a result of a professional review proceeding be reported to the board. Eliminates the requirement that the board send a letter of admonition to any physician who commits subsequent actions of a similar nature. Eliminates the formal complaint procedure and replaces it with a requirement that the handling of complaints conform to the state administrative procedure act. Eliminates the procedure by which a complainant may seek review of an order dismissing a complaint.

Eliminates private or public censure as a means of discipline. Requires hearings panels to consider sanctions needed to protect the public before they consider measures to rehabilitate the licensee. Subjects physician assistants to mental and physical examination provisions. Eliminates the authority of the department of regulatory agencies to direct the board to investigate a licensee about whom the department has received a complaint.

Provides that review of board actions shall be governed by the state administrative procedure act. Eliminates obsolete continuing education provisions. Directs the board to determine whether applicants for renewal or reinstatement of medical licenses have complied with statutory and professional requirements, including continued competence. Makes the physicians' peer health assistance program accessible to physician assistants. Eliminates provisions concerning advertisements by physicians and instead makes advertising in a misleading, deceptive, or false manner an act of unprofessional conduct.

Requires that professional review committees forward a copy of their recommendations to the board.

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

2 SECTION 1. 12-36-103 (4), (5), and (6) (b), Colorado

3 Revised Statutes, 1991 Repl. Vol., are amended to read:

4 12-36-103. State board of medical examiners -

5 immunity - subject to termination - repeal of article. (4) The

6 board shall elect biennially from its members a president, a

1 vice-president, and a secretary. Regular meetings of the board or
 2 either panel, established pursuant to section 12-36-118, shall be
 3 held as scheduled by the board in the state of Colorado. Special
 4 meetings of the board may be called by the president or by three
 5 members of the board at any time on three days' prior notice by
 6 mail or, in case of emergency, on twenty-four hours' notice by
 7 telephone or ~~telegraph~~ ELECTRONIC ACCESS, any such meetings to
 8 be held at the place designated in the call therefor. Except as
 9 provided in section 12-36-118 (6), a majority of the board shall
 10 constitute a quorum for the transaction of all business. All
 11 meetings of the board shall be deemed to have been duly called
 12 and regularly held, and all decisions, resolutions, and proceedings
 13 of the board shall be deemed to have been duly authorized, unless
 14 the contrary be proved.

15 ~~(5) Members of the board~~ A BOARD MEMBER shall be
 16 immune from ~~suit in any CIVIL action civil or criminal,~~ based
 17 upon ~~any A disciplinary proceedings or other official acts~~
 18 ~~performed~~ PROCEEDING OR OTHER OFFICIAL ACT THAT SUCH
 19 BOARD MEMBER PERFORMS in good faith. ~~as members of such~~
 20 ~~board.~~

21 (6) (b) This article is repealed, effective ~~July 1, 1995~~
 22 JULY 1, 2010.

23 SECTION 2. 12-36-106 (3.5) (d) (IV), Colorado
 24 Revised Statutes, 1991 Repl. Vol., is amended to read:

25 12-36-106. Practice of medicine defined - exemptions
 26 from licensing requirements. (3.5) (d) For purposes of this
 27 subsection (3.5), "athletic trainer scope of practice" means the

1 performance of all or some of the following functions by a
 2 qualified athletic trainer:

3 (IV) ~~The supervision of maintenance of athletic~~
 4 ~~equipment to assure safety~~ THE ASSESSMENT, DURING A
 5 SCREENING PROCESS, OF PHYSICAL LIMITATIONS, INCLUDING THOSE
 6 PREVIOUSLY DIAGNOSED BY A PHYSICIAN, WHICH MAY POSE A RISK
 7 OF INJURY TO AN ATHLETE;

8 SECTION 3. 12-36-107 (2), Colorado Revised Statutes,
 9 1991 Repl. Vol., is amended to read:

10 12-36-107. Qualifications for licensure. (2) No person
 11 shall be granted a license to practice medicine as provided by
 12 subsection (1) of this section unless he SUCH PERSON:

- 13 (a) Is at least twenty-one years of age;
- 14 (b) Is a graduate of an approved medical college, as
 15 defined in section 12-36-108; and

16 (c) Has completed EITHER an approved internship of at
 17 least one year, as defined in section 12-36-109, or ~~has completed~~
 18 at least one year of postgraduate training approved by the board.
 19 ~~The board may grant a license subject to terms of probation or~~
 20 ~~may refuse to grant a license to any such person if it has~~
 21 ~~reasonable grounds to believe he has committed any of the acts or~~
 22 ~~offenses defined in this article as unprofessional conduct.~~

23 SECTION 4. 12-36-107.6 (2). Colorado Revised
 24 Statutes, 1991 Repl. Vol., is repealed as follows:

25 12-36-107.6. Foreign medical school graduates.
 26 (2) ~~An applicant who has completed the academic curriculum in~~
 27 ~~residence at a foreign medical school, but who did not complete~~

1 ~~an internship or social service, and who thereafter has completed~~
 2 ~~a year of supervised clinical training at a hospital in the United~~
 3 ~~States, which training was affiliated with a medical school~~
 4 ~~offering a fifth pathway program, shall be deemed to have~~
 5 ~~attained the equivalent of the degree of doctor of medicine at a~~
 6 ~~United States medical school approved by the liaison committee~~
 7 ~~for medical education and, for purposes of the application for~~
 8 ~~licensure, such applicant shall not be considered a graduate of a~~
 9 ~~foreign medical school. "Fifth pathway program" means the~~
 10 ~~program which was in effect in Colorado pursuant to the~~
 11 ~~provisions of section 12-36-107.5 (1), as such section existed~~
 12 ~~prior to its repeal effective July 1, 1988, or a similar~~
 13 ~~statutorily based program of another state.~~

14 **SECTION 5.** 12-36-108, Colorado Revised Statutes,
 15 1991 Repl. Vol., is amended to read:

16 **12-36-108. Approved medical college.** An approved
 17 medical college is a college which conforms to the minimum
 18 educational standards for medical colleges ~~or for osteopathic~~
 19 ~~colleges~~ as established ~~respectively~~ by the ~~American medical~~
 20 ~~association~~ LIAISON COMMITTEE ON MEDICAL EDUCATION OR ANY
 21 SUCCESSOR ORGANIZATION THAT IS THE OFFICIAL ACCREDITING
 22 BODY OF EDUCATIONAL PROGRAMS LEADING TO THE DEGREE OF
 23 DOCTOR OF MEDICINE AND RECOGNIZED FOR SUCH PURPOSE BY
 24 THE FEDERAL DEPARTMENT OF EDUCATION AND THE COUNCIL ON
 25 POSTSECONDARY ACCREDITATION, OR FOR OSTEOPATHIC COLLEGES
 26 AS ESTABLISHED ~~and~~ by the American osteopathic association, or
 27 a college which is approved by either of ~~said associations~~ SUCH

1 ORGANIZATIONS. The board shall have the authority, upon its
 2 own investigation of the educational standards and facilities
 3 thereof, to approve any other medical college.

4 **SECTION 6.** 12-36-109, Colorado Revised Statutes,
 5 1991 Repl. Vol., is amended to read:

6 **12-36-109. Approved internship.** (1) An approved
 7 internship is an internship:

8 (a) Of at least one year in a hospital conforming to the
 9 minimum standards for intern training established by the
 10 ~~American medical association~~ ACCREDITATION COUNCIL FOR
 11 GRADUATE MEDICAL EDUCATION OR ANY SUCCESSOR
 12 ORGANIZATION, or by the American osteopathic association; or

13 (b) ~~an internship~~ Approved by either of ~~said associations~~
 14 SUCH ORGANIZATIONS.

15 (2) The board has the authority, upon its own
 16 investigation, to approve any other internship.

17 **SECTION 7.** 12-36-110, Colorado Revised Statutes,
 18 1991 Repl. Vol., is amended to read:

19 **12-36-110. Approved residency.** (1) An approved
 20 residency is a residency:

21 (a) ~~PERFORMED~~ in a hospital conforming to the
 22 minimum standards for residency training established by the
 23 ~~American medical association~~ ACCREDITATION COUNCIL FOR
 24 GRADUATE MEDICAL EDUCATION OR ANY SUCCESSOR
 25 ORGANIZATION, or by the American osteopathic association; or

26 (b) ~~A residency~~ Approved by either of ~~said associations~~
 27 SUCH ORGANIZATIONS.

1 (2) The board has the authority, upon its own
2 investigation, to approve any other residency.

3 SECTION 8. 12-36-111 (2), Colorado Revised Statutes,
4 1991 Repl. Vol., is amended to read:

5 12-36-111. Applications for license. (2) (a) An
6 applicant for a license on the basis of an examination by the board
7 shall file his AN application at least ~~thirty~~ NINETY days prior to the
8 announced date of the examination.

9 (b) If ~~such~~ AN applicant is not A GRADUATE OF AN
10 APPROVED MEDICAL COLLEGE at the time of filing his AN
11 application, ~~a graduate of, but is then in attendance at, an~~
12 ~~approved medical college, he~~ SUCH APPLICANT shall submit to the
13 board, in lieu of ~~a diploma or other~~ required evidence of
14 graduation, a written statement from the dean or other authorized
15 representative of ~~such~~ THE approved medical college IN WHICH
16 SUCH APPLICANT IS IN ATTENDANCE STATING that the applicant
17 will receive his A diploma at the end of the then current school
18 term; ~~but in any such case, the~~ EXCEPT THAT THE applicant shall
19 not be permitted to take the examination until ~~he has filed with the~~
20 ~~board his diploma or other~~ acceptable evidence of graduation from
21 ~~such approved medical college~~ HAS BEEN FILED WITH THE BOARD
22 and THE APPLICANT has complied with the requirements of
23 subsection (1) of this section. ~~and~~ No license shall be issued to
24 him AN APPLICANT until ~~he has satisfied~~ the board IS SATISFIED
25 that ~~he has completed~~ SUCH APPLICANT HAS COMPLETED at least
26 one year of approved internship or approved postgraduate training
27 and has otherwise met the requirements for the issuance of a

1 license under this article.

2 SECTION 9. 12-36-112, Colorado Revised Statutes,
3 1991 Repl. Vol., as amended, is repealed as follows:

4 12-36-112. License fee. ~~An applicant for a license to~~
5 ~~practice medicine shall pay a fee to be determined and collected~~
6 ~~pursuant to section 12-36-123.5 (2) (b) or established pursuant to~~
7 ~~section 24-34-105, C.R.S.~~

8 SECTION 10. 12-36-113 (2), Colorado Revised
9 Statutes, 1991 Repl. Vol., is amended to read:

10 12-36-113. Examinations. (2) The board shall be
11 responsible for determining the passing score to reflect a standard
12 of minimum competency for the practice of medicine. If an
13 applicant fails to meet such minimum passing score, ~~he~~ SUCH
14 APPLICANT may be reexamined at any subsequent scheduled
15 examination upon paying a fee to be determined and collected
16 pursuant to section 24-34-105, C.R.S. ~~If he fails in a second~~
17 ~~examination, a further examination may be taken, but not less~~
18 ~~than one year after the date of the preceding examination, and he~~
19 ~~shall be required to file a new application and pay a fee to be~~
20 ~~determined and collected pursuant to section 24-34-105, C.R.S.~~
21 ~~The board may determine by regulation whether any second or~~
22 ~~further examination shall be on all subjects included in the~~
23 ~~scheduled examination. No fees remitted with an application shall~~
24 ~~be refunded, but, in case an applicant is prevented through no~~
25 ~~fault of his own from taking the examination applied for, he may~~
26 ~~take a subsequently scheduled examination within one year~~
27 ~~without payment of another fee or submission of a new~~

1 ~~application.~~

2 SECTION 11. 12-36-116, Colorado Revised Statutes,
3 1991 Repl. Vol., is amended to read:

4 12-36-116. Refusal of license - issuance subject to
5 probation. (1) THE BOARD MAY REFRAIN FROM ISSUING A
6 LICENSE OR MAY GRANT A LICENSE SUBJECT TO TERMS OF
7 PROBATION if the board determines that an applicant for a license
8 to practice medicine:

9 (a) Does not possess the qualifications required by this
10 article; ~~or that he;~~

11 (b) Has ~~done any of the acts~~ ENGAGED IN
12 UNPROFESSIONAL CONDUCT, AS defined in section 12-36-117; ~~or~~
13 ~~as unprofessional conduct, it may refrain from issuing a license~~
14 ~~and the applicant may proceed as provided in section 24-4-104~~
15 ~~(9), C.R.S.;~~ OR

16 (c) HAS BEEN DISCIPLINED IN ANOTHER STATE OR
17 FOREIGN JURISDICTION WITH RESPECT TO HIS OR HER LICENSE TO
18 PRACTICE MEDICINE.

19 (2) FOR PURPOSES OF THIS SECTION, "DISCIPLINE" MEANS
20 ANY MATTER WHICH MUST BE REPORTED PURSUANT TO 45 CFR
21 SEC. 60.8 AND IS SUBSTANTIALLY SIMILAR TO UNPROFESSIONAL
22 CONDUCT AS DEFINED IN SECTION 12-36-117.

23 (3) AN APPLICANT WHOSE APPLICATION IS DENIED OR
24 WHOSE LICENSE IS GRANTED SUBJECT TO TERMS OF PROBATION
25 MAY SEEK REVIEW PURSUANT TO SECTION 24-4-104 (9), C.R.S.;

26 EXCEPT THAT, IF AN APPLICANT ACCEPTS A LICENSE THAT IS
27 SUBJECT TO TERMS OF PROBATION, SUCH ACCEPTANCE SHALL BE

1 IN LIEU OF AND NOT IN ADDITION TO THE REMEDIES SET FORTH IN
2 SECTION 24-4-104 (9), C.R.S.

3 SECTION 12. 12-36-117 (1) (a), (1) (f), (1) (h), (1) (p),
4 (1) (r), (1) (aa), (1) (ee), and (2), Colorado Revised Statutes,
5 1991 Repl. Vol., are amended, and the said 12-36-117 (1), as
6 amended, is further amended BY THE ADDITION OF THE
7 FOLLOWING NEW PARAGRAPHS. to read:

8 12-36-117. Unprofessional conduct.

9 (1) "Unprofessional conduct" as used in this article means:

10 (a) Resorting to fraud, misrepresentation, or deception
11 in applying for, securing, renewing, or seeking reinstatement of
12 a license TO PRACTICE MEDICINE IN THIS STATE OR ANY OTHER
13 STATE, IN APPLYING FOR PROFESSIONAL LIABILITY COVERAGE,
14 REQUIRED PURSUANT TO SECTION 13-64-301, C.R.S., OR
15 PRIVILEGES AT A HOSPITAL, or in taking the examination provided
16 for in this article;

17 (f) ANY conviction of AN OFFENSE OF MORAL
18 TURPITUDE, a felony, ~~or pleading guilty or nolo contendere to a~~
19 ~~felony~~ OR A CRIME THAT WOULD CONSTITUTE A VIOLATION OF THIS
20 ARTICLE. FOR PURPOSES OF THIS PARAGRAPH (f), "CONVICTION"
21 INCLUDES THE ENTRY OF A PLEA OF GUILTY OR NOLO CONTENDERE
22 OR THE IMPOSITION OF A DEFERRED SENTENCE.

23 (h) ANY conviction of violation of any federal or state
24 law regulating the possession, distribution, or use of any
25 controlled substance, as defined in section 12-22-303 (7), and, in
26 determining if a license should be denied, revoked, or suspended,
27 or if the licensee should be placed on probation, the board shall

1 be governed by ~~the provisions of~~ section 24-5-101, C.R.S. FOR
2 PURPOSES OF THIS PARAGRAPH (h), "CONVICTION" INCLUDES THE
3 ENTRY OF A PLEA OF GUILTY OR NOLO CONTENDERE OR THE
4 ISSUANCE OF A DEFERRED SENTENCE.

5 (p) ~~An act or omission constituting grossly negligent~~
6 ~~medical practice or two or more acts or omissions which fail~~ ANY
7 ACT OR OMISSION WHICH FAILS to meet generally accepted
8 standards of medical practice; ~~whether the two or more acts or~~
9 ~~omissions occur during a single treatment of one patient, during~~
10 ~~the course of treatment of one patient, or during the treatment of~~
11 ~~more than one patient;~~

12 (r) Engaging in a sexual act with a patient during the
13 course of patient care OR WITHIN SIX MONTHS IMMEDIATELY
14 FOLLOWING THE TERMINATION OF THE PHYSICIAN'S PROFESSIONAL
15 RELATIONSHIP WITH THE PATIENT. "Sexual act", as used in this
16 paragraph (r), means sexual contact, sexual intrusion, or sexual
17 penetration as defined in section 18-3-401, C.R.S.

18 (aa) Failing to accurately answer the questionnaire
19 accompanying the renewal form as required pursuant to section
20 ~~12-36-123 (2) (b)~~ 12-36-123 (1) (b);

21 (cc) ~~Violating the provisions of section 8 42-101 (3.6),~~
22 ~~C.R.S.~~ FAILING TO ESTABLISH AND CONTINUOUSLY MAINTAIN
23 FINANCIAL RESPONSIBILITY, AS REQUIRED IN SECTION 13-64-301,
24 C.R.S.;

25 (gg) FAILING TO RESPOND IN A TIMELY MANNER TO A
26 COMPLAINT ISSUED PURSUANT TO SECTION 12-36-118 (4);

27 (hh) ADVERTISING IN A MANNER THAT IS MISLEADING,

1 DECEPTIVE, OR FALSE.

2 (2) A revocation or suspension of a license to practice
3 medicine in any other state, territory, or country, for disciplinary
4 reasons shall be deemed to be prima facie evidence of
5 unprofessional conduct. FOR PURPOSES OF THIS SUBSECTION (2),
6 THE TERM "DISCIPLINARY REASONS" INCLUDES THE IMPOSITION OF
7 ANY SANCTION REQUIRED TO BE REPORTED PURSUANT TO 45 CFR
8 SEC. 60.8; EXCEPT THAT this subsection (2) shall apply only to
9 ~~revocations or suspensions~~ WHEN SUCH SANCTIONS ARE based
10 upon acts or omissions ~~in such other state, territory, or country,~~
11 THAT ARE substantially as THE SAME AS THOSE defined as
12 unprofessional conduct ~~pursuant to~~ IN subsection (1) of this
13 section.

14 **SECTION 13.** 12-36-118 (1), (4) (a), (4) (b) (II), (4) (c)
15 (II.5), (5) (a), (5) (b), (5) (c), (5) (d), (5) (e), (5) (g) (II), the
16 introductory portion to 12-36-118 (5) (g) (III), and 12-36-118 (9)
17 (a), (9) (b), and (12), Colorado Revised Statutes, 1991 Repl.
18 Vol., are amended to read:

19 **12-36-118. Disciplinary action by board - immunity.**
20 (1) (a) The president of the board shall divide those members of
21 the board other than ~~himself~~ THE PRESIDENT into two panels of
22 five members each, four of whom shall be physician members.

23 (b) Each panel shall act as both an inquiry and a
24 hearings panel. Members of the board may be assigned from one
25 panel to the other by the president. The president may be a
26 member of both panels, but in no event shall the president or any
27 other member who has considered a complaint as a member of

1 ~~one~~ A panel acting as an inquiry panel take any part ~~whatever~~ in
 2 the consideration of a formal complaint involving the same matter.
 3 ~~other than with regard to the appointment of an advisor to an~~
 4 ~~administrative law judge.~~

5 (c) All matters referred to one panel for investigation
 6 shall be heard, if referred for formal hearing, by the other panel
 7 or a committee ~~thereof~~ OF SUCH PANEL. However, in its
 8 discretion, either inquiry panel ~~of the board~~ may elect to refer a
 9 case for formal hearing to a qualified administrative law judge
 10 ~~with or without an assigned advisor from the hearings panel,~~ in
 11 lieu of a hearings panel of the board, for ~~his~~ AN initial decision
 12 pursuant to the provisions of section 24-4-105, C.R.S. ~~Should the~~
 13 ~~inquiry panel elect to have an advisor assist with the~~
 14 ~~administrative law judge, the advisor would be assigned to the~~
 15 ~~hearing by the president of the board. The advisor would assist~~
 16 ~~the administrative law judge in obtaining and interpreting medical~~
 17 ~~data pertinent to the hearing. The advisor would be excluded~~
 18 ~~from the hearings panel review of the decision of the~~
 19 ~~administrative law judge.~~

20 (d) The initial decision of ~~the~~ AN administrative law
 21 judge may be reviewed pursuant to section 24-4-105 (14) and
 22 (15), C.R.S., by the filing of exceptions to the initial decision ~~by~~
 23 ~~the respondent or the board's counsel~~ with the hearings panel
 24 which would have heard the case if it had not been referred to an
 25 administrative law judge or by review upon the motion of such
 26 hearings panel. THE RESPONDENT OR THE BOARD'S COUNSEL
 27 SHALL FILE SUCH EXCEPTIONS.

1 (4) (a) (I) WRITTEN complaints ~~in writing~~ relating to the
 2 conduct of ~~any~~ A physician licensed or authorized to practice
 3 medicine in this state may be made by any person or may be
 4 initiated by AN INQUIRY PANEL OF the board on its own motion.
 5 The physician complained of shall be given notice by certified
 6 mail of the nature of ~~all matters complained of~~ THE COMPLAINT
 7 and shall be given ~~twenty~~ THIRTY days to ~~make explanation or~~
 8 ~~explain answer thereto~~ ANSWER OR EXPLAIN IN WRITING THE
 9 MATTERS DESCRIBED IN SUCH COMPLAINT. Upon receipt of the
 10 physician's answer or at the conclusion of ~~twenty~~ THIRTY days,
 11 WHICHEVER OCCURS FIRST, ~~if no answer has been received, the~~
 12 ~~matter shall be referred to one panel acting as an inquiry panel for~~
 13 ~~that particular case, referred to in this subsection (4) as the~~
 14 ~~"inquiry panel", for investigation. The investigation~~ THE INQUIRY
 15 PANEL MAY TAKE FURTHER ACTION AS SET FORTH IN
 16 SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

17 (II) THE INQUIRY PANEL MAY THEN CONDUCT A FURTHER
 18 INVESTIGATION, WHICH may be made by one or more members of
 19 the inquiry panel, ~~by~~ one or more physicians who are not
 20 members of the board, ~~by~~ a member of the staff of the board, ~~or~~
 21 ~~by~~ a professional investigator, OR ANY OTHER PERSON OR
 22 ORGANIZATION as the inquiry panel directs. ~~and it~~ ANY SUCH
 23 INVESTIGATION shall be entirely informal.

24 (b) The board shall cause an investigation to be made
 25 when the board is informed of:

26 (II) Disciplinary actions taken as a result of a
 27 professional review proceeding pursuant to part 1 of article 36.5

1 of this title against a physician. SUCH DISCIPLINARY ACTIONS
2 SHALL BE PROMPTLY REPORTED TO THE BOARD.

3 (c) On completion of an investigation the inquiry panel
4 shall make a finding that:

5 (II.5) The investigation discloses an instance of conduct
6 which ~~in the opinion of the inquiry panel~~, does not warrant formal
7 action by the board and should be dismissed but in which the
8 inquiry panel has noticed indications of possible errant conduct by
9 the licensee that could lead to serious consequences if not
10 corrected. In ~~which~~ SUCH A case, a confidential letter of concern
11 shall be sent to the physician against whom a THE complaint was
12 made. ~~If the board learns of second or subsequent actions of the~~
13 ~~same or similar nature by the licensee, the board shall send a~~
14 ~~letter of admonition to the physician, and such letter need not~~
15 ~~remain confidential.~~

16 (5) (a) ~~All formal complaints seeking disciplinary action~~
17 ~~against a physician shall be filed with the board. A formal~~
18 ~~complaint shall set forth the charges with sufficient particularity~~
19 ~~as to inform the physician clearly and specifically of the acts of~~
20 ~~unprofessional conduct with which he is charged.~~

21 (b) ~~Upon the filing of a formal complaint, the board~~
22 ~~shall issue a citation, together with a copy of the complaint~~
23 ~~attached thereto. The citation shall require said physician to file~~
24 ~~with the board, within twenty days after service thereof, a written~~
25 ~~answer to the complaint. Such citation and complaint may be~~
26 ~~served by certified mail, return receipt requested, addressed to the~~
27 ~~physician at his last registered or known post office address. The~~

1 ~~return receipt signed by the physician complained of shall be~~
2 ~~proof of service thereof. In the event that the physician refuses~~
3 ~~to accept such certified mail and sign the receipt therefor, the~~
4 ~~citation and a copy of the complaint may be served upon him as~~
5 ~~other process and proof thereof are made, all as provided in rule~~
6 ~~4 of the Colorado rules of civil procedure. The time to answer~~
7 ~~shall commence from the date of service.~~

8 (c) ~~It is the duty of the physician so served with such~~
9 ~~citation to file with the board his answer to the complaint in which~~
10 ~~he shall admit or deny the material allegations thereof and shall~~
11 ~~set forth any affirmative defenses he may have. He may include~~
12 ~~in his answer any request for a more particular statement of the~~
13 ~~alleged acts of unprofessional conduct or may raise any other~~
14 ~~objections, including a plea that the complaint does not charge~~
15 ~~unprofessional conduct warranting the imposition of discipline.~~

16 (d) ~~If the physician so charged fails to answer the~~
17 ~~complaint as provided in paragraph (c) of this subsection (5) or~~
18 ~~fails to appear at the hearing after receiving due notice of the time~~
19 ~~and place thereof, the panel to which the hearings function has~~
20 ~~been assigned in that particular case, referred to in this subsection~~
21 ~~(5) as the "hearings panel", may proceed to hear the complaint~~
22 ~~and make its findings and recommendations as provided in this~~
23 ~~subsection (5).~~

24 (e) ALL FORMAL COMPLAINTS SHALL BE HEARD AND
25 DETERMINED IN ACCORDANCE WITH PARAGRAPH (f) OF THIS
26 SUBSECTION (5) AND SECTION 24-4-105, C.R.S. Except as
27 provided in subsection (1) of this section, all formal hearings

1 shall be conducted by the hearings panel. The physician may be
2 present in person and by counsel, if he so desires DESIRED, to
3 offer evidence and be heard in his OR HER OWN defense. At
4 formal hearings, the witnesses shall be sworn and a complete
5 record shall be made of all proceedings had and testimony. ~~taken.~~
6 ~~Hearings on formal complaints shall be conducted in accordance~~
7 ~~with paragraph (f) of this subsection (5) and the applicable~~
8 ~~provisions of section 24-4-105, C.R.S.~~

9 (g) (II) If it is found that the charges are ~~unfounded and~~
10 ~~unproven~~, the hearings panel, or an administrative law judge
11 sitting in lieu of the hearings panel pursuant to subsection (1) of
12 this section, shall enter an order dismissing the complaint.
13 ~~whereupon, the matter shall be terminated, but any person who~~
14 ~~has filed a complaint in the proceedings who desires to have the~~
15 ~~matter of dismissal of the complaint reviewed may seek such~~
16 ~~review pursuant to the provisions of section 12-36-119.~~

17 (III) If the hearings panel finds the charges proven and
18 orders that discipline be imposed it shall also determine the extent
19 of such discipline, WHICH SHALL BE in the form of a letter of
20 admonition, ~~private censure, public censure~~, suspension for a
21 definite or indefinite period, or revocation of license to practice.
22 ~~In any~~ IN DETERMINING APPROPRIATE DISCIPLINARY ACTION, THE
23 HEARINGS PANEL SHALL FIRST CONSIDER SANCTIONS THAT ARE
24 NECESSARY TO PROTECT THE PUBLIC. ONLY AFTER THE PANEL
25 HAS CONSIDERED SUCH SANCTIONS MAY IT CONSIDER AND ORDER
26 REQUIREMENTS DESIGNED TO REHABILITATE THE LICENSEE OR
27 APPLICANT. IF discipline other than revocation of a license to

1 practice IS IMPOSED, the hearings panel may also order that the
2 physician be granted probation and allowed to continue to practice
3 during the period of such probation. The hearings panel may also
4 include in any disciplinary order which allows the physician to
5 continue to practice such conditions as ~~said~~ THE panel may deem
6 appropriate to assure that the physician is physically, mentally
7 morally, and otherwise qualified to practice medicine in
8 accordance with generally accepted professional standards of
9 practice, including any or all of the following:

10 (9) (a) If the board has reasonable cause to believe that
11 a person licensed to practice medicine in this state is unable to
12 practice medicine OR THAT A PERSON CERTIFIED TO PRACTICE AS
13 A PHYSICIAN ASSISTANT IN THIS STATE IS UNABLE TO PRACTICE
14 with reasonable skill and safety to patients because of a condition
15 described in section 12-36-117 (1) (i) or (1) (o) it may require
16 such licensee OR PHYSICIAN ASSISTANT to submit to mental or
17 physical examinations by physicians designated by the board.
18 ~~Upon the failure of such~~ IF A licensee OR PHYSICIAN ASSISTANT
19 FAILS to submit to such mental or physical examinations, ~~unless~~
20 ~~due to circumstances beyond his control~~, the board may suspend
21 ~~such licensee's license to practice medicine in this state~~ THE
22 LICENSE OR CERTIFICATE until ~~such time as he submits to the~~
23 required examinations ARE CONDUCTED.

24 (b) Every person licensed to practice medicine OR
25 CERTIFIED TO PRACTICE AS A PHYSICIAN ASSISTANT in this state
26 shall be deemed, by so practicing or by applying for annual
27 registration of his SUCH PERSON'S license ~~to practice medicine in~~

1 ~~this state, OR CERTIFICATE, to have given his consent~~ CONSENTED
 2 to submit to mental or physical examinations when directed in
 3 writing by the board. ~~and,~~ Further, SUCH PERSON SHALL BE
 4 DEEMED to have waived all objections to the admissibility of the
 5 examining physician's testimony or examination reports on the
 6 ground of privileged communication. SUBJECT TO APPLICABLE
 7 FEDERAL LAW, SUCH PHYSICIAN OR PHYSICIAN ASSISTANT SHALL
 8 BE DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE
 9 PRODUCTION OF MEDICAL RECORDS TO THE BOARD FROM HEALTH
 10 CARE PROVIDERS WHICH MAY BE NECESSARY FOR THE
 11 EVALUATIONS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION
 12 (9).

13 (12) ~~(a) The executive director of the department of~~
 14 ~~regulatory agencies may direct the board to conduct an~~
 15 ~~investigation of a person licensed to practice medicine about~~
 16 ~~whom the executive director has received complaints.~~

17 ~~(b) The board, within sixty days, shall accept or reject~~
 18 ~~the directive of the executive director under paragraph (a) of this~~
 19 ~~subsection (12), and the board shall notify the executive director~~
 20 ~~of its decision. If the board rejects the investigation or if, upon~~
 21 ~~review, the executive director and the attorney general find that~~
 22 ~~the board has not proceeded with a thorough investigation, the~~
 23 ~~executive director may then cause an investigation to be made of~~
 24 ~~the complaints presented to him; but no new investigation shall be~~
 25 ~~made by the executive director for the sole reason of disagreement~~
 26 ~~with the findings and conclusions of the board. In any~~
 27 ~~investigation conducted by the executive director pursuant to this~~

1 ~~paragraph (b), the executive director may utilize the staff,~~
 2 ~~records, and moneys of the board. After an investigation and, if~~
 3 ~~necessary, a hearing, the executive director shall submit to the~~
 4 ~~board the findings of fact and conclusions of law for further~~
 5 ~~action.~~

6 ~~(e) Except as specifically provided in this subsection~~
 7 ~~(12), actions taken by the executive director are subject to the~~
 8 ~~limitations imposed by section 24-1-105 (1), C.R.S., relating to~~
 9 ~~the powers, duties, and functions of the board under a type 1~~
 10 ~~transfer.~~

11 SECTION 14. 12-36-119, Colorado Revised Statutes,
 12 1991 Repl. Vol., is amended to read:

13 12-36-119. Appeal of final board actions. ~~(1) (a) The~~
 14 ~~board, on its own motion or upon application, at any time after~~
 15 ~~the refusal to grant a license, the imposition of any discipline as~~
 16 ~~provided in section 12-36-118, or the ordering of probation, as~~
 17 ~~provided in section 12-36-118 (5) (g) (III), may reconsider its~~
 18 ~~prior action and grant, reinstate, or restore such license or~~
 19 ~~terminate probation, or reduce the severity of its prior disciplinary~~
 20 ~~action. The taking of any such further action, or the holding of~~
 21 ~~a hearing with respect thereto, shall rest in the sole discretion of~~
 22 ~~the board.~~

23 ~~(b) Upon the receipt of such application, it may be~~
 24 ~~forwarded to the attorney general for such investigation as may be~~
 25 ~~deemed necessary. A copy of the application and the report of~~
 26 ~~investigation shall be forwarded to the hearings panel which shall~~
 27 ~~consider the same and report its findings and conclusions. The~~

1 ~~proceedings shall be governed by the applicable provisions~~
2 ~~governing formal hearings in disciplinary proceedings. The~~
3 ~~attorney general may present evidence bearing upon the matters~~
4 ~~in issue, and the burden shall be upon the applicant seeking~~
5 ~~reinstatement to establish the averments of his application as~~
6 ~~specified in section 24-4-105 (7), C.R.S. No application for~~
7 ~~reinstatement or for modification of a prior order shall be~~
8 ~~accepted unless the applicant deposits with the board all amounts~~
9 ~~unpaid under any prior order of the board.~~

10 ~~(2) The action of the board in refusing to grant a license,~~
11 ~~in taking any disciplinary action as provided in section 12-36-118,~~
12 ~~or in placing a physician on probation may be reviewed by the~~
13 ~~court of appeals by appropriate proceedings under section~~
14 ~~24-4-106 (11), C.R.S. WHEN THE BOARD REFUSES TO GRANT A~~
15 ~~LICENSE, IMPOSES DISCIPLINARY ACTION PURSUANT TO SECTION~~
16 ~~12-36-118, OR PLACES A PHYSICIAN ON PROBATION, SUCH ACTION~~
17 ~~MAY BE REVIEWED BY THE COURT OF APPEALS PURSUANT TO~~
18 ~~SECTION 24-4-106 (11), C.R.S., UNLESS THE PHYSICIAN HAS~~
19 ~~ACCEPTED A LICENSE SUBJECT TO TERMS OF PROBATION AS SET~~
20 ~~FORTH IN SECTION 12-36-116 (3).~~

21 **SECTION 15.** 12-36-122, Colorado Revised Statutes,
22 1991 Repl. Vol., is amended to read:

23 **12-36-122. Internship - residency - registration.** Any
24 person serving an approved internship or an approved residency,
25 as defined by this article, in a hospital in the state of Colorado
26 THIS STATE may do so for an aggregate period of not to exceed UP
27 TO six years without a license to practice medicine or the payment

1 of any fee. Such person must register with the board in such
2 manner and form as the board shall prescribe. Licensed
3 physicians responsible for THE supervision of interns or residents
4 in graduate training programs are required to SHALL PROMPTLY
5 report to the board anything concerning an individual in such
6 graduate medical education programs which would constitute a
7 violation of this article. Such physicians shall also report to the
8 board any individual who has not progressed satisfactorily in the
9 program or who has been dismissed from the program for
10 inadequate performance or ethical reasons.

11 **SECTION 16.** 12-36-123 (1) (a), (1) (b), (2) (a), (2)
12 (b), and (3), Colorado Revised Statutes, 1991 Repl. Vol., are
13 amended to read:

14 **12-36-123. Procedure - registration - fees.** (1) (a) The
15 board shall establish procedures for the maintenance of licensee
16 lists and the establishment of renewal fees and schedules, which
17 fees and schedules shall be established subject to the provisions of
18 section 24-34-102 (8), C.R.S. Every licensee AND EVERY
19 CERTIFIED PHYSICIAN ASSISTANT shall pay the secretary BOARD a
20 registration fee to be determined and collected pursuant to section
21 24-34-105, C.R.S., and shall obtain a registration certificate for
22 the current calendar year RENEWAL PERIOD.

23 (b) A licensee desiring to obtain an annual registration
24 certificate shall submit the information necessary to show that he
25 has fulfilled the board's continuing medical education
26 requirements pursuant to paragraph (c) of this subsection (1). Any
27 licensee aggrieved by a decision relating to such continuing

1 ~~education requirements may ask the executive director of the~~
2 ~~department of regulatory agencies to review such requirements in~~
3 ~~accordance with the procedures established by section 24-34-102~~
4 ~~(11), C.R.S.~~ THE BOARD SHALL DESIGN A QUESTIONNAIRE TO
5 ACCOMPANY THE RENEWAL FORM FOR THE PURPOSE OF
6 DETERMINING WHETHER A LICENSEE HAS ACTED IN VIOLATION OF
7 THIS ARTICLE OR BEEN DISCIPLINED FOR ANY ACTION THAT MIGHT
8 BE CONSIDERED A VIOLATION OF THIS ARTICLE OR MIGHT MAKE
9 THE LICENSEE UNFIT TO PRACTICE MEDICINE WITH REASONABLE
10 CARE AND SAFETY. IF AN APPLICANT FAILS TO ANSWER THE
11 QUESTIONNAIRE ACCURATELY, SUCH FAILURE SHALL CONSTITUTE
12 UNPROFESSIONAL CONDUCT UNDER SECTION 12-36-117 (1) (aa).

13 (2) (a) ~~The secretary shall mail to each such licensee at~~
14 ~~his last address as shown by the records of the board, during~~
15 ~~December of each year, notice of the foregoing provisions~~
16 ~~together with such form of application for registration as may be~~
17 ~~prescribed by the board. Failure of any licensee~~ THE BOARD
18 SHALL MAIL NOTICE OF THE PROVISIONS OF THIS SECTION, WITH
19 THE APPLICATION FOR REGISTRATION PRESCRIBED BY THE BOARD,
20 TO EACH LICENSEE AT THE LAST ADDRESS SHOWN ON THE BOARD'S
21 RECORDS. SUCH MAILING SHALL BE MADE IN ACCORDANCE WITH
22 THE RENEWAL SCHEDULE ESTABLISHED PURSUANT TO SECTION
23 24-34-102 (8), C.R.S. IF A LICENSEE OR CERTIFIED PHYSICIAN
24 ASSISTANT FAILS TO PAY THE REGISTRATION FEE PRESCRIBED BY
25 SUBSECTION (1) OF THIS SECTION, ~~means that the license has lapsed,~~
26 ~~and the name of any lapsed licensee~~ OR CERTIFICATE OF SUCH
27 LICENSEE OR CERTIFICATE HOLDER SHALL LAPSE AND THE NAME

1 OF THE LICENSEE OR CERTIFICATE HOLDER shall be omitted from
2 such list.

3 (b) ~~The board shall establish a questionnaire to~~
4 ~~accompany the renewal form. Said questionnaire shall be~~
5 ~~designed to determine if the licensee has acted in violation of or~~
6 ~~has been disciplined for actions that might be construed as~~
7 ~~violations of this article or that might make the licensee unfit to~~
8 ~~practice medicine with reasonable care and safety. Failure of the~~
9 ~~applicant to answer the questionnaire accurately shall be~~
10 ~~considered unprofessional conduct as specified in section~~
11 ~~12-36-117.~~ WHEN A LICENSEE'S LICENSE LAPSES, THE LICENSEE
12 MAY FILE A BOARD-APPROVED APPLICATION FOR REINSTATEMENT
13 WITH THE BOARD, AND THE LICENSE SHALL BE REINSTATED
14 SUBJECT TO PAYMENT TO THE BOARD OF THE RENEWAL FEE AND
15 A REINSTATEMENT FEE DETERMINED BY THE BOARD PURSUANT TO
16 SECTION 24-34-105, C.R.S. IF CHARGES ARE MADE AGAINST THE
17 LICENSEE PURSUANT TO SECTION 12-36-118, THE BOARD SHALL
18 DEFER ACTION ON THE PENDING APPLICATION FOR REINSTATEMENT
19 AND PROCEED WITH A HEARING ON SUCH CHARGES IN
20 ACCORDANCE WITH SECTION 12-36-118. AFTER SUCH HEARING,
21 THE BOARD SHALL REINSTATE, FURTHER SUSPEND, OR REVOKE
22 SUCH LICENSE. THE BOARD SHALL NOT REINSTATE ANY LICENSE
23 TO PRACTICE MEDICINE WHICH HAS LAPSED FOR MORE THAN TWO
24 YEARS UNLESS THE APPLICANT DEMONSTRATES CONTINUED
25 PROFESSIONAL COMPETENCE IN THE MANNER PRESCRIBED BY THE
26 BOARD.

27 (3) ~~Upon application made to the board by any such~~

1 ~~licensee on a form prescribed by the board, his license shall be~~
 2 ~~reinstated, subject to the payment to the board of the current~~
 3 ~~renewal fee and a reinstatement fee determined by the board~~
 4 ~~pursuant to section 24-34-105, C.R.S. If, before or after such~~
 5 ~~application for reinstatement has been made, charges are preferred~~
 6 ~~against the licensee by the board or by any person, as provided by~~
 7 ~~section 12-36-118, the board shall defer action on the pending~~
 8 ~~application for reinstatement, if any, and proceed with a hearing~~
 9 ~~on such charges in accordance with section 12-36-118 and~~
 10 ~~thereupon shall reinstate, further suspend, or revoke such license.~~
 11 ~~No license to practice medicine which has lapsed for more than~~
 12 ~~two years shall be reinstated unless the applicant demonstrates to~~
 13 ~~the board his continued professional competence in such manner~~
 14 ~~as prescribed by the board.~~

15 SECTION 17. 12-36-123.5 (3.5), (4), and (5), Colorado
 16 Revised Statutes, 1991 Repl. Vol., as amended, are amended to
 17 read:

18 12-36-123.5. Physicians' and physician assistants'
 19 peer health assistance fund. (3.5) (a) ~~No later than June 30,~~
 20 ~~1994, the board shall transfer the balance in the fund, if any, to~~
 21 ~~the administering entity chosen by the board pursuant to~~
 22 ~~paragraphs (d) and (e) of this subsection (3.5).~~

23 (b) Effective July 1, 1994, as a condition of licensure in
 24 this state, AND EFFECTIVE JULY 1, 1995, AS A CONDITION OF
 25 PHYSICIAN ASSISTANT CERTIFICATION, every applicant shall pay to
 26 the administering entity that has been selected by the board
 27 pursuant to the provisions of paragraphs (d) and (e) of this

1 subsection (3.5) an amount set by the board not to exceed
 2 twenty-eight dollars per year, which amount shall be used to
 3 support designated providers that have been selected by the board
 4 to provide assistance to physicians AND PHYSICIAN ASSISTANTS
 5 needing help in dealing with physical, emotional, or psychological
 6 problems which may be detrimental to their ability to practice
 7 medicine.

8 (c) The board shall select one or more peer health
 9 assistance programs as designated providers. To be eligible for
 10 designation by the board a peer health assistance program shall:

11 (I) Provide for the education of physicians AND
 12 PHYSICIAN ASSISTANTS with respect to the recognition and
 13 prevention of physical, emotional, and psychological problems and
 14 provide for intervention when necessary or under circumstances
 15 which may be established by rules promulgated by the board;

16 (II) Offer assistance to a physician OR PHYSICIAN
 17 ASSISTANT in identifying physical, emotional, or psychological
 18 problems;

19 (III) Evaluate the extent of physical, emotional, or
 20 psychological problems and refer the physician OR PHYSICIAN
 21 ASSISTANT for appropriate treatment;

22 (IV) Monitor the status of a physician OR PHYSICIAN
 23 ASSISTANT who has been referred for treatment;

24 (V) Provide counseling and support for the physician OR
 25 PHYSICIAN ASSISTANT and for the family of any physician OR
 26 PHYSICIAN ASSISTANT referred for treatment;

27 (VI) Agree to receive referrals from the board;

1 (VII) Agree to make their services available to all
2 licensed Colorado physicians AND CERTIFIED COLORADO
3 PHYSICIAN ASSISTANTS.

4 (d) The administering entity shall be a qualified,
5 nonprofit private foundation that is qualified under section 501 (c)
6 (3) of the federal "Internal Revenue Code of 1986", as amended,
7 and shall be dedicated to providing support for charitable,
8 benevolent, educational, and scientific purposes that are related to
9 medicine, medical education, medical research and science, and
10 other medical charitable purposes.

11 (e) The responsibilities of the administering entity shall
12 be:

13 (I) To collect the required annual payments;

14 (II) To verify to the board, in a manner acceptable to the
15 board, the names of all physician AND PHYSICIAN ASSISTANT
16 applicants who have paid the fee set by the board;

17 (III) To distribute the moneys collected, less expenses,
18 to the approved designated provider, as directed by the board;

19 (IV) To provide an annual accounting to the board of all
20 amounts collected, expenses incurred, and amounts disbursed; and

21 (V) To post a surety performance bond in an amount
22 specified by the board to secure performance under the
23 requirements of this section. The administering entity may
24 recover the actual administrative costs incurred in performing its
25 duties under this section in an amount not to exceed ten percent
26 of the total amount collected.

27 (f) NO LATER THAN JUNE 30, 1994, THE BOARD SHALL

1 TRANSFER THE BALANCE IN THE FUND, IF ANY, TO THE
2 ADMINISTERING ENTITY CHOSEN BY THE BOARD PURSUANT TO
3 PARAGRAPHS (d) AND (e) OF THIS SUBSECTION (3.5).

4 (4) ~~No grant shall be made by the board pursuant to~~
5 ~~subsection (3) of this section until sufficient moneys have been~~
6 ~~credited to the physicians' peer health assistance fund in~~
7 ~~accordance with subsection (2) of this section.~~

8 (5) Nothing in this section shall be construed to create
9 any liability on the board or the state of Colorado for the actions
10 of the board in making grants to peer assistance programs, and no
11 civil action may be brought or maintained against the board or the
12 state for an injury alleged to have been the result of the activities
13 of any state-funded peer assistance program or the result of an act
14 or omission of a physician OR PHYSICIAN ASSISTANT participating
15 in or referred by a state-funded peer assistance program.

16 SECTION 18. 12-36-125 (3), Colorado Revised
17 Statutes, 1991 Repl. Vol., is repealed as follows:

18 12-36-125. Division of fees - independent advertising
19 or marketing agent. (3) ~~The board shall not have the authority~~
20 ~~to regulate, directly or indirectly, advertising or marketing~~
21 ~~activities of independent advertising or marketing agents except as~~
22 ~~provided in this section. The board may, in the name of the~~
23 ~~people of the state of Colorado, apply for an injunction in the~~
24 ~~district court to enjoin any independent advertising or marketing~~
25 ~~agent from the use of advertising or marketing which the court~~
26 ~~finds on the basis of the evidence presented by the board to be~~
27 ~~misleading, deceptive, or false or otherwise in violation of section~~

1 ~~12-36-128.5, except that a licensee shall not be subject to~~
2 ~~discipline by the board, injunction, or prosecution in the court~~
3 ~~under this article or any other law for advertising or marketing by~~
4 ~~an independent advertising or marketing agent if the factual~~
5 ~~information which the licensee provides to the advertising or~~
6 ~~marketing agent is accurate and not misleading, deceptive, or~~
7 ~~false, and the licensee has otherwise complied with the provisions~~
8 ~~of section 12-36-128.5.~~

9 SECTION 19. 12-36-129 (5) (a), Colorado Revised
10 Statutes, 1991 Repl. Vol., is amended to read:

11 **12-36-129. Violation - penalties.** (5) (a) No specialty
12 society, or association of physicians, ~~whether through by laws,~~
13 ~~rules, regulations, or otherwise, and no~~ OR licensed physician may
14 discriminate against any other person licensed to practice medicine
15 if such physician is otherwise qualified for membership and, IN
16 THE SPECIALTY SOCIETY OR ASSOCIATION. If board certification
17 or board eligibility IN A SPECIALTY is a membership requirement,
18 ~~such board certification or board eligibility in a specialty must be~~
19 ~~granted by either the American board of medical specialists~~
20 ~~SPECIALTIES or the American osteopathic association based upon~~
21 ~~his~~ THE APPLICANT'S training either as a doctor of medicine or as
22 a doctor of osteopathy, with respect to any aspect of membership
23 in such specialty society or association of physicians IS
24 SUFFICIENT. Notwithstanding any other remedies provided under
25 this article, any A licensed physician ~~so~~ WHO IS discriminated
26 against IN VIOLATION OF THIS SECTION shall have a private right
27 of action for damages against any such THE licensed physician and

1 ~~against the~~ OR specialty society or association of physicians THAT
2 SO DISCRIMINATES.

3 SECTION 20. 12-36.5-104 (7), Colorado Revised
4 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF
5 A NEW PARAGRAPH to read:

6 **12-36.5-104. Establishment of professional review**
7 **committees - function.** (7) The written bylaws, policies, or
8 procedures of any professional review committee shall provide for
9 at least the following:

10 (f) A COPY OF ANY RECOMMENDATIONS MADE PURSUANT
11 TO PARAGRAPH (d) OF THIS SUBSECTION (7) SHALL BE PROMPTLY
12 FORWARDED TO THE BOARD OF MEDICAL EXAMINERS.

13 SECTION 21. 24-34-104 (24) (b), Colorado Revised
14 Statutes, 1988 Repl. Vol., is repealed as follows:

15 **24-34-104. General assembly review of regulatory**
16 **agencies and functions for termination, continuation, or**
17 **reestablishment.** (24) The following boards in the division of
18 registrations shall terminate on July 1, 1995:

19 (b) ~~The Colorado state board of medical examiners,~~
20 ~~created by article 36 of title 12, C.R.S.;~~

21 SECTION 22. 24-34-104, Colorado Revised Statutes,
22 1988 Repl. Vol., as amended, is amended BY THE ADDITION
23 OF A NEW SUBSECTION to read:

24 **24-34-104. General assembly review of regulatory**
25 **agencies and functions for termination, continuation, or**
26 **reestablishment.** (41) THE FOLLOWING AGENCIES, FUNCTIONS,
27 OR BOTH, SHALL TERMINATE ON JULY 1, 2010:

1 (a) THE FOLLOWING BOARD IN THE DIVISION OF
2 REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES:

3 (1) THE COLORADO STATE BOARD OF MEDICAL
4 EXAMINERS, CREATED BY ARTICLE 36 OF TITLE 12, C.R.S.

5 **SECTION 23.** 13-4-102 (2) (f), Colorado Revised
6 Statutes, 1987 Repl. Vol., is amended to read:

7 **13-4-102. Jurisdiction.** (2) The court of appeals shall
8 have initial jurisdiction to:

9 (f) Review actions of the state board of medical
10 examiners in refusing to grant or in revoking or suspending a
11 license or in placing the holder thereof on probation, as provided
12 in section ~~12-36-119 (2)~~, C.R.S. 12-36-119, C.R.S.;

13 **SECTION 24. Repeal.** 12-36-128.5, Colorado Revised
14 Statutes, 1991 Repl. Vol., is repealed.

15 **SECTION 25. Effective date - applicability.** This act
16 shall take effect July 1, 1995, and shall apply to acts occurring on
17 or after said date.

SECTION 26. 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.

Joint Legislative Sunrise and Sunset Review Committee

November 17, 1994

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF THE PRACTICE OF
2 CHIROPRACTIC BY THE STATE BOARD OF CHIROPRACTIC
3 EXAMINERS.
4

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.
Extends the authority of the state board of chiropractic examiners. Requires licensed chiropractors to display their licenses. Permits license applicants to complete their required course work by attending a course given by a board-approved provider. States that a licensee's license shall automatically expire if it is not renewed prior to its expiration date. Prohibits the board from refunding any renewal fee. Requires that a licensee furnish the board with a new address within thirty days after the change.

Authorizes the board to issue a letter of admonition or impose conditions on a person's license, in addition to the other disciplinary actions already authorized. Makes the following actions grounds for discipline: Using misrepresentation, fraud, or deceit in securing, renewing, or seeking reinstatement of a license or taking an examination; failing to meet generally accepted standards of practice; being addicted to or dependent upon alcohol or drugs or habitually using controlled substances; commission of a fraudulent insurance act; allowing colonic irrigation to be performed at the practitioner's premises; fee-splitting; failing to report the surrender of a license to an agency in another state for acts that would constitute grounds for discipline in this state; engaging in a sexual act with a patient during the course of care or within a specified time following the termination of the professional relationship; abandoning a patient; and failing to

provide adequate supervision when employing unlicensed persons in chiropractic practice. Provides that disciplinary action taken against a practitioner's license to practice in another state shall constitute prima facie evidence of a violation in this state and grounds for discipline.

Authorizes the board, in its discretion, to require a chiropractor to take an examination when the chiropractor has been proven incompetent or negligent. Requires that an order for examination include the board's reasons for believing a licensee is unable to practice with reasonable skill and safety. Authorizes the board to require a licensee to take a mental or physical examination if reasonable cause exists to believe he or she is unable to practice with reasonable skill and safety. States that a licensee shall be deemed to have waived any claim of privilege regarding an examining physician's testimony and reports. Allows the board to suspend a licensee's license for failure to undergo such an examination except due to circumstances that are beyond his or her control. Prohibits the results of an examination from being used as evidence in another proceeding or made available to the public.

Requires that recipients of letters of admonition be advised they have a specified time from the date of mailing the letter to request that formal disciplinary proceedings be initiated. Authorizes the board to issue cease and desist orders and establishes requirements for the issuance of such orders. Requires licensed chiropractors to report to the board any chiropractor known or believed to have violated statutory provisions.

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

SECTION 1. 12-33-107 (1) (h), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-33-107. Board powers. (1) The board is authorized to and shall:

(h) Identify and proscribe, by rule, chiropractic trade practices which are untrue, deceptive, or misleading.

SECTION 2. Part 1 of article 33 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

12-33-111.5. Display of license required. EVERY

LICENSED PRACTITIONER OF CHIROPRACTIC SHALL CONSPICUOUSLY

1 DISPLAY HIS OR HER LICENSE TO PRACTICE IN THIS STATE. IF A
2 CHIROPRACTOR PRACTICES AT SEVERAL LOCATIONS, HIS OR HER
3 NAME AND LICENSE NUMBER SHALL BE DISPLAYED IN A MANNER
4 THAT CAN BE EASILY RECOGNIZED BY PATIENTS. PERSONS WHO
5 ENGAGE IN THE PRACTICE OF CHIROPRACTIC UNDER THE NAME OF
6 A PARTNERSHIP, ASSOCIATION, OR OTHER ENTITY SHALL
7 CONSPICUOUSLY DISPLAY AT THE ENTRANCE OF THEIR PLACE OF
8 BUSINESS THE NAME OF EACH MEMBER OR ASSOCIATE OF SUCH
9 ENTITY WHO IS ENGAGED IN THE PRACTICE OF CHIROPRACTIC.

10 SECTION 3. 12-33-112, Colorado Revised Statutes,
11 1991 Repl. Vol., is amended to read:

12 12-33-112. Application for license - fee - examination.

13 Any person who fulfills the minimum educational requirements
14 prescribed by this article and by the board, who is not less than
15 twenty-one years of age, who desires to obtain a license to
16 practice chiropractic in this state, and who is not entitled to a
17 license therefor under other provisions of this article may make
18 application for such license upon such forms and in such manner
19 as prescribed by the board, which application shall be
20 accompanied by an examination fee. The board may refuse to
21 examine or license an applicant if the applicant has committed any
22 act that would be grounds for disciplinary action against a licensed
23 chiropractor. Such applicant shall be examined by the board in
24 the subjects outlined in section 12-33-111 to determine the
25 applicant's qualifications to practice chiropractic. A license shall
26 be granted to all applicants who on such examination are found
27 qualified by attaining a passing grade on each section of the

1 examination. Any applicant receiving a passing grade in all but
2 one subject may, within one year from the date of such failure,
3 repeat the examination in only that subject, upon payment of the
4 total examination fee, and will be licensed upon receiving a
5 passing grade in such subject. Qualification in that portion of the
6 examination relating to the basic sciences shall be established by
7 the applicant submitting proof satisfactory to the board of
8 successfully passing the examination in the basic sciences given
9 by the national board of chiropractic examiners. Any chiropractic
10 applicant who desires to practice electrotherapy shall present
11 evidence that he OR SHE has successfully completed a course of
12 not less than one hundred twenty classroom hours in this subject
13 at a school approved by the board OR UNDER THE INSTRUCTION OF
14 AN APPROVED PROVIDER.

15 SECTION 4. 12-33-114 (1), Colorado Revised Statutes,
16 1991 Repl. Vol., is amended, and the said 12-33-114 is further
17 amended BY THE ADDITION OF THE FOLLOWING NEW
18 SUBSECTIONS, to read:

19 12-33-114. Renewal of license. (1) ~~Every licensed~~
20 ~~chiropractor who desires to retain his license shall pay to the~~
21 ~~board a renewal fee set pursuant to law on or before October 1 of~~
22 ~~each year; except that the board may change the period of the~~
23 ~~validity of a license as provided by section 24-34-102 (7), C.R.S.~~
24 ~~Upon payment of this fee and showing of a certificate of~~
25 ~~continuing education attendance of fifteen hours by the~~
26 ~~chiropractor, the board shall issue a renewal license permitting the~~
27 ~~continued practice of chiropractic and of electrotherapy if~~

1 ~~previously so licensed.~~ A PERSON LICENSED TO PRACTICE
2 CHIROPRACTIC IN THIS STATE WHO IS ELIGIBLE TO HAVE HIS OR HER
3 LICENSE RENEWED SHALL RECEIVE A RENEWAL LICENSE UPON:

4 (a) TIMELY SUBMISSION OF A RENEWAL APPLICATION IN
5 A FORM PRESCRIBED BY THE BOARD; AND

6 (b) PAYMENT OF A RENEWAL FEE ESTABLISHED BY THE
7 BOARD PURSUANT TO SECTIONS 24-34-102 (8) AND 24-34-105,
8 C.R.S.

9 (1.2) IF A LICENSEE FAILS TO RENEW HIS OR HER LICENSE
10 PRIOR TO ITS EXPIRATION, SUCH LICENSE SHALL AUTOMATICALLY
11 EXPIRE. A CHIROPRACTOR FORMERLY LICENSED IN THIS STATE
12 MAY HAVE AN EXPIRED LICENSE REINSTATED PURSUANT TO RULES
13 ESTABLISHED BY THE BOARD.

14 (1.3) A RENEWAL FEE PAID PURSUANT TO SUBSECTION (1)
15 OF THIS SECTION SHALL NOT BE REFUNDED.

16 SECTION 5. Part 1 of article 33 of title 12, Colorado
17 Revised Statutes, 1991 Repl. Vol., is amended BY THE
18 ADDITION OF A NEW SECTION to read:

19 12-33-114.5. Change of address - reporting required.
20 EACH PERSON LICENSED UNDER THIS ARTICLE, UPON CHANGING
21 HIS OR HER ADDRESS, SHALL INFORM THE BOARD OF THE THEIR
22 NEW ADDRESS WITHIN THIRTY DAYS AFTER SUCH CHANGE. THE
23 ADDRESS CHANGE SHALL BE REFLECTED ON THE NEXT LICENSE OR
24 RENEWAL CERTIFICATE ISSUED TO THE LICENSEE.

25 SECTION 6. The introductory portion to 12-33-117 (1)
26 and 12-33-117 (1) (a), (1) (b), (1) (c), (1) (e), (1) (j), (1) (k), (1)
27 (l), (2), and (4), Colorado Revised Statutes, 1991 Repl. Vol., are

1 amended, and the said 12-33-117 (1) is further amended BY THE
2 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to
3 read:

4 12-33-117. Discipline of licensees - letters of
5 admonition, suspension, revocation, denial, and probation -
6 grounds. (1) ~~The board may refuse, suspend, or revoke a~~
7 ~~license, including but not limited to a license under section~~
8 ~~12-33-113, to practice chiropractic or electrotherapy by~~
9 ~~chiropractors for any of the following causes~~ UPON ANY OF THE
10 FOLLOWING GROUNDS, THE BOARD MAY ISSUE A LETTER OF
11 ADMONITION TO A LICENSEE OR MAY REVOKE, SUSPEND, DENY,
12 REFUSE TO RENEW, OR IMPOSE CONDITIONS ON SUCH LICENSEE'S
13 LICENSE:

14 (a) USING fraud, MISREPRESENTATION, or deceit in
15 applying for, SECURING, RENEWING, OR SEEKING REINSTATEMENT
16 OF a license or in taking an examination provided for in this
17 article;

18 (b) ~~Unprofessional, incompetent, or negligent conduct~~
19 AN ACT OR OMISSION THAT CONSTITUTES NEGLIGENT
20 CHIROPRACTIC PRACTICE OR FAILS TO MEET GENERALLY ACCEPTED
21 STANDARDS OF CHIROPRACTIC PRACTICE;

22 (c) Conviction of a felony or ANY CRIME THAT WOULD
23 CONSTITUTE A VIOLATION OF THIS ARTICLE. FOR PURPOSES OF
24 THIS SUBSECTION (1), "CONVICTION" INCLUDES the acceptance of
25 a guilty plea or a plea of nolo contendere ~~to a felony~~ OR THE
26 IMPOSITION OF A DEFERRED SENTENCE.

27 (e) ~~Habitual intemperance in the use of alcoholic liquors~~

1 ADDICTION TO OR DEPENDENCE ON ALCOHOL OR HABIT-FORMING
2 DRUGS OR HABITUAL USE OF CONTROLLED SUBSTANCES, AS
3 DEFINED IN SECTION 12-22-303 (7), OR OTHER DRUGS HAVING
4 SIMILAR EFFECTS;

5 (j) Failure to report malpractice judgments or settlements
6 within ~~thirty~~ SIXTY days;

7 (k) Violation of abuse of health insurance pursuant to
8 section 18-13-119, C.R.S., OR COMMISSION OF A FRAUDULENT
9 INSURANCE ACT, AS DEFINED IN SECTION 10-1-127, C.R.S.;

10 (l) ~~Treatment of~~ TREATING a patient by colonic irrigation
11 OR ALLOWING COLONIC IRRIGATION TO BE PERFORMED AT THE
12 LICENSEE'S PREMISES;

13 ~~(2) For the purpose of this article, any one of the~~
14 ~~following acts by a licensed chiropractor is declared to constitute~~
15 ~~unprofessional conduct:~~

16 (a) (m) Practicing ~~while license is~~ WITH A suspended OR
17 EXPIRED LICENSE;

18 (b) (n) Willfully deceiving or attempting to deceive the
19 board of examiners or their agents with reference to any matter
20 under investigation by the board;

21 (e) (o) Practicing under an assumed name;

22 (d) (p) Unethical advertising, as defined in subsection (3)
23 of this section. OR ADVERTISING THROUGH ANY MEDIUM THAT THE
24 LICENSEE WILL PERFORM AN ACT PROHIBITED BY SECTION
25 18-13-119 (3). C.R.S.;

26 (e) Repealed, L. 79, p. 495, § 18, effective July 1,
27 1979.

1 (f) (q) Violating this article or aiding any person to
2 violate this article;

3 (g) (r) Knowingly practicing in the employment of or in
4 association with any person who is practicing in an unlawful or
5 unprofessional manner;

6 (h) Repealed, L. 85, p. 511, § 10, effective July 1,
7 1985.

8 (i) (s) ~~Either directly or indirectly paying or~~
9 ~~compensating or agreeing to pay or compensate any person, firm,~~
10 ~~association, or corporation for sending or bringing any patient or~~
11 ~~any person to such licentiate for examination or treatment, for~~
12 ~~recommending such licentiate to any person, or for being~~
13 ~~instrumental in causing any other licentiate to rebate fees on a~~
14 ~~referral basis;~~ OFFERING, GIVING, OR RECEIVING COMMISSIONS,
15 REBATES, OR OTHER FORMS OF REMUNERATION FOR THE REFERRAL
16 OF CLIENTS; EXCEPT THAT A LICENSEE MAY COMPENSATE AN
17 INDEPENDENT ADVISORY OR MARKETING AGENT FOR ADVERTISING
18 OR MARKETING SERVICES, WHICH SERVICES MAY INCLUDE THE
19 REFERRAL OF PATIENTS IDENTIFIED THROUGH SUCH SERVICES, AND
20 A LICENSEE MAY GIVE AN INCIDENTAL GIFT TO A PATIENT IN
21 APPRECIATION FOR A REFERRAL.

22 (j) (t) Conducting any enterprise other than the regular
23 practice of chiropractic whereby the holder's license is used as a
24 means of attracting patients or attaining prestige or patronage in
25 the conduct of such enterprise;

26 (k) (u) Permitting the practice of chiropractic. ~~or~~ the
27 holding out of such practice, or the maintenance of an office for

1 such by an unlicensed person in association with himself OR
2 HERSELF;

3 ~~(l) Advertising through newspapers, magazines,~~
4 ~~circulars, direct mail, directories, radio, television, or otherwise~~
5 ~~that the licensee will perform any act prohibited by section~~
6 ~~18-13-119 (3), C.R.S.;~~

7 ~~(m)~~ (v) Engaging in any of the following activities and
8 practices: Willful and repeated ordering or performance, without
9 clinical justification, of demonstrably unnecessary laboratory tests
10 or studies; the administration, without clinical justification, of
11 treatment which is demonstrably unnecessary; the failure to obtain
12 consultations or perform referrals when failing to do so is not
13 consistent with the standard of care for the profession; or ordering
14 or performing, without clinical justification, any service, X-ray,
15 or treatment which is contrary to recognized standards of the
16 practice of chiropractic as interpreted by the board;

17 ~~(n)~~ (w) Falsifying or repeatedly making incorrect
18 essential entries or repeatedly failing to make essential entries on
19 patient records;

20 ~~(o) Committing a fraudulent insurance act, as defined in~~
21 ~~section 10-1-127, C.R.S.;~~

22 ~~(p)~~ (x) Violating ~~the provisions of~~ section 8-42-101
23 (3.6), C.R.S.;

24 ~~(q)~~ (y) ~~Any violation of the provisions of~~ VIOLATING
25 section 12-33-202 or any rule or regulation of the board adopted
26 pursuant to said section;

27 (z) FAILING TO REPORT TO THE BOARD THE SURRENDER

1 OF A LICENSE TO, OR ADVERSE ACTION TAKEN AGAINST A LICENSE
2 BY, A LICENSING AGENCY IN ANOTHER STATE, TERRITORY, OR
3 COUNTRY, A GOVERNMENTAL AGENCY, A LAW ENFORCEMENT
4 AGENCY, OR A COURT FOR ACTS OR CONDUCT THAT WOULD
5 CONSTITUTE GROUNDS FOR DISCIPLINE PURSUANT TO THIS
6 ARTICLE;

7 (aa) ENGAGING IN A SEXUAL ACT WITH A PATIENT
8 DURING THE COURSE OF SUCH PATIENT'S CARE OR WITHIN SIX
9 MONTHS IMMEDIATELY FOLLOWING THE TERMINATION OF THE
10 CHIROPRACTOR'S PROFESSIONAL RELATIONSHIP WITH THE PATIENT.
11 "SEXUAL ACT", AS USED IN THIS PARAGRAPH (aa), MEANS SEXUAL
12 CONTACT, SEXUAL INTRUSION, OR SEXUAL PENETRATION, AS
13 DEFINED IN SECTION 18-3-401, C.R.S.

14 (bb) ABANDONING A PATIENT BY ANY MEANS,
15 INCLUDING, BUT NOT LIMITED TO, FAILING TO PROVIDE A
16 REFERRAL TO ANOTHER CHIROPRACTOR OR OTHER APPROPRIATE
17 HEALTH CARE PRACTITIONER WHEN SUCH REFERRAL WAS
18 NECESSARY TO MEET GENERALLY ACCEPTED STANDARDS OF
19 CHIROPRACTIC CARE;

20 (cc) FAILING TO PROVIDE ADEQUATE OR PROPER
21 SUPERVISION WHEN EMPLOYING UNLICENSED PERSONS IN A
22 CHIROPRACTIC PRACTICE.

23 (2) DISCIPLINARY ACTION TAKEN AGAINST A LICENSEE'S
24 ABILITY TO PRACTICE IN ANOTHER STATE OR COUNTRY SHALL BE
25 PRIMA FACIE EVIDENCE OF A VIOLATION OF THIS ARTICLE AND
26 SHALL CONSTITUTE GROUNDS FOR DISCIPLINE IF THE ACTS GIVING
27 RISE TO SUCH DISCIPLINARY ACTION WOULD VIOLATE THIS ARTICLE

1 IF COMMITTED IN THIS STATE.

2 (4) (a) Any doctor of chiropractic proven to be
3 incompetent or negligent shall MAY be required to take an
4 examination, given by the board, in the subjects outlined in
5 section 12-33-111. In addition, the board may also order the
6 doctor of chiropractic to take such therapy or courses of training
7 or education as may be needed to correct deficiencies found in the
8 hearing.

9 ~~(b) In addition to the provisions of subsections (1), (2),
10 and (3) of this section, incompetent, negligent, or unprofessional
11 conduct consists of two or more acts or omissions within a
12 twenty year period which fail to meet generally accepted standards
13 of chiropractic practice.~~

14 **SECTION 7.** Part 1 of article 33 of title 12, Colorado
15 Revised Statutes, 1991 Repl. Vol., is amended BY THE
16 ADDITION OF A NEW SECTION to read:

17 **12-33-117.5. Mental and physical examination of**
18 **licensees.** (1) IF THE BOARD HAS REASONABLE CAUSE TO BELIEVE
19 A LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL AND
20 SAFETY, IT MAY REQUIRE SUCH LICENSEE TO TAKE A MENTAL OR
21 PHYSICAL EXAMINATION GIVEN BY A PHYSICIAN OR OTHER
22 QUALIFIED PROVIDER DESIGNATED BY THE BOARD. IF THE
23 LICENSEE REFUSES TO UNDERGO SUCH EXAMINATION OR TO
24 RELEASE ALL MEDICAL RECORDS NECESSARY TO DETERMINE HIS OR
25 HER ABILITY TO PRACTICE SAFELY, UNLESS SUCH REFUSAL OR
26 FAILURE IS DUE TO CIRCUMSTANCES BEYOND THE LICENSEE'S
27 CONTROL, THE BOARD MAY SUSPEND SUCH LICENSEE'S LICENSE

1 UNTIL THE RESULTS OF SUCH EXAMINATION ARE KNOWN AND THE
2 BOARD HAS MADE A DETERMINATION OF THE LICENSEE'S FITNESS
3 TO PRACTICE. THE BOARD SHALL PROCEED WITH AN ORDER FOR
4 EXAMINATION AND MAKE ITS DETERMINATION IN A TIMELY
5 MANNER.

6 (2) AN ORDER FOR EXAMINATION ISSUED BY THE BOARD
7 PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL INCLUDE
8 THE BOARD'S REASONS FOR BELIEVING THE LICENSEE IS UNABLE TO
9 PRACTICE WITH REASONABLE SKILL AND SAFETY.

10 (3) FOR PURPOSES OF ANY DISCIPLINARY PROCEEDING
11 AUTHORIZED UNDER THIS ARTICLE, A LICENSEE SHALL BE DEEMED
12 TO HAVE WAIVED ALL OBJECTIONS TO THE ADMISSIBILITY OF AN
13 EXAMINING PHYSICIAN'S TESTIMONY AND EXAMINATION REPORTS
14 ON THE BASIS OF PRIVILEGE.

15 (4) A LICENSEE MAY SUBMIT TO THE BOARD TESTIMONY
16 AND EXAMINATION REPORTS RECEIVED FROM A PHYSICIAN CHOSEN
17 BY THE LICENSEE, IF SUCH TESTIMONY AND REPORTS PERTAIN TO
18 A CONDITION THAT THE BOARD HAS ALLEGED MAY PRECLUDE THE
19 LICENSEE FROM PRACTICING WITH REASONABLE SKILL AND
20 SAFETY.

21 (5) THE RESULTS OF A MENTAL OR PHYSICAL
22 EXAMINATION ORDERED BY THE BOARD SHALL NOT BE USED AS
23 EVIDENCE IN ANY PROCEEDING OTHER THAN ONE HELD BEFORE
24 THE BOARD AND SHALL NOT BE A PUBLIC RECORD NOR MADE
25 AVAILABLE TO THE PUBLIC.

26 **SECTION 8.** 12-33-119 (9), Colorado Revised Statutes,
27 1991 Repl. Vol., is amended to read:

12-33-119. Disciplinary proceedings. (9) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the board, does not warrant formal action by the board but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the chiropractor against whom a THE complaint was made and A copy thereof ALSO SENT to the person making the complaint. ~~but,~~ When a letter of admonition is sent by certified mail by the board to a chiropractor complained against, such chiropractor shall be advised that he OR SHE has the right to request in writing, within ~~twenty~~ THIRTY days after ~~proven receipt of~~ MAILING the letter, that formal disciplinary proceedings be initiated ~~against him~~ to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

SECTION 9. Part 1 of article 33 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-33-119.2. Cease and desist orders - fines. (1) IF AFTER INVESTIGATING A COMPLAINT THE BOARD DETERMINES THAT A PERSON IS ACTING OR HAS ACTED IN VIOLATION OF THIS ARTICLE OR OF ANY RULE ADOPTED UNDER THIS ARTICLE, IT MAY, IN ADDITION TO ALL OTHER ACTIONS AUTHORIZED IN THIS ARTICLE, ENTER AN ORDER WITHOUT PREJUDICE REQUIRING SUCH PERSON TO CEASE AND DESIST FROM SUCH VIOLATION. SUCH ORDER SHALL SET FORTH THE STATUTES AND RULES ALLEGED TO

HAVE BEEN VIOLATED. THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS IMMEDIATELY CEASE.

(2) NO STAY OF A CEASE AND DESIST ORDER SHALL BE ISSUED BEFORE A HEARING HAS BEEN HELD AT WHICH BOTH PARTIES HAVE HAD AN OPPORTUNITY TO APPEAR.

(3) MATTERS BROUGHT BEFORE A COURT PURSUANT TO THIS SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON THE COURT'S CALENDAR.

(4) AFTER INVESTIGATION THE BOARD MAY FINE ANY PERSON WHO IS DETERMINED TO BE VIOLATING OR TO HAVE VIOLATED THIS ARTICLE. SUCH FINE SHALL BE IN AN AMOUNT NOT LESS THAN FIFTY DOLLARS AND NOT MORE THAN EIGHT HUNDRED FIFTY DOLLARS.

12-33-125. Reporting requirements. A PERSON LICENSED TO PRACTICE CHIROPRACTIC IN THIS STATE SHALL REPORT TO THE BOARD ANY CHIROPRACTOR KNOWN OR BELIEVED TO HAVE VIOLATED THIS ARTICLE.

SECTION 10. 12-33-103 (3) (b), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-33-103. State board of chiropractic examiners - subject to termination - repeal of article. (3) (b) This article is repealed, effective ~~July 1, 1995~~ JULY 1, 2010.

SECTION 11. 24-34-104 (24) (a), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 24-34-104, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

1 **24-34-104. General assembly review of regulatory**
2 **agencies and functions for termination, continuation, or**
3 **reestablishment. (24) The following boards in the division of**
4 **registrations shall terminate on July 1, 1995:**

5 (a) ~~The Colorado state board of chiropractic examiners,~~
6 ~~created by article 33 of title 12, C.R.S.;~~

7 (36) THE FOLLOWING BOARDS AND FUNCTIONS SHALL
8 TERMINATE ON JULY 1, 2010: THE COLORADO STATE BOARD OF
9 CHIROPRACTIC EXAMINERS, CREATED BY ARTICLE 33 OF TITLE 12,
10 C.R.S.

11 **SECTION 12. Effective date - applicability.** This act
12 shall take effect July 1, 1995, and shall apply to acts occurring on
13 or after said date.

14 **SECTION 13. Safety clause.** The general assembly
15 hereby finds, determines, and declares that this act is necessary
16 for the immediate preservation of the public peace, health, and
17 safety.

2 Joint Legislative Sunrise and Sunset Review Committee
3 October 6, 1994

4 A BILL FOR AN ACT
101 CONCERNING THE REGULATION OF PSYCHIATRIC TECHNICIANS BY
102 THE STATE BOARD OF NURSING.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.
Extends until a specified date the regulatory and licensing authority of the state board of nursing over psychiatric technicians.

Empowers the board to limit the scope of a licensee's practice within specified limitations. Removes the limitation that a psychiatric technician must practice in a state-run institution if the technician performs certain duties. Clarifies the grounds for which disciplinary action may be taken against a licensee.

Removes the specific subject areas which must be covered by a licensing examination, allowing the state board of nursing to specify such subject areas by rule. Changes certain educational requirements for accreditation of a psychiatric technician educational program.

Changes the procedure for license renewal.

Allows mental or physical examinations of licensees to be conducted by a qualified professional, who may or may not be a physician, rather than requiring such examination to be done only by a physician.

Modifies how medical records of a licensee may be released, utilized, or obtained by the state board of nursing.

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

2 SECTION 1. 12-38-108 (1) (k) (I), Colorado Revised

1 Statutes, 1991 Repl. Vol., is amended to read:

2 12-38-108. Powers and duties of the board. (1) The
3 board has the following powers and duties:

4 (k) To administer the licensing and regulation of
5 psychiatric technicians pursuant to article 42 of this title and to
6 adopt and revise rules and regulations consistent with the laws of
7 this state as may be necessary:

8 (I) To renew, grant, suspend, LIMIT THE SCOPE OF, and
9 revoke licenses of psychiatric technicians IN ACCORDANCE WITH
10 ARTICLE 42 OF THIS TITLE;

11 SECTION 2. 12-42-102 (4), Colorado Revised Statutes,
12 1991 Repl. Vol., as amended, is amended to read:

13 12-42-102. Definitions. As used in this article, unless
14 the context otherwise requires:

15 (4) The practice as a "psychiatric technician" means the
16 performance for compensation of selected acts requiring
17 interpersonal and technical skills and ~~in a state hospital or other~~
18 ~~state institutional setting approved by the department of human~~
19 ~~services, said practice~~ includes the administering of selected
20 treatments and selected medications prescribed by a licensed
21 physician or dentist, in the care of and in the observation and
22 recognition of symptoms and reactions of the mentally ill patient
23 or developmentally disabled individual under the direction of a
24 licensed physician and the supervision of a registered professional
25 nurse. The selected acts in the care of the mentally ill patient or
26 developmentally disabled individual shall not require the
27 substantial specialized skill, judgment, and knowledge required in

1 professional nursing.

2 **SECTION 3.** 12-42-103, Colorado Revised Statutes,
3 1991 Repl. Vol., is amended to read:

4 **12-42-103. State board of nursing - repeal of article**
5 **- review of licensing and regulation functions.** (1) The
6 licensing and regulation of psychiatric technicians shall be under
7 the control of the board.

8 (2) (a) This article is repealed, effective ~~July 1, 1995~~
9 JULY 1, 2010.

10 (b) Prior to such repeal, the licensure AND REGULATION
11 functions of the state board of nursing shall be reviewed as
12 provided in section 24-34-104, C.R.S.

13 **SECTION 4.** 12-42-106 (1), Colorado Revised Statutes,
14 1991 Repl. Vol., is amended to read:

15 **12-42-106. Examinations.** (1) All applicants, unless
16 licensed by endorsement, shall be required to pass a written
17 examination. ~~in the following subject areas:~~

18 ~~(a) Nursing principles related to health and disease,~~
19 ~~including human growth and development;~~

20 ~~(b) (I) Basic psychiatric nursing, including social and~~
21 ~~cultural concepts for psychiatric technicians working with~~
22 ~~mentally ill patients;~~

23 ~~(II) Mental retardation theory and practice, human~~
24 ~~development, and behavior management for psychiatric~~
25 ~~technicians working with developmentally disabled individuals.~~

26 **SECTION 5.** 12-42-108, Colorado Revised Statutes,
27 1991 Repl. Vol., is repealed as follows:

1 **12-42-108. License by waiver and examination.**

2 ~~(1) The board may issue a license without examination to any~~
3 ~~person who, not later than July 1, 1980, submits to the board~~
4 ~~written evidence, verified by oath, that such person:~~

5 ~~(a) Has not committed an act which would be grounds~~
6 ~~for disciplinary action against a licensee under this article;~~

7 ~~(b) Has practiced in a state hospital or other state~~
8 ~~institutional setting approved by the department of human~~
9 ~~services, working with developmentally disabled individuals, for~~
10 ~~at least twelve consecutive months within the three year period~~
11 ~~immediately prior to application pursuant to this section. The~~
12 ~~board may accept evidence of such practice through written~~
13 ~~statements, verified by oath, of one physician and two registered~~
14 ~~professional nurses, each licensed to practice in this state, that~~
15 ~~each has personal knowledge of the applicant's practice working~~
16 ~~with developmentally disabled individuals.~~

17 ~~(c) Has passed a written examination on nursing service~~
18 ~~and mental retardation approved by the state board of nursing.~~

19 **SECTION 6.** 12-42-111 (1), Colorado Revised Statutes,
20 1991 Repl. Vol., is amended to read:

21 **12-42-111. Accredited psychiatric technician**
22 **educational program.** (1) (a) Any institution within the state of
23 Colorado desiring to conduct an accredited preservice psychiatric
24 technician educational program may apply to the board and submit
25 evidence that it is prepared to carry out a psychiatric technician
26 curriculum ~~including but not limited to:~~ THAT CONTAINS
27 THEORETICAL CONTENT AND CLINICAL PRACTICE TO PREPARE THE

1 PSYCHIATRIC TECHNICIAN STUDENT TO CARE FOR CLIENTS WITH
2 DEVELOPMENTAL DISABILITIES OR MENTAL ILLNESS IN
3 INSTITUTIONAL AND COMMUNITY SETTINGS.

4 (a) ~~Nursing principles which shall include, but not be~~
5 ~~limited to, learning experiences to develop:~~

6 (I) ~~An understanding of the principles of mental and~~
7 ~~physical health and the maintenance of health;~~

8 (II) ~~A knowledge of health services and community~~
9 ~~resources and the role of the psychiatric technician in these health~~
10 ~~services, and the ability to perform the following functions as~~
11 ~~required:~~

12 (A) ~~Activities concerned with daily hygiene;~~

13 (B) ~~Activities concerned with prescribed therapeutic~~
14 ~~measure with understanding of underlying basic principles; and~~

15 (C) ~~Observing the appearance and behavior of patients~~
16 ~~and reporting to the appropriate persons; and~~

17 (III) ~~Ability to work with licensed physicians,~~
18 ~~professional nurses, dentists, and other treatment personnel in~~
19 ~~assisting with nursing situations;~~

20 (b) (I) ~~Psychiatric nursing, for psychiatric technicians~~
21 ~~working with mentally ill patients, which shall include, but not be~~
22 ~~limited to, fundamentals of psychiatric and mental health nursing~~
23 ~~with learning experience planned to develop the following skills:~~

24 ~~The knowledge, skills, and attitudes necessary to function~~
25 ~~adequately as a contributing member of the psychiatric team,~~
26 ~~understanding of self and patient relationship, principles of~~
27 ~~psychiatric nursing including social and cultural studies,~~

1 ~~rehabilitation, and special therapies.~~

2 (II) ~~Mental retardation practice, for psychiatric~~
3 ~~technicians working with developmentally disabled individuals,~~
4 ~~which shall include, but not be limited to, mental retardation~~
5 ~~theory and practice, human development, and behavior~~
6 ~~management.~~

7 (b) CONTENT IN A PSYCHIATRIC TECHNICIAN
8 EDUCATIONAL PROGRAM SHALL INCLUDE BUT SHALL NOT BE
9 LIMITED TO:

10 (I) FUNDAMENTAL NURSING PRINCIPLES AND SKILLS;

11 (II) GROWTH AND DEVELOPMENTAL AND OTHER
12 PHYSICAL AND BEHAVIORAL SKILLS;

13 (III) MENTAL RETARDATION THEORY AND
14 REHABILITATION NURSING PRINCIPLES AND SKILLS IF THE
15 TECHNICIAN INTENDS TO CARE FOR CLIENTS WITH
16 DEVELOPMENTAL DISABILITIES; AND

17 (IV) PSYCHOPATHOLOGY AND PSYCHIATRIC NURSING
18 PRINCIPLES AND SKILLS IF THE TECHNICIAN INTENDS TO CARE FOR
19 CLIENTS WITH MENTAL ILLNESS.

20 SECTION 7. 12-42-112 (1), Colorado Revised Statutes,
21 1991 Repl. Vol., is amended to read:

22 12-42-112. **Renewal of license.** (1) ~~Each license issued~~
23 ~~under the provisions of this article shall be renewed annually;~~
24 ~~except that the period of validity of any license may be changed~~
25 ~~pursuant to the provisions of section 24-34-102 (7), C.R.S. On~~
26 ~~or before April 30 of each year, the board shall mail an~~
27 ~~application for renewal of license to each person to whom a~~

1 ~~license was issued or renewed during the current year, which~~
 2 ~~application shall be mailed to the most recent address of said~~
 3 ~~person as it appears on the records of the board. Such person~~
 4 ~~shall complete the renewal application and return it to the board~~
 5 ~~with a renewal fee established pursuant to section 24-34-105,~~
 6 ~~C.R.S., before July 1 of the year in which said application was~~
 7 ~~received. Upon receipt of any such application and fee, the board~~
 8 ~~shall verify the accuracy of such application and fee and issue to~~
 9 ~~the applicant a certificate of renewal of license for the current~~
 10 ~~year, beginning July 1 and expiring June 30. TO RENEW A~~
 11 ~~LICENSE ISSUED PURSUANT TO THIS ARTICLE, A LICENSEE SHALL~~
 12 ~~SUBMIT AN APPLICATION FOR RENEWAL ON A FORM PRESCRIBED BY~~
 13 ~~THE BOARD AND PAY A FEE IN AN AMOUNT SET BY THE BOARD IN~~
 14 ~~ACCORDANCE WITH SECTION 24-34-105, C.R.S. UPON RECEIPT BY~~
 15 ~~THE BOARD OF A COMPLETED APPLICATION AND THE REQUISITE~~
 16 ~~FEE, THE BOARD SHALL ISSUE A CERTIFICATE OF RENEWAL OF~~
 17 ~~LICENSURE. NO MORE THAN ONE RENEWAL FEE SHALL BE~~
 18 ~~ASSESSED OR COLLECTED IN CONJUNCTION WITH THE SUBMITTAL~~
 19 ~~OF AN APPLICATION FOR LICENSE RENEWAL.~~

20 SECTION 8. The introductory portion to 12-42-113 (1)
 21 and 12-42-113 (1) (b) and (1) (i), Colorado Revised Statutes, 1991
 22 Repl. Vol., are amended, and the said 12-42-113 is further
 23 amended BY THE ADDITION OF A NEW SUBSECTION, to
 24 read:

25 12-42-113. Grounds for discipline. (1) The board has
 26 the power to revoke, suspend, withhold, LIMIT THE SCOPE OF, or
 27 refuse to renew any license to practice as a psychiatric technician,

1 to place on probation a licensee, or to issue a letter of admonition
 2 to a licensee in accordance with the procedures set forth in
 3 subsection (3) of this section, upon proof that such person:

4 (b) (I) Has been convicted of a felony or ~~has had~~
 5 ~~accepted by a court a plea of guilty or nolo contendere to a felony~~
 6 ANY CRIME THAT WOULD CONSTITUTE A VIOLATION OF THIS
 7 ARTICLE.

8 (II) (A) FOR PURPOSES OF THIS PARAGRAPH (b), A
 9 CONVICTION INCLUDES A PLEA OF GUILTY OR NOLO CONTENDERE
 10 OR THE IMPOSITION OF A SENTENCE THAT IS DEFERRED PRIOR TO
 11 FINAL SENTENCING OR DISMISSAL WITH PREJUDICE.

12 (B) A certified copy of the judgment of a court of
 13 competent jurisdiction of such conviction or plea shall be prima
 14 facie evidence of such conviction.

15 (III) In considering the possible revocation, suspension,
 16 LIMITING, or nonrenewal of a license or temporary license, the
 17 board shall be governed by the provisions of section 24-5-101,
 18 C.R.S.

19 (i) Is addicted to or dependent on alcohol or
 20 habit-forming drugs, ~~or~~ is a habitual user of controlled substances,
 21 as defined in section 12-22-303 (7), or other drugs having similar
 22 effects, OR IS DIVERTING CONTROLLED SUBSTANCES, AS DEFINED
 23 IN SECTION 12-22-303 (7). OR OTHER DRUGS HAVING SIMILAR
 24 EFFECTS FROM THE LICENSEE'S PLACE OF EMPLOYMENT; except
 25 that the board has the discretion not to discipline the licensee if ~~he~~
 26 SUCH LICENSEE is participating in good faith in a program
 27 approved by the board designed to end such addiction or

1 dependency;
2 (6) THE BOARD SHALL NOT DISCIPLINE A LICENSEE BY
3 LIMITING THE SCOPE OF SUCH LICENSEE'S LICENSE BASED UPON A
4 LICENSEE'S VIOLATION OF PARAGRAPH (i) OF SUBSECTION (1) OF
5 THIS SECTION UNTIL THE LICENSEE HAS COMPLETED A PROGRAM
6 APPROVED BY THE BOARD DESIGNED TO END ADDICTION TO OR
7 DEPENDENCY ON ALCOHOL, HABIT-FORMING DRUGS, CONTROLLED
8 SUBSTANCES, AS DEFINED IN SECTION 12-22-303 (7), OR OTHER
9 DRUGS HAVING SIMILAR EFFECTS. UNTIL SUCH TIME AS THE
10 LICENSEE COMPLETES AN APPROVED PROGRAM, THE BOARD MAY
11 IMPOSE ANY OF THE OTHER FORMS OF DISCIPLINE SET FORTH IN
12 SUBSECTION (1) OF THIS SECTION.

13 **SECTION 9.** 12-42-115 (2) (a), Colorado Revised
14 Statutes, 1991 Repl. Vol., is amended, and the said 12-42-115 (2)
15 is further amended BY THE ADDITION OF A NEW
16 PARAGRAPH, to read:

17 **12-42-115. Mental or physical examination of**
18 **licensees - review of medical records.** (2) (a) If the board has
19 reasonable cause to believe that a licensee is unable to practice
20 with reasonable skill and safety to patients because of a condition
21 described in section 12-42-113 (1) (i) or (1) (j), it may require
22 such person to submit to a mental or physical examination by a
23 ~~physician~~ QUALIFIED PROFESSIONAL it designates. Upon the
24 failure of such person to submit to such mental or physical
25 examination, unless due to circumstances beyond his SUCH
26 PERSON'S control, the board may suspend such person's license
27 until such time as such person submits to the required

1 ~~examinations~~ EXAMINATION.

2 (e) THE BOARD MAY REQUIRE THAT A LICENSEE SUBMIT
3 MEDICAL RECORDS FOR REVIEW IN CONJUNCTION WITH AN
4 INVESTIGATION MADE PURSUANT TO PARAGRAPH (a) OF THIS
5 SUBSECTION (2); EXCEPT THAT SUCH RECORDS SHALL REMAIN
6 CONFIDENTIAL AND SHALL BE REVIEWED BY THE BOARD ONLY TO
7 THE EXTENT NECESSARY TO CONDUCT AN INVESTIGATION.

8 **SECTION 10.** 12-42-115.3 (6), Colorado Revised
9 Statutes, 1991 Repl. Vol., is amended to read:

10 **12-42-115.3. Disciplinary proceedings - administrative**
11 **law judges.** (6) In order to aid the board in any hearing or
12 investigation instituted pursuant to this section, the board, through
13 any member or executive officer thereof, shall have the power to
14 issue subpoenas commanding production of copies of any records
15 containing information relevant to practice as a psychiatric
16 technician rendered by any licensee, including, but not limited to,
17 hospital and physician records. ~~The person providing such copies~~
18 ~~shall prepare them from the original record and shall delete from~~
19 ~~the copy provided pursuant to the subpoena the name of the~~
20 ~~patient, but he shall identify the patient by a numbered code, to~~
21 ~~be retained by the custodian of the records from which the copies~~
22 ~~were made.~~ Upon certification of the custodian that the copies are
23 true and complete except for the patient's name, they shall be
24 deemed authentic, subject to the right to inspect the originals for
25 the limited purpose of ascertaining the accuracy of the copies. No
26 privilege of confidentiality shall exist with respect to such copies,
27 and no liability shall lie against the board or the custodian or his

1 THE CUSTODIAN'S authorized employee for furnishing or using
2 such copies in accordance with this subsection (6).

3 **SECTION 11.** 24-34-104 (24.1) (h), Colorado Revised
4 Statutes, 1988 Repl. Vol., as amended, is amended, and the said
5 24-34-104 is further amended BY THE ADDITION OF A NEW
6 SUBSECTION, to read:

7 **24-34-104. General assembly review of regulatory**
8 **agencies and functions for termination, continuation, or**
9 **reestablishment.** (24.1) The following functions of the specified
10 agencies shall terminate on July 1, 1995:

11 (h) ~~The licensing of psychiatric technicians through the~~
12 ~~state board of nursing in accordance with article 42 of title 12,~~
13 ~~C.R.S.;~~

14 **(41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH,**
15 **OF THE SPECIFIED AGENCIES SHALL TERMINATE ON JULY 1, 2010:**
16 **THE LICENSING AND REGULATION OF PSYCHIATRIC TECHNICIANS**
17 **BY THE STATE BOARD OF NURSING PURSUANT TO ARTICLE 42 OF**
18 **TITLE 12, C.R.S.**

19 **SECTION 12. Effective date - applicability.** This act
20 shall take effect July 1, 1995, and shall apply to acts occurring on
21 or after said date.

22 **SECTION 13. Safety clause.** The general assembly
23 hereby finds, determines, and declares that this act is necessary
24 for the immediate preservation of the public peace, health, and
25 safety.

2 Joint Legislative Sunrise and Sunset Review Committee

3 November 17, 1994

4 A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF NURSING BY THE STATE BOARD

102 OF NURSING.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.

Continues the authority of the state board of nursing to regulate professional nurses.

Requires licensees to carry out nursing functions in accordance with accepted practice standards. Allows the board to adopt rules authorizing advanced practice nurses to prescribe certain medications.

Changes the professional experience required of certain members of the board, including removing all but one member who is engaged in professional nursing education. Authorizes the state board of nursing to issue temporary permits to certain persons who are being supervised by licensees.

Creates a new mode of discipline that allows the state board of nursing to limit the scope of a license held by a licensee. Changes certain existing grounds for disciplinary action against a licensee and adds new grounds, including improper dispensing of steroids. Empowers the state board of nursing to require a licensee to furnish certain medical records in conjunction with an investigation of such licensee. Allows physical or mental examinations of licensees to be conducted by a qualified professional, who may or may not be a physician, rather than requiring such examinations to be done by a physician. Requires the state board of nursing to consider enumerated factors before disciplining a licensee.

Removes certain requirements for releasing medical records of a licensee.

Repeals the nursing peer health assistance diversion program.

Belit enacted by the General Assembly of the State of Colorado:

2 SECTION 1. 12-38-103 (10), Colorado Revised
3 Statutes, 1991 Repl. Vol., as amended, is amended to read:

4 12-38-103. Definitions. As used in this article, unless
5 the context otherwise requires:

6 (10) (a) "Practice of professional nursing" means the
7 performance of both independent nursing functions and delegated
8 medical functions ~~including the initiation and performance of~~
9 ~~nursing care through prevention, diagnosis, and treatment of~~
10 ~~human disease, ailment, pain, injury, deformity, or physical or~~
11 ~~mental condition which requires such specialized knowledge,~~
12 ~~judgment, and skill involving the application of principles of~~
13 ~~biological, physical, social, and behavioral sciences as are~~
14 ~~required for licensing as a professional nurse pursuant to section~~
15 ~~12-38-111.~~ IN ACCORDANCE WITH ACCEPTED PRACTICE
16 STANDARDS. SUCH PRACTICE STANDARDS INCLUDE THE INITIATION
17 AND PERFORMANCE OF NURSING CARE THROUGH HEALTH
18 PROMOTION, SUPPORTIVE OR RESTORATIVE CARE, DISEASE
19 PREVENTION, DIAGNOSIS AND TREATMENT OF HUMAN DISEASE,
20 AILMENT, PAIN, INJURY, DEFORMITY, AND PHYSICAL OR MENTAL
21 CONDITION USING SPECIALIZED KNOWLEDGE, JUDGMENT, AND
22 SKILL INVOLVING THE APPLICATION OF BIOLOGICAL, PHYSICAL,
23 SOCIAL, AND BEHAVIORAL SCIENCE PRINCIPLES REQUIRED FOR
24 LICENSURE AS A PROFESSIONAL NURSE PURSUANT TO SECTION
25 12-38-111.

26 (b) The "practice of professional nursing" shall include

1 the performance of such services as:

2 (a) (I) Evaluating health status through the collection and
3 assessment of health data;

4 (b) (II) Health teaching and health counseling;

5 (c) (III) Providing therapy and treatment that is
6 supportive and restorative to life and well-being either directly to
7 the patient or indirectly through consultation with, delegation to,
8 supervision of, or teaching of others;

9 (d) (IV) Executing delegated medical functions;

10 (e) (V) Referring to medical or community agencies
11 those patients who need further evaluation or treatment;

12 (f) (VI) Reviewing and monitoring therapy and treatment
13 plans.

14 **SECTION 2.** 12-38-104 (1) and (4), Colorado Revised
15 Statutes, 1991 Repl. Vol., are amended to read:

16 **12-38-104. State board of nursing created.**

17 (1) (a) There is hereby created the state board of nursing in the
18 division of registrations in the department of regulatory agencies,
19 which board shall consist of eleven members, ~~to be~~ appointed by
20 the governor with senate confirmation, AS FOLLOWS:

21 (I) Three members OF THE BOARD shall be licensed
22 practical nurses engaged in the practice of practical nursing, one
23 of whom shall be employed by a licensed hospital in a rural area;

24 (II) Six members OF THE BOARD shall be licensed
25 professional nurses as follows:

26 (A) One member shall be engaged in professional OR
27 PRACTICAL nursing education; ~~at the baccalaureate level; one~~

1 ~~member shall be engaged in professional nursing education at the~~
2 ~~associate degree or diploma level; one member shall be engaged~~
3 ~~in practical nursing education;~~

4 (B) One member shall be engaged in home health care;

5 (C) ONE MEMBER SHALL BE ENGAGED IN ANY
6 NON-EDUCATIONAL FACET OF PROFESSIONAL NURSING NOT
7 OTHERWISE DESIGNATED IN THIS SUBPARAGRAPH (II);

8 (D) One member shall be engaged in nursing service
9 administration; and

10 (E) Two members shall be engaged as staff nurses,
11 including one staff nurse who is employed in a hospital or a
12 long-term patient care delivery system.

13 (III) Two members OF THE BOARD shall be persons who
14 are not licensed, employed, or in any way connected with, or with
15 any financial interest in, any health care facility, agency, or
16 insurer.

17 (b) The nurse members OF THE BOARD shall be actively
18 employed in their respective nursing professions, and the
19 professional nurse members shall have been employed for at least
20 three years in their respective categories. All members shall be
21 residents of this state and the nurse members shall be licensed in
22 this state.

23 (c) (I) Each member OF THE BOARD shall be appointed
24 for a term of three years, except as otherwise provided in
25 subsection (2) of this section.

26 (II) Any interim appointment necessary to fill a vacancy
27 which has occurred by any reason other than the expiration of a

1 term shall be for the remainder of the term of the individual
2 member whose office has become vacant.

3 (III) A member may be reappointed for a subsequent
4 term at the pleasure of the governor, with the consent of the
5 senate, but no member shall serve for more than two consecutive
6 terms.

7 (4) (a) ~~The provisions of section 24-34-104, C.R.S.,~~
8 ~~concerning the termination schedule for regulatory bodies of the~~
9 ~~state unless extended as provided in that section, are applicable to~~
10 ~~the state board of nursing created by this section.~~

11 (b) ~~This article is repealed, effective July 1, 1995.~~

12 SECTION 3. Article 38 of title 12, Colorado Revised
13 Statutes, 1991 Repl. Vol., as amended, is amended BY THE
14 ADDITION OF A NEW SECTION to read:

15 12-38-111.6. Prescriptive authority - advance practice
16 nurses - repeal. (1) AN ADVANCED PRACTICE NURSE WHO IS
17 LISTED ON THE ADVANCED PRACTICE REGISTRY, HAS AN
18 UNRESTRICTED LICENSE ISSUED PURSUANT TO SECTION 12-38-111,
19 AND HAS FULFILLED REQUIREMENTS ESTABLISHED BY THE BOARD
20 PURSUANT TO THIS SECTION MAY BE AUTHORIZED BY THE BOARD
21 TO PRESCRIBE CONTROLLED SUBSTANCES OR PRESCRIPTION DRUGS
22 AS DEFINED IN ARTICLE 22 OF THIS TITLE.

23 (2) (a) THE BOARD SHALL ADOPT RULES TO IMPLEMENT
24 THIS SECTION.

25 (b) RULES ADOPTED PURSUANT TO THIS SECTION SHALL
26 REFLECT CURRENT, ACCEPTED PROFESSIONAL STANDARDS FOR THE
27 SAFE AND EFFECTIVE USE OF CONTROLLED SUBSTANCES AND

1 PRESCRIPTION DRUGS. (3) (a) An advanced practice nurse may
2 be granted authority to prescribe controlled substances or
3 prescription drugs to provide treatment for persons requiring:

4 (I) ROUTINE HEALTH MAINTENANCE OR ROUTINE
5 PREVENTATIVE CARE,

6 (II) CARE FOR AN ACUTE, SELF-LIMITING ILLNESS;

7 (III) CARE FOR A CHRONIC CONDITION THAT HAS BEEN
8 STABILIZED; OR

9 (IV) TERMINAL COMFORT CARE.

10 (b) FOR PURPOSES OF THIS SUBSECTION (3),
11 "SELF-LIMITING ILLNESS" MEANS AN ILLNESS THAT HAS A DEFINED
12 DIAGNOSIS AND A PREDICTABLE OUTCOME AND IS NOT
13 THREATENING TO LIFE OR LIMB.

14 (4) AN ADVANCED PRACTICE NURSE APPLYING FOR
15 PRESCRIPTIVE AUTHORITY SHALL PROVIDE EVIDENCE TO THE
16 BOARD OF THE FOLLOWING:

17 (a) A GRADUATE DEGREE IN A NURSING SPECIALTY;

18 (b) SATISFACTORY COMPLETION OF SPECIFIC
19 EDUCATIONAL REQUIREMENTS IN THE USE OF CONTROLLED
20 SUBSTANCES AND PRESCRIPTION DRUGS, AS ESTABLISHED BY THE
21 BOARD, EITHER AS PART OF A DEGREE PROGRAM OR IN ADDITION
22 TO A DEGREE PROGRAM;

23 (c) POST-GRADUATE EXPERIENCE AS AN ADVANCED
24 PRACTICE NURSE IN A RELEVANT CLINICAL SETTING, AS DEFINED
25 BY THE BOARD, CONSISTING OF NOT LESS THAN ONE THOUSAND
26 EIGHT HUNDRED HOURS TO BE COMPLETED WITHIN THE
27 IMMEDIATELY PRECEDING FIVE-YEAR PERIOD. THE BOARD SHALL

1 DEFINE THE REQUIREMENTS FOR SUCH EXPERIENCE TO INCLUDE:

2 (I) SATISFACTORY COMPLETION OF A STRUCTURED PLAN;

3 (II) ADEQUATE INTERACTION BETWEEN THE ADVANCED
4 PRACTICE NURSE, THE PHYSICIAN, AND ANY OTHER HEALTH
5 PROFESSIONAL;

6 (III) EXPERIENCE WITH THE SPECIFIC DRUGS RELEVANT
7 TO THE SCOPE OF PRACTICE OF THE ADVANCED PRACTICE NURSE;
8 AND

9 (IV) ANY OTHER REQUIREMENT THE BOARD DEEMS
10 RELEVANT AND NECESSARY.

11 (d) (I) EXECUTION OF A WRITTEN COLLABORATIVE
12 AGREEMENT WITH A PHYSICIAN LICENSED IN COLORADO WHOSE
13 MEDICAL EDUCATION, TRAINING, EXPERIENCE, AND ACTIVE
14 PRACTICE CORRESPOND WITH THAT OF THE ADVANCED PRACTICE
15 NURSE.

16 (II) THE WRITTEN COLLABORATIVE AGREEMENT SHALL
17 INCLUDE THE DUTIES AND RESPONSIBILITIES OF EACH PARTY,
18 PROVISIONS REGARDING CONSULTATION AND REFERRAL, AND
19 OTHER PROVISIONS AS ESTABLISHED BY THE BOARD.

20 (III) THE NURSE SHALL PROVIDE TO THE BOARD THE
21 NAME AND APPROPRIATE IDENTIFIER OF THE PHYSICIAN AND SHALL
22 KEEP SUCH INFORMATION CURRENT WITH THE BOARD. THIS
23 INFORMATION SHALL ALSO BE AVAILABLE TO THE BOARD OF
24 MEDICAL EXAMINERS, THE BOARD OF PHARMACY, AND, EXCEPT
25 FOR IDENTIFICATION NUMBERS GRANTED BY THE DRUG
26 ENFORCEMENT ADMINISTRATION, TO THE GENERAL PUBLIC.

27 (IV) NOTHING IN THIS PARAGRAPH (d) SHALL BE

1 CONSTRUED TO:

2 (A) LIMIT THE ABILITY OF AN ADVANCED PRACTICE
3 NURSE TO MAKE AN INDEPENDENT JUDGMENT;

4 (B) REQUIRE ON-SITE SUPERVISION BY A PHYSICIAN; OR

5 (C) REQUIRE THE USE OF PROTOCOLS.

6 (5) (a) THE BOARD MAY REVIEW THE EDUCATION AND
7 EXPERIENCE OF AN INDIVIDUAL AND MAY GRANT THE INDIVIDUAL
8 PRESCRIPTIVE AUTHORITY UPON A FINDING THAT SUCH EDUCATION
9 AND EXPERIENCE ARE SUBSTANTIALLY EQUIVALENT TO THE
10 REQUIREMENTS OF THIS SECTION.

11 (b) FOR PURPOSES OF THIS SUBSECTION (5), SUBSTANTIAL
12 EQUIVALENCE INCLUDES, BUT IS NOT LIMITED TO, A FINDING THAT
13 THE INDIVIDUAL RECEIVED EDUCATION FROM AN INSTITUTION
14 ACCREDITED THROUGH THE UNITED STATES DEPARTMENT OF
15 EDUCATION.

16 (c) THE BOARD SHALL MAINTAIN STATISTICS ON PERSONS
17 APPLYING FOR REVIEW PURSUANT TO THIS SUBSECTION (5).

18 (d) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JULY
19 1, 2000.

20 (6) ADVANCED PRACTICE NURSES FROM OTHER STATES
21 APPLYING FOR PRESCRIPTIVE AUTHORITY SHALL COMPLY WITH ALL
22 REQUIREMENTS SET FORTH IN THIS SECTION OR ANY RULE ADOPTED
23 BY THE BOARD PURSUANT TO THIS SECTION.

24 (7) AN ADVANCED PRACTICE NURSE WHO OBTAINS
25 PRESCRIPTIVE AUTHORITY PURSUANT TO THIS SECTION SHALL BE
26 ASSIGNED A SPECIFIC IDENTIFIER BY THE BOARD. THIS IDENTIFIER

1 SHALL BE AVAILABLE TO THE BOARD OF MEDICAL EXAMINERS AND
2 THE BOARD OF PHARMACY. THE BOARD SHALL ESTABLISH A
3 MECHANISM TO ASSURE THAT THE PRESCRIPTIVE AUTHORITY OF AN
4 ADVANCED PRACTICE NURSE MAY BE READILY VERIFIED.

5 (8) (a) THE SCOPE OF PRACTICE FOR AN ADVANCED
6 PRACTICE NURSE MAY BE DETERMINED BY THE BOARD IN
7 ACCORDANCE WITH THIS ARTICLE.

8 (b) THE BOARD MAY CONSIDER INFORMATION PROVIDED
9 BY NURSING, MEDICAL, OR OTHER HEALTH PROFESSIONAL
10 ORGANIZATIONS, ASSOCIATIONS, OR REGULATORY BOARDS.

11 (c) PRESCRIPTIVE AUTHORITY BY AN ADVANCED
12 PRACTICE NURSE SHALL BE LIMITED TO THOSE PATIENTS
13 APPROPRIATE TO SUCH NURSE'S SCOPE OF PRACTICE.
14 PRESCRIPTIVE AUTHORITY MAY BE LIMITED OR WITHDRAWN AND
15 THE ADVANCED PRACTICE NURSE MAY BE SUBJECT TO FURTHER
16 DISCIPLINARY ACTION IN ACCORDANCE WITH THIS ARTICLE IF SUCH
17 NURSE HAS PRESCRIBED OUTSIDE SUCH NURSE'S SCOPE OF
18 PRACTICE OR FOR OTHER THAN A THERAPEUTIC PURPOSE.

19 (9) ALL PRESCRIPTIONS SHALL BE IN COMPLIANCE WITH
20 APPLICABLE FEDERAL AND STATE LAWS, INCLUDING ARTICLE 22 OF
21 THIS TITLE AND PART 2 OF ARTICLE 18 OF TITLE 18, C.R.S.

22 (10) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
23 PERMIT DISPENSING OR DISTRIBUTION, AS DEFINED IN SECTION
24 12-22-102, BY AN ADVANCED PRACTICE NURSE, EXCEPT FOR
25 SAMPLES, UNDER ARTICLE 22 OF THIS TITLE AND THE FEDERAL
26 "PRESCRIPTION DRUG MARKETING ACT OF 1987".

27 (11) NOTHING IN THIS SECTION SHALL LIMIT THE USUAL

1 AND CUSTOMARY PRACTICE OF A NURSE LICENSED PURSUANT TO
2 SECTION 12-38-111 OR SECTION 12-38-112.

3 SECTION 4. 12-38-115. Colorado Revised Statutes,
4 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW
5 SUBSECTION to read:

6 12-38-115. Temporary licenses and permits.
7 (3.5) THE BOARD MAY, AS IT DEEMS APPROPRIATE, ISSUE A
8 PERMIT TO A PERSON WHO IS UNDER THE SUPERVISION OF A
9 PROFESSIONAL NURSE LICENSED PURSUANT TO THIS ARTICLE.

10 SECTION 5. The introductory portion to 12-38-117 (1)
11 and 12-38-117 (1) (b) and (1) (i), Colorado Revised Statutes, 1991
12 Repl. Vol., are amended to read:

13 12-38-117. Grounds for discipline. (1) The board has
14 the power to revoke, suspend, withhold, LIMIT THE SCOPE OF, or
15 refuse to renew any license, to place on probation a licensee or
16 temporary license holder, or to issue a letter of admonition to a
17 licensee in accordance with the procedures set forth in subsection
18 (3) of this section, upon proof that such person:

19 (b) (I) Has been convicted of a felony ~~or has had~~
20 ~~accepted by a court a plea of guilty or nolo contendere to a~~
21 ~~felony.~~ OR ANY CRIME THAT WOULD CONSTITUTE A VIOLATION
22 OF THIS ARTICLE.

23 (II) (A) FOR PURPOSES OF THIS PARAGRAPH (b),
24 "CONVICTION" INCLUDES THE ENTRY OF A PLEA OF GUILTY OR
25 NOLO CONTENDERE OR THE IMPOSITION OF A DEFERRED SENTENCE.

26 (B) A certified copy of the judgment of a court of
27 competent jurisdiction of such conviction or plea shall be prima

1 facie evidence of such conviction.

2 (III) In considering the possible revocation, suspension,
3 LIMITING, or nonrenewal of a license or a temporary license, the
4 board shall be governed by the provisions of section 24-5-101,
5 C.R.S.

6 (i) Is addicted to or dependent on alcohol or
7 habit-forming drugs, or is a habitual user of controlled substances,
8 as defined in section 12-22-303 (7), or other drugs having similar
9 effects, OR IS DIVERTING CONTROLLED SUBSTANCES, AS DEFINED
10 IN SECTION 12-22-303 (7), OR OTHER DRUGS HAVING SIMILAR
11 EFFECTS FROM THE LICENSEE'S PLACE OF EMPLOYMENT; except
12 that the board has the discretion not to discipline the licensee if he
13 SUCH LICENSEE is participating in good faith in a program
14 approved by the board designed to end such addiction or
15 dependency;

16 SECTION 6. 12-38-117 (1), Colorado Revised Statutes,
17 1991 Repl. Vol., is amended BY THE ADDITION OF THE
18 FOLLOWING NEW PARAGRAPHS to read:

19 12-38-117. Grounds for discipline. (1) The board has
20 the power to revoke, suspend, withhold, or refuse to renew any
21 license, to place on probation a licensee or temporary license
22 holder, or to issue a letter of admonition to a licensee in
23 accordance with the procedures set forth in subsection (3) of this
24 section, upon proof that such person:

25 (p) HAS PRESCRIBED, DISTRIBUTED, OR GIVEN TO
26 HIMSELF OR HERSELF OR A FAMILY MEMBER ANY CONTROLLED
27 SUBSTANCE AS DEFINED IN PART 2 OF ARTICLE 18 OF TITLE 18,

1 C.R.S., OR AS CONTAINED IN SCHEDULE II OF 21 U.S.C. SEC. 812;

2 (q) HAS DISPENSED, INJECTED, OR PRESCRIBED AN
3 ANABOLIC STEROID, AS DEFINED IN SECTION 12-22-102 (2.5), FOR
4 THE PURPOSE OF HORMONAL MANIPULATION THAT IS INTENDED TO
5 INCREASE MUSCLE MASS, STRENGTH, OR WEIGHT WITHOUT A
6 MEDICAL NECESSITY TO DO SO OR FOR THE INTENDED PURPOSE OF
7 IMPROVING PERFORMANCE IN ANY FORM OF EXERCISE, SPORT, OR
8 GAME;

9 (r) HAS DISPENSED OR INJECTED AN ANABOLIC STEROID,
10 AS DEFINED IN SECTION 12-22-102 (2.5), UNLESS SUCH ANABOLIC
11 STEROID IS DISPENSED FROM A PHARMACY PURSUANT TO A
12 WRITTEN PRESCRIPTION OR IS DISPENSED BY ANY PERSON LICENSED
13 TO PRACTICE MEDICINE IN THE COURSE OF SUCH PERSON'S
14 PROFESSIONAL PRACTICE;

15 (s) HAS ADMINISTERED, DISPENSED, OR PRESCRIBED ANY
16 HABIT-FORMING DRUG, AS DEFINED IN SECTION 12-22-303 (13), OR
17 ANY CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 12-22-303
18 (7), OTHER THAN IN THE COURSE OF LEGITIMATE PROFESSIONAL
19 PRACTICE.

20 SECTION 7. 12-38-119 (2) (a), Colorado Revised
21 Statutes, 1991 Repl. Vol., is amended, and the said 12-38-119 (2)
22 is further amended BY THE ADDITION OF A NEW
23 PARAGRAPH, to read:

24 12-38-119. Mental and physical examination of
25 licensees. (2) (a) If the board has reasonable cause to believe that
26 a licensee or temporary license holder is unable to practice with
27 reasonable skill and safety to patients because of a condition

1 described in section 12-38-117 (1) (i) or (1) (j), it may require
 2 such person to submit to a mental or physical examination by a
 3 ~~physician~~ QUALIFIED PROFESSIONAL it designates. Upon the
 4 failure of such person to submit to such mental or physical
 5 examination, unless due to circumstances beyond ~~his~~ SUCH
 6 PERSON'S control, the board may suspend such person's license
 7 until such time as such person submits to the required
 8 examinations.

9 (e) THE BOARD MAY REQUIRE THAT A LICENSEE SUBMIT
 10 MEDICAL RECORDS FOR REVIEW IN CONJUNCTION WITH AN
 11 INVESTIGATION MADE PURSUANT TO PARAGRAPH (a) OF THIS
 12 SUBSECTION (2); EXCEPT THAT SUCH RECORDS SHALL REMAIN
 13 CONFIDENTIAL AND SHALL BE REVIEWED BY THE BOARD ONLY TO
 14 THE EXTENT NECESSARY TO CONDUCT AN INVESTIGATION.

15 SECTION 8. 12-38-120 (4) and (7), Colorado Revised
 16 Statutes, 1991 Repl. Vol., are amended to read:

17 12-38-120. Disciplinary proceedings - administrative
 18 law judges - judicial review. (4) (a) Disciplinary proceedings
 19 shall be conducted in the manner prescribed by article 4 of title
 20 24, C.R.S., and the hearing and opportunity for review shall be
 21 conducted pursuant to said article by the board or an
 22 administrative law judge at the board's discretion.

23 (b) BEFORE DETERMINING WHAT DISCIPLINARY ACTION
 24 SHOULD BE IMPOSED AGAINST A LICENSEE, THE BOARD SHALL
 25 DETERMINE WHAT SANCTIONS, IF ANY, ARE NECESSARY TO
 26 PROTECT OR COMPENSATE THE PUBLIC. AFTER ANY SUCH
 27 PROTECTION IS IN PLACE OR COMPENSATION MADE, OR BOTH, THE

1 BOARD MAY CONSIDER AND IMPOSE REQUIREMENTS OR FORMS OF
 2 RELIEF DESIGNED TO REHABILITATE OR RELIEVE THE LICENSEE.
 3 PROTECTION OF THE PUBLIC SHALL BE THE PRIMARY CONCERN IN
 4 A DISCIPLINARY PROCEEDING.

5 (7) In order to aid the board in any hearing or
 6 investigation instituted pursuant to this section, the board, through
 7 any member or executive officer thereof, shall have the power to
 8 issue subpoenas commanding production of copies of any records
 9 containing information relevant to the practice of practical or
 10 professional nursing rendered by any licensee, including, but not
 11 limited to, hospital and physician records. ~~The person providing~~
 12 ~~such copies shall prepare them from the original record and shall~~
 13 ~~delete from the copy provided pursuant to the subpoena the name~~
 14 ~~of the patient, but he shall identify the patient by a numbered~~
 15 ~~code, to be retained by the custodian of the records from which~~
 16 ~~the copies were made.~~ Upon certification of the custodian that the
 17 copies are true and complete except for the patient's name, they
 18 shall be deemed authentic, subject to the right to inspect the
 19 originals for the limited purpose of ascertaining the accuracy of
 20 the copies. No privilege of confidentiality shall exist with respect
 21 to such copies, and no liability shall lie against the board or the
 22 custodian or ~~his~~ THE CUSTODIAN'S authorized employee for
 23 furnishing or using such copies in accordance with this subsection
 24 (7).

25 SECTION 9. Article 38 of title 12, Colorado Revised
 26 Statutes, 1991 Repl. Vol., as amended, is amended BY THE
 27 ADDITION OF A NEW SECTION to read:

1 **12-38-133. Repeal - review of functions.** (1) THIS
2 ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2010.

3 (2) THE PROVISIONS OF SECTION 24-34-104, C.R.S.,
4 CONCERNING THE TERMINATION SCHEDULE FOR REGULATORY
5 BODIES OF THE STATE UNLESS EXTENDED AS PROVIDED IN THAT
6 SECTION, ARE APPLICABLE TO THE STATE BOARD OF NURSING
7 CREATED BY THIS ARTICLE.

8 **SECTION 10.** 12-36-106 (3), Colorado Revised
9 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF
10 A NEW PARAGRAPH to read:

11 **12-36-106. Practice of medicine defined - exemptions**
12 **from licensing requirements.** (3) Nothing in this section shall be
13 construed to prohibit, or to require a license under this article
14 with respect to, any of the following acts:

15 (t) (I) THE RENDERING OF SERVICES BY AN ADVANCED
16 PRACTICE NURSE WHO IS PRACTICING WITHIN SUCH NURSE'S
17 RECOGNIZED SCOPE OF PRACTICE IN COMPLIANCE WITH SECTION
18 12-38-111.6.

19 (II) A PHYSICIAN WHO SIGNS A COLLABORATIVE
20 AGREEMENT WITH AN ADVANCED PRACTICE NURSE PURSUANT TO
21 THE REQUIREMENTS OF SECTION 12-38-111.6 (4) (d) SHALL HAVE
22 AN UNRESTRICTED LICENSE TO PRACTICE MEDICINE IN COLORADO
23 AND AN UNRESTRICTED REGISTRATION BY THE DRUG
24 ENFORCEMENT ADMINISTRATION FOR THE SAME SCHEDULES AS THE
25 COLLABORATING ADVANCED PRACTICE NURSE.

26 (III) (A) THE BOARD OF MEDICAL EXAMINERS SHALL
27 ESTABLISH A MAXIMUM NUMBER OF ADVANCED PRACTICE NURSES

1 WITH WHOM A PHYSICIAN MAY SIGN A COLLABORATIVE
2 AGREEMENT PURSUANT TO THE PROVISIONS OF SECTION
3 12-38-111.6 (4) (d).

4 (B) IT IS UNLAWFUL AND A VIOLATION OF THIS ARTICLE
5 FOR ANY PERSON, CORPORATION, OR OTHER ENTITY TO REQUIRE AS
6 A CONDITION OF CONTRACT, EMPLOYMENT, OR COMPENSATION TO
7 EXCEED THE LIMITATION SET PURSUANT TO SUB-SUBPARAGRAPH
8 (A) OF THIS SUBPARAGRAPH (III).

9 (C) THE BOARD MAY WAIVE THE MAXIMUM NUMBER OF
10 ADVANCED PRACTICE NURSES WITH WHOM A PHYSICIAN MAY SIGN
11 A COLLABORATIVE AGREEMENT FOR A SPECIFIC PHYSICIAN UPON
12 A FINDING THAT QUALITY PATIENT CARE CAN BE MAINTAINED.

13 **SECTION 11.** 24-34-104 (24) (c), Colorado Revised
14 Statutes, 1988 Repl. Vol., is amended, and the said 24-34-104, as
15 amended, is further amended BY THE ADDITION OF A NEW
16 SUBSECTION, to read:

17 **24-34-104. General assembly review of regulatory**
18 **agencies and functions for termination, continuation, or**
19 **reestablishment.** (24) The following boards in the division of
20 registrations shall terminate on July 1, 1995:

21 (c) ~~The state board of nursing, created by article 38 of~~
22 ~~title 12, C.R.S.~~

23 (41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH,
24 SHALL TERMINATE ON JULY 1, 2010:

25 (a) THE FOLLOWING BOARD IN THE DIVISION OF
26 REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES:

27 (I) THE STATE BOARD OF NURSING, CREATED BY ARTICLE

1 38 OF TITLE 12, C.R.S.

2 **SECTION 12. Repeal.** 12-38-131, Colorado Revised
3 Statutes, 1991 Repl. Vol., as amended, is repealed.

4 **SECTION 13. Effective date - applicability.** This act
5 shall take effect July 1, 1995, and shall apply to acts occurring on
6 or after said date.

7 **SECTION 14. Safety clause.** The general assembly
8 hereby finds, determines, and declares that this act is necessary
9 for the immediate preservation of the public peace, health, and
10 safety.

2 Joint Legislative Sunrise and Sunset Review Committee

3 November 17, 1994

4 A BILL FOR AN ACT

101 CONCERNING THE REGULATORY AUTHORITY OF THE DEPARTMENT

102 OF AGRICULTURE UNDER THE "MEASUREMENT

103 STANDARDS ACT OF 1983".

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.

Continues the licensing functions of the department of agriculture under the "Measurement Standards Act of 1983".

Adopts standards for evaluation and inspection of National Institute of Standards and Technology ("Institute") weighing and measuring devices, and eliminates the statutory provisions that apply to moisture-testing devices. Requires that all commercial devices have a certificate of conformance issued by the Institute.

Eliminates, as conditions for qualification as a certified weigher, the current requirements that a person be a U.S. citizen and have good moral character. Grants the commissioner of agriculture authority to deny applications for licensure and certification and to discipline holders of licenses and certificates.

Replaces provisions for licensure of weighing and measuring device salesmen with certification provisions.

Requires the commissioner of the department of agriculture to establish metrology service fees based on the cost of providing such services. Defines "cost". Eliminates current language that limits such fees to a stated amount.

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

2 SECTION 1. 35-14-102 (16), (22), and (31), Colorado

1 Revised Statutes, 1984 Repl. Vol., are amended, and the said
2 35-14-102, as amended, is further amended, BY THE ADDITION
3 OF THE FOLLOWING NEW SUBSECTIONS, to read:

4 35-14-102. Definitions. As used in this article, unless
5 the context otherwise requires:

6 (1.7) "CERTIFICATE OF CONFORMANCE" MEANS A
7 DOCUMENT ISSUED BY THE NATIONAL INSTITUTE OF STANDARDS
8 AND TECHNOLOGY BASED ON TESTING IN PARTICIPATING
9 LABORATORIES, SAID DOCUMENT CONSTITUTING EVIDENCE OF
10 CONFORMANCE OF A TYPE WITH THE REQUIREMENTS OF NATIONAL
11 INSTITUTE OF STANDARDS AND TECHNOLOGY HANDBOOKS 44,
12 105-1, 105-2, OR 105-3.

13 (8.5) "COST" OR "ACTUAL COST" MEANS THE DIRECT
14 COST OF PROVIDING GOODS OR SERVICES, INCLUDING, BUT NOT
15 LIMITED TO, THE TOTAL COST OF LABOR AND ALL RELATED
16 BENEFITS, MAINTENANCE COSTS, MATERIALS, PROVISIONS,
17 SUPPLIES, EQUIPMENT RENTALS, EQUIPMENT PURCHASES,
18 INSURANCE, FINANCING, SUPERVISION, ENGINEERING, CLERICAL
19 AND ACCOUNTING SERVICES, THE VALUE OF THE USE OF
20 EQUIPMENT, INCLUDING THE DEPRECIATION OR REPLACEMENT
21 VALUE OF SUCH EQUIPMENT, AND AN EQUITABLE SHARE OF OTHER
22 ADMINISTRATIVE COSTS NOT OTHERWISE DIRECTLY ATTRIBUTABLE
23 TO A PARTICULAR GOOD OR SERVICE THAT MAY BE REASONABLY
24 APPORTIONED TO EACH PARTICULAR GOOD OR SERVICE IN
25 ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING
26 PRINCIPLES AND STANDARDS.

27 (16) "Metrology services" means all testing, calibrating,

1 and opening of weights and, when necessary, the making of
2 adjustments to weights and measures in order to meet tolerances
3 prescribed by the ~~national bureau of standards~~ NATIONAL
4 INSTITUTE OF STANDARDS AND TECHNOLOGY.

5 (20.5) "NATIONAL TYPE EVALUATION PROGRAM" MEANS
6 A PROGRAM OF COOPERATION BETWEEN THE NATIONAL INSTITUTE
7 OF STANDARDS AND TECHNOLOGY, THE NATIONAL CONFERENCE
8 ON WEIGHTS AND MEASURES, THE STATE OF COLORADO, AND THE
9 PRIVATE SECTOR FOR THE PURPOSE OF DETERMINING, ON A
10 UNIFORM BASIS, CONFORMANCE OF A TYPE WITH THE RELEVANT
11 PROVISIONS OF THE FOLLOWING NATIONAL INSTITUTE OF
12 STANDARDS AND TECHNOLOGY HANDBOOKS:

13 (a) HANDBOOK 44, "SPECIFICATIONS, TOLERANCES, AND
14 OTHER TECHNICAL REQUIREMENTS FOR WEIGHING AND
15 MEASURING DEVICES"; (b) HANDBOOK 105-1, "SPECIFICATIONS
16 AND TOLERANCES FOR REFERENCE STANDARDS AND FIELD
17 STANDARD WEIGHTS AND MEASURES, SPECIFICATIONS AND
18 TOLERANCES FOR FIELD STANDARD WEIGHTS (NIST CLASS F)";

19 (c) HANDBOOK 105-2, "SPECIFICATIONS AND
20 TOLERANCES FOR REFERENCE STANDARDS AND FIELD STANDARD
21 MEASURING FLASKS"; OR

22 (d) HANDBOOK 105-3, "SPECIFICATIONS AND
23 TOLERANCES FOR REFERENCE STANDARDS AND FIELD STANDARD
24 WEIGHTS AND MEASURES, SPECIFICATIONS AND TOLERANCES FOR
25 GRADUATED NECK TYPE VOLUMETRIC FIELD STANDARDS".

26 (22) "Not susceptible of repair" means any weight or
27 measure which is designed or constructed in such a fashion so as

1 to fail to comply with the applicable design or construction
2 standards for such weight or measure as promulgated by the
3 ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS
4 AND TECHNOLOGY or which cannot be repaired to meet the
5 tolerance standards for such weight or measure as promulgated by
6 the national bureau of standards.

7 (23.5) "PARTICIPATING LABORATORY" MEANS ANY
8 STATE MEASUREMENT LABORATORY THAT HAS BEEN CERTIFIED BY
9 THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, IN
10 ACCORDANCE WITH ITS PROGRAM FOR THE CERTIFICATION OF
11 CAPABILITY OF MEASUREMENT LABORATORIES, TO CONDUCT A
12 TYPE EVALUATION UNDER THE NATIONAL TYPE EVALUATION
13 PROGRAM.

14 (31) "Traceable" means the system of determining the
15 value of a standard by comparison with approved standards of the
16 ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS
17 AND TECHNOLOGY.

18 (31.5) "TYPE" MEANS A MODEL OR MODELS OF A
19 PARTICULAR MEASUREMENT SYSTEM, INSTRUMENT, ELEMENT, OR
20 FIELD STANDARD THAT POSITIVELY IDENTIFIES THE DESIGN. A
21 SPECIFIC TYPE MAY VARY IN ITS MEASUREMENT RANGES, SIZE,
22 PERFORMANCE, AND OPERATING CHARACTERISTICS AS SPECIFIED
23 IN THE CERTIFICATE OF CONFORMANCE.

24 (31.6) "TYPE EVALUATION" MEANS THE TESTING,
25 EXAMINATION, OR EVALUATION OF A TYPE BY A PARTICIPATING
26 LABORATORY UNDER THE NATIONAL TYPE EVALUATION
27 PROGRAM.

1 **SECTION 2.** 35-14-103, Colorado Revised Statutes,
2 1984 Repl. Vol., is amended to read:

3 **35-14-103. Systems of weights and measures -**
4 **customary or metric.** The inch pound system and the metric
5 system of weights and measures are jointly valid, and either one
6 or both of these systems shall be used for all commercial purposes
7 in this state. The definitions of basic units of weights and
8 measures, the tables of weights and measures, and the equivalents
9 of weights and measures, as published by the ~~national bureau of~~
10 ~~standards~~ NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY,
11 are recognized and shall govern weighing and measuring
12 equipment and transactions in this state.

13 **SECTION 3.** 35-14-104, Colorado Revised Statutes,
14 1984 Repl. Vol., is amended to read:

15 **35-14-104. Physical standards.** Weights and measures
16 that are traceable to the United States prototype standards supplied
17 by the federal government, or approved as being satisfactory by
18 the ~~national bureau of standards~~ NATIONAL INSTITUTE OF
19 STANDARDS AND TECHNOLOGY, shall be the state's primary
20 standards of weights and measures and shall be maintained in such
21 calibration as prescribed by the ~~national bureau of standards~~
22 NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY. All
23 secondary standards may be prescribed by the commissioner and
24 shall be verified upon their initial receipt and as often thereafter
25 as deemed necessary by the commissioner. The commissioner
26 shall have the custody of the state standards of weights and
27 measures and of the other standards and equipment provided for

1 by this article, and he shall keep accurate records of the same.

2 **SECTION 4.** 35-14-105, Colorado Revised Statutes,
3 1984 Repl. Vol., is amended to read:

4 **35-14-105. Technical requirements for weighing and**
5 **measuring devices - certificate required.** The specifications,
6 tolerances, and other technical requirements for commercial, law
7 enforcement, data gathering, and other weighing and measuring
8 devices as adopted by the national conference on weights and
9 measures and published in the ~~national bureau of standards~~
10 NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY handbook
11 44, "Specifications, Tolerances, and Other Technical
12 Requirements for Commercial Weighing and Measuring Devices",
13 and supplements thereto or revisions thereof, shall apply to
14 weighing and measuring devices in this state, except as modified
15 or rejected by this article or any rule or regulation promulgated
16 pursuant to this article. THE COMMISSIONER SHALL REQUIRE ANY
17 WEIGHT OR MEASURE OR ANY WEIGHING OR MEASURING
18 INSTRUMENT OR DEVICE TO BE ISSUED A CERTIFICATE OF
19 CONFORMANCE FROM THE NATIONAL TYPE EVALUATION
20 PROGRAM PRIOR TO USE FOR COMMERCIAL OR LAW ENFORCEMENT
21 PURPOSES.

22 **SECTION 5.** 35-14-107 (1) (a) and (1) (l), Colorado
23 Revised Statutes, 1984 Repl. Vol., are amended, and the said
24 35-14-107 (1) is further amended BY THE ADDITION OF A
25 NEW PARAGRAPH, to read:

26 **35-14-107. Powers and duties of the commissioner.**
27 (1) The commissioner shall:

1 (a) Maintain traceability of this state's standards to the
2 ~~national bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS
3 AND TECHNOLOGY;

4 (l) Weigh, measure, or inspect packaged commodities
5 kept, offered, or exposed for sale, sold, or in the process of
6 delivery to determine whether they contain the amounts
7 represented and whether they are kept, offered, or exposed for
8 sale in accordance with this article and the rules and regulations
9 promulgated pursuant thereto. Accuracy of weight, measure, or
10 count shall be determined by procedures set forth in the ~~national~~
11 ~~bureau of standards~~ NATIONAL INSTITUTE OF STANDARDS AND
12 TECHNOLOGY handbook 133 as adopted by the national conference
13 on weights and measures 1980, and any supplements or revisions
14 thereto. When the nature of the packaged commodity requires
15 assistance in testing, the commissioner may request the person in
16 possession of the package to furnish equipment and assistance to
17 complete the test.

18 (q) SET FEES FOR METROLOGY SERVICES, PURSUANT TO
19 SECTIONS 35-14-127 AND 35-14-128. SUCH FEES SHALL BE BASED
20 ON ACTUAL COSTS, AS DEFINED IN SECTION 35-14-102 (8.5).

21 SECTION 6. 35-14-114 (2) (a), Colorado Revised
22 Statutes, 1984 Repl. Vol., as amended, is amended to read:

23 35-14-114. Method of sale - special nonfood products
24 - repeal. (2) (a) In addition to other methods of measurement,
25 motor fuels may be sold by gallon equivalents pursuant to the
26 requirements of section 8-20-232.5, C.R.S., notwithstanding the
27 provisions of any ~~national bureau of standards~~ NATIONAL

1 INSTITUTE OF STANDARDS AND TECHNOLOGY handbook or other
2 national standard that is adopted by this state.

3 SECTION 7. 35-14-121 (1) and (7), Colorado Revised
4 Statutes, 1984 Repl. Vol., are amended to read:

5 35-14-121. Weigher - qualification - certification -
6 revocation. (1) ~~A citizen of the United States or a person who~~
7 ~~has declared his intention of becoming such a citizen, who is a~~
8 ~~resident of this state and of good moral character,~~ A PERSON WHO
9 HAS SUFFICIENTLY GOOD MORAL CHARACTER TO CARRY ON THE
10 BUSINESS STATED IN THE APPLICATION, SUBJECT TO SECTION
11 24-5-101, C.R.S., who has the ability to weigh accurately, ~~and to~~
12 make correct weight certificates, and who has received from the
13 commissioner a certificate of certified weigher may use the title
14 of and shall be authorized to act as a certified weigher.

15 (7) The commissioner, in accordance with section 24-4-104,
16 C.R.S., may suspend, ~~or~~ DENY, revoke, RESTRICT, PLACE ON
17 PROBATION, OR REFUSE TO RENEW THE CERTIFICATE OF any
18 certified weigher OR APPLICANT FOR SUCH CERTIFICATE if he OR
19 SHE has been convicted in any court of competent jurisdiction of
20 violating any provision of this article or if the commissioner is
21 satisfied that the ~~weigher~~ PERSON has violated any provision of
22 this article.

23 SECTION 8. 35-14-123 (1), the introductory portion to
24 35-14-123 (2), and 35-14-123 (3), (5), (6), (7), (9), and (10),
25 Colorado Revised Statutes, 1984 Repl. Vol., as amended, are
26 amended to read:

27 35-14-123. Weighing and measuring device sales and

1 **repair - certification of service persons.** (1) Except as provided
 2 in subsection (11) of this section, before ~~selling or offering for~~
 3 ~~sale any new device or~~ installing or performing any repairs or
 4 services on any weighing or measuring device which is required
 5 to be licensed in this state, a person shall make written application
 6 to the commissioner for a ~~license~~ CERTIFICATION upon forms
 7 provided by the department. For the purposes of this section,
 8 only one ~~license~~ CERTIFICATE is required for each business
 9 employing ~~salesmen or servicemen~~ SERVICE PERSONS.

10 (2) ~~Scale servicemen's licenses~~ CERTIFICATES FOR
 11 SCALE SERVICE PERSONS shall be issued in the following classes:

12 (3) If ten percent or more of the devices installed or
 13 repaired in any one calendar year by a ~~serviceman~~ SERVICE
 14 PERSON are rejected, such ~~serviceman~~ PERSON shall be ordered to
 15 appear before the commissioner in accordance with the provisions
 16 of section 24-4-104, C.R.S., to show cause why ~~his serviceman's~~
 17 ~~license~~ THE PERSON'S CERTIFICATE should not be revoked.

18 (5) (a) No scale ~~serviceman~~ SERVICE PERSON shall have
 19 in his OR HER possession any test weights other than those weights
 20 meeting the requirements of the ~~national bureau of standards~~
 21 NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY handbook
 22 105-1: "Field Standard Weights", and any supplements or
 23 additions thereto. Weights employed in the testing, servicing, or
 24 repairing of a scale shall conform to the tolerances prescribed for
 25 such weights as set forth in said handbook 105-1, and any
 26 supplements or additions thereto, and scale ~~servicemen~~ SERVICE
 27 PERSONS shall maintain their testing equipment within such

1 tolerances at all times.

2 (b) All repairs and adjustments made by weighing or
 3 measuring device ~~servicemen~~ SERVICE PERSONS shall conform to
 4 the technical requirements for weighing and measuring devices
 5 adopted in ACCORDANCE WITH section 35-14-105.

6 (6) Each ~~serviceman~~ SERVICE PERSON shall annually
 7 submit his OR HER weights and standards to the laboratory for
 8 certification; EXCEPT THAT, if such weights or standards are
 9 annually certified in another state by that state's metrology
 10 laboratory and evidence is shown of current certification,
 11 traceable to standards of the ~~national bureau of standards,~~
 12 NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, which is
 13 less than a year from date of issuance, the ~~serviceman~~ SERVICE
 14 PERSON shall be exempt from obtaining ~~the annual~~ A Colorado
 15 certificate for ~~his weights and standards~~ THE CURRENT YEAR.

16 (7) Upon the completion of an installation or the repair
 17 of any device, the ~~serviceman~~ SERVICE PERSON shall submit a
 18 placing-in-service report to the commissioner within ten days ~~of~~
 19 AFTER such completion date. The report shall include a scale
 20 status report for scale capacities of five thousand pounds or more.
 21 Any weighing or measuring device tagged for repairs by the
 22 commissioner shall be repaired by the ~~serviceman~~ SERVICE
 23 PERSON within thirty days after receiving notification from the
 24 owner of the device.

25 (9) ~~Salesmen who install devices shall only install them~~
 26 ~~in the proper position, level the device, and adjust the zero~~
 27 ~~balance.~~

1 (10) Licenses for servicemen and persons who sell
2 weighing and measuring devices in existence on June 30, 1983,
3 shall expire December 31, 1988. All licenses AND CERTIFICATES
4 issued on or after July 1, 1983, shall expire five years after
5 issuance. Renewal application shall be in such form as the
6 commissioner shall prescribe. Persons licensed OR CERTIFIED as
7 ~~servicemen~~ SERVICE PERSONS shall also have authority to sell
8 weighing and measuring devices. ~~without obtaining a separate~~
9 ~~license therefor.~~

10 **SECTION 9.** Article 14 of title 35, Colorado Revised
11 Statutes, 1984 Repl. Vol., as amended, is amended BY THE
12 ADDITION OF A NEW SECTION to read:

13 **35-14-124.5. Disciplinary powers.** (1) THE
14 COMMISSIONER MAY DENY AN APPLICATION FOR, REFUSE TO
15 RENEW, REVOKE, OR SUSPEND A LICENSE OR CERTIFICATE OR
16 PLACE A LICENSEE OR CERTIFICATE HOLDER ON PROBATION, IF
17 SUCH PERSON HAS:

18 (a) VIOLATED ANY PROVISION OF THIS ARTICLE OR OF
19 ANY RULE ADOPTED BY THE COMMISSIONER UNDER THIS ARTICLE;

20 (b) BEEN CONVICTED OF A FELONY UNDER ANY STATE OR
21 FEDERAL LAW; EXCEPT THAT, IN CONSIDERING A CONVICTION OF
22 A FELONY, THE COMMISSIONER SHALL BE GOVERNED BY SECTION
23 24-5-101, C.R.S.;

24 (c) COMMITTED FRAUD OR DECEPTION IN THE
25 PROCUREMENT OR ATTEMPTED PROCUREMENT OF A LICENSE OR
26 CERTIFICATE;

27 (d) FAILED TO COMPLY WITH A LAWFUL ORDER OF THE

1 COMMISSIONER CONCERNING THE ADMINISTRATION OF THIS
2 ARTICLE;

3 (e) BEEN CONVICTED OF DECEPTIVE TRADE PRACTICES
4 UNDER ANY STATE OF FEDERAL LAW;

5 (f) USED A COMMERCIAL MEASURING DEVICE OR
6 MOISTURE-TESTING DEVICE IN DECEPTIVE TRADE PRACTICES IN
7 VIOLATION OF ANY STATE OF FEDERAL LAW.

8 (2) ALL PROCEEDINGS CONCERNING THE DENIAL,
9 REFUSAL TO RENEW, REVOCATION, OR SUSPENSION OF A LICENSE
10 OR CERTIFICATE OR THE PLACING OF A LICENSEE OR CERTIFICATE
11 HOLDER ON PROBATION SHALL BE CONDUCTED PURSUANT TO
12 ARTICLE 4 OF TITLE 24, C.R.S.

13 (3) ANY PREVIOUS VIOLATION OF THIS ARTICLE BY AN
14 APPLICANT OR ASSOCIATE OF THE APPLICANT SHALL BE SUFFICIENT
15 GROUNDS FOR DENIAL OF A LICENSE. FOR PURPOSES OF THIS
16 SUBSECTION (3), "ASSOCIATE" MEANS:

17 (a) A PERSON ASSOCIATED WITH THE APPLICANT IN THE
18 BUSINESS FOR WHICH SUCH APPLICANT SEEKS TO BE LICENSED OR
19 CERTIFIED;

20 (b) A PARTNER, OFFICER, DIRECTOR, OR STOCKHOLDER
21 OF MORE THAN THIRTY PERCENT OF THE OUTSTANDING SHARES OF
22 A PARTNERSHIP OR CORPORATION, WHEN SUCH PARTNERSHIP OR
23 CORPORATION IS THE APPLICANT.

24 **SECTION 10.** 35-14-127 (12), Colorado Revised
25 Statutes, 1984 Repl. Vol., is amended to read:

26 **35-14-127. Licenses - fees - stickers - certificates.** (12)
27 The fee for a special test where passenger vehicles, or light duty

1 submitted for calibration be cleaned or sanded, scraped, and
2 painted before submission. Precision weights, volume, and length
3 standards shall be cleaned and dried before submission. The fee
4 for any metrology service, shall not exceed twenty dollars per
5 hour. The commissioner shall set the fee annually at a rate not to
6 exceed actual costs. When metrology services are to be
7 performed outside the laboratory, the laboratory shall be
8 reimbursed for travel and time at the same rates for special tests
9 set forth in section 35-14-127 (12). INCLUDING A SERVICE
10 PERFORMED OUTSIDE THE LABORATORY, SHALL BE DETERMINED
11 ANNUALLY BY THE COMMISSIONER AND SHALL NOT EXCEED THE
12 COST OF PROVIDING SUCH SERVICE, AS DEFINED IN SECTION
13 35-14-102 (8.5).

14 **SECTION 12.** 35-14-129 (2), (3), (4), (5), and (6),
15 Colorado Revised Statutes, 1984 Repl. Vol., are repealed as
16 follows:

17 **35-14-129. Moisture-testing devices - specifications.**
18 (2) When a moisture-testing device requires a thermometer, the
19 thermometer shall be a laboratory-type thermometer with a
20 minimum graduation of one degree Fahrenheit, with an accuracy
21 of plus or minus two degrees Fahrenheit, or one degree centigrade
22 with an accuracy of plus or minus one degree centigrade.

23 (3) When a moisture-testing device requires a scale or
24 balance external to the device to determine moisture content, the
25 scale or balance and weights must meet the requirements for
26 weighing and measuring devices adopted in section 35-14-105.

27 (4) Any installer, serviceman, or salesman who installs,

pickup trucks, are used shall not exceed twenty five dollars per
hour plus the mileage charge set forth in section 24-9-104, C.R.S.
The fee for a special test where OR scale test trucks are used shall
not exceed twenty five dollars per hour plus one dollar and
twenty five cents per mile traveled. The commissioner shall
review and set the fees annually at a rate not to exceed actual
costs. If any test of a device at one location requires time beyond
the first day, the special test fee shall be effective for the balance
of time after one day and until the test is completed. BE
DETERMINED ANNUALLY BY THE COMMISSIONER. SUCH FEE SHALL
NOT EXCEED THE COST, AS DEFINED IN SECTION 35-14-102 (8.5),
OF PERFORMING SUCH SPECIAL TEST. The special test fee may be
charged for any test made at the request of the owner of the
device.

SECTION 11. 35-14-128 (1) and (2), Colorado Revised
Statutes, 1984 Repl. Vol., are amended to read:

35-14-128. Laboratory approval - service -
condemnation. (1) Weights and measures will not be approved
by the department's laboratory unless the design and construction
of the unit complies with the design and construction requirements
prescribed by the national bureau of standards NATIONAL
INSTITUTE OF STANDARDS AND TECHNOLOGY set forth in handbook
105-1: "Field Standard Weights"; handbook 105-2: "Field
Measuring Flasks"; handbook 105-3: "Metal Volumetric Field
Standards"; and circular 547: "Precision Laboratory Weights";
and any supplements or revisions to such handbooks or circular.

(2) The laboratory may require that specified standards

1 ~~services, repairs, or sells a moisture measuring device shall cause~~
2 ~~a placing in service report to be filed with the department. This~~
3 ~~report shall indicate the date of placing in service, the name and~~
4 ~~address of the owner, the manufacturer, and the model and serial~~
5 ~~number of the device within ten days of the in service date. All~~
6 ~~installers, servicemen, and salesmen of moisture testing devices~~
7 ~~shall meet the requirements of section 35-14-123.~~

8 (5) ~~Every moisture testing device that is in commercial~~
9 ~~use shall be tested for accuracy by the department at least once~~
10 ~~each year. An official grain sample shall be used for all tests of~~
11 ~~moisture measuring devices. A grain sample taken from a lot of~~
12 ~~grain for moisture content determination shall be taken in a~~
13 ~~manner recognized by the United States department of agriculture.~~
14 ~~The tolerance of the moisture testing device shall be plus or minus~~
15 ~~five hundredths times the moisture content of the official grain~~
16 ~~sample.~~

17 (6) ~~All specifications and tolerances pertaining to~~
18 ~~moisture measuring devices specified in this section shall be in~~
19 ~~effect until such time as specifications and tolerances for~~
20 ~~moisture testing devices are included among the technical~~
21 ~~requirements adopted in section 35-14-105.~~

22 SECTION 13. 35-14-131 (1), (2) (b), (2) (d), (2) (e),
23 (2) (f), (2) (j), (2) (l), (2) (m), and (3), Colorado Revised
24 Statutes, 1984 Repl. Vol., are amended to read:

25 35-14-131. Civil penalties. (1) Any person who, by
26 himself OR HERSELF, by his OR HER servant or agent, or as the
27 servant or agent of another person commits any of the acts

1 enumerated in subsection (2) of this section shall be subject to a
2 civil penalty of not more than seven hundred fifty dollars for each
3 day of violation.

4 (2) It is a violation for any person to:

5 (b) Use, or have in his OR HER possession for current
6 use or for hire, in the buying or selling of any commodity or
7 thing, in the computation of any basic charge or payment for
8 services rendered on the basis of weight or measurement, or in
9 the determination of weight or measurement when a charge is
10 made for such determination, any weight or measure which has
11 not been sealed by the commissioner or his THE COMMISSIONER'S
12 designated agent within the last year, unless specific written
13 permission to use such weight or measure has been received from
14 the commissioner;

15 (d) Remove, break, or deface, contrary to law or
16 regulation, any tag, seal, or mark placed on any weight or
17 measure pursuant to the requirements of this article, except in the
18 case of the commissioner or a serviceman, licensed SERVICE
19 PERSON, CERTIFIED pursuant to section 35-14-123, performing his
20 duties as provided FOR in this article or any rule or regulation
21 adopted pursuant thereto;

22 (e) Sell, or offer or expose for sale, less than the
23 quantity he OR SHE represents of any commodity, thing, or
24 service;

25 (f) Take more than the quantity he OR SHE represents of
26 any commodity, thing, or service when, as a buyer, he OR SHE
27 furnishes the weight or measure by means of which the amount of

1 the commodity, thing, or service is determined;

2 (j) Act as or represent himself OR HERSELF to be a
3 certified weigher without being certified therefor, or for any
4 certified weigher to: Falsely certify the weight of any load, or
5 part of any load, or of any article whatsoever; falsely certify any
6 net or gross weight required by this article to be in said
7 certificate; refuse to weigh any article or thing which it is his OR
8 HER duty to weigh; or refuse to state in any weight certificate
9 anything required to be therein;

10 (l) Hinder or obstruct in any way the commissioner or
11 his THE COMMISSIONER's authorized agent in the performance of
12 the commissioner's official duties under this article;

13 (m) Act as or represent himself OR HERSELF to be a
14 licensed CERTIFIED weighing or measuring device serviceman
15 SERVICE PERSON without being so licensed CERTIFIED.

16 (3) Any civil penalty collected under this section shall be
17 transmitted to the state treasurer, who shall credit the same to the
18 general fund. Penalties shall be determined by the commissioner
19 or his THE COMMISSIONER's designee and may be collected by the
20 department by action instituted in a court of competent jurisdiction
21 for collection of such penalty. In determining the amount of any
22 civil penalty to be assessed, the commissioner shall consider any
23 relevant factors. The final decision of the commissioner or his
24 THE COMMISSIONER's designee shall be subject to judicial review.
25 In the event that such an action is instituted for the collection of
26 such penalty, the court may consider the appropriateness of the
27 amount of the penalty, if such issue is raised by the party against

1 whom the penalty was assessed.

2 SECTION 14. 35-14-134. Colorado Revised Statutes,
3 1984 Repl. Vol., as amended, is amended to read:

4 35-14-134. Repeal of sections - review of functions.
5 Sections 35-14-102 (3), 35-14-121 to ~~35-14-124~~ 35-14-124.5,
6 35-14-127, 35-14-129, 35-14-131 (1) (d), (1) (j), and (1) (m) are
7 repealed, effective ~~July 1, 1995.~~ JULY 1, 2010. Prior to such
8 repeal, the licensing AND CERTIFICATION functions of the
9 department shall be reviewed as provided for in section
10 24-34-104, C.R.S.

11 SECTION 15. 24-34-104 (24.1) (d), Colorado Revised
12 Statutes, 1988 Repl. Vol., as amended, is amended, and the said
13 24-34-104 is further amended BY THE ADDITION OF A NEW
14 SUBSECTION, to read:

15 24-34-104. General assembly review of regulatory
16 agencies and functions for termination, continuation, or
17 reestablishment. (24.1) The following functions of the specified
18 agencies shall terminate on July 1, 1995:

19 (d) ~~The issuance of licenses related to measurement~~
20 ~~standards through the department of agriculture in accordance~~
21 ~~with article 14 of title 35, C.R.S.;~~

22 (41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH,
23 SHALL TERMINATE ON JULY 1, 2010:

24 (a) THE FOLLOWING FUNCTIONS OF THE COMMISSIONER
25 OF AGRICULTURE:

26 (I) THE ISSUANCE OF LICENSES AND CERTIFICATES
27 RELATED TO MEASUREMENT STANDARDS IN ACCORDANCE WITH

1 ARTICLE 14 OF TITLE 35, C.R.S.

2 **SECTION 16. Effective date - applicability.** This act
3 shall take effect July 1, 1995, and shall apply to acts occurring on
4 or after said date.

5 **SECTION 17. Safety clause.** The general assembly
6 hereby finds, determines, and declares that this act is necessary
7 for the immediate preservation of the public peace, health, and
8 safety.

2 Joint Legislative Sunrise and Sunset Review Committee
3 October 6, 1994

4 A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF EGGS BY THE DEPARTMENT OF
102 AGRICULTURE.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.
Continues the licensing functions of the department of agriculture with respect to egg production, handling, and sale.
Amends the definition of "edible egg" to conform to United States department of agriculture requirements. Eliminates the licensing of egg breakers. Excludes the sale of gasoline from the definition of "total annual gross sales", which must be reported to determine the license fee paid by a retailer. Replaces the current requirement that eggs be kept in refrigeration at or below sixty degrees with a requirement that they be kept at a temperature specified by the agricultural commission by rule. Deletes certain provisions dealing with invoices, advertisements, sale of eggs, and placement of certificates on cases.
Deletes license requirement for egg candlers, out-of-state wholesalers or truckers selling eggs in Colorado, first receivers, and sellers of frozen eggs or egg solids.

Designates the commissioner as the enforcer of the article and gives the commissioner or a designee access to business places and records pertinent to egg production. Gives the commissioner the ability to impose civil penalties and to deny licensure, place a licensee on probation, or restrict or refuse to renew the license of a person found to be in violation of the article.

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

2 SECTION 1. 35-21-101 (6), (8), (9), and (12),

3 Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

4 35-21-101. Definitions. As used in this article, unless
5 the context otherwise requires:

6 (6) "Dealer" means any person WHO IS NOT A PRODUCER
7 AND WHO IS ENGAGED IN BUYING, OR SELLING, EGGS OR BUYING AND
8 SELLING EGGS.

9 (8) "Edible eggs" means eggs which are free from
10 mould, blood ring, blood spot, bloody whites, filth, stuck yolk,
11 black rot, white rot, mixed rot, or any other inedible quality AS
12 DEFINED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE.
13 ~~this includes adhering fecal or other extraneous matter covering~~
14 ~~more than one-fourth of the shell surface. Eggs which have been~~
15 ~~subjected to incubation practices, whether natural or artificial,~~
16 ~~shall be classed as inedible.~~

17 (9) "Egg breaker" means any person who commercially
18 engages in the business of removing eggs from their shells in the
19 production of liquid, frozen, egg solids, or any preparation of egg
20 products.

21 (12) The terms "gross sales" and "total annual gross
22 sales of the establishment" are synonymous and when used for
23 license fee classification purposes mean the gross sales of all
24 items including poultry eggs, sold annually as reported to the
25 department of revenue, BUT DOES NOT INCLUDE GASOLINE SALES.

26 SECTION 2. 35-21-103, Colorado Revised Statutes,
27 1984 Repl. Vol., is amended to read:

28 35-21-103. Eggs to be candled - refrigeration -

29 transportation. (1) Every person buying shell eggs from
 30 producers for resale shall candle and grade the eggs according to
 31 United States department of agriculture standards, grades, and
 32 weight classes for shell eggs. The candling and grading required
 33 by this subsection (1) shall be done in the presence of the
 34 producer if said THE producer so requests. IN BUYING EGGS FOR
 35 RESALE OR SELLING EGGS, no person shall, ~~in buying or selling~~
 36 ~~eggs~~, give or take a greater or less deduction for eggs rejected as
 37 unfit for food or a lower grade than the actual loss or grade which
 38 has been determined by the careful examination of the same.

39 (2) All eggs shall be kept under adequate refrigeration
 40 from the time they are first received from the producer until sold
 41 to the consumer. This refrigeration shall be such that the
 42 temperature of the eggs does not exceed ~~sixty degrees Fahrenheit~~
 43 THE TEMPERATURE ESTABLISHED IN RULES ADOPTED BY THE
 44 COMMISSION PURSUANT TO SECTION 35-21-106 (1).

45 (3) Every vehicle used to transport eggs from a producer
 46 to any dealer, processing plant, or retailer shall be maintained in
 47 a sanitary condition and shall be enclosed to protect eggs from
 48 extreme heat or cold.

49 (4) ~~A certificate shall be placed upon the top layer of~~
 50 ~~each case or part case of candled and graded loose eggs showing~~
 51 ~~the grade, size, date of candling, and the name and address of the~~
 52 ~~dealer selling the eggs. The person selling the eggs shall be~~
 53 ~~responsible for the maintenance of grade for a period of ten days,~~
 54 ~~after which the subsequent buyer is responsible.~~

55 (5) ~~An invoice shall be furnished the subsequent~~

56 ~~purchaser of eggs by the first receiver, showing the name of the~~
 57 ~~seller, the date sold, and the grade and size classification of the~~
 58 ~~eggs sold. A copy of this invoice shall be retained by the buyer~~
 59 ~~and seller of such eggs for a period of thirty days after receipt of~~
 60 ~~the eggs.~~

61 (6) ~~Every carton or container of eggs offered for sale to~~
 62 ~~the consumer in the state of Colorado shall have clearly imprinted~~
 63 ~~thereon, or shall bear a tag or adhesive label securely fastened~~
 64 ~~thereto, showing that the eggs have been candled and graded,~~
 65 ~~together with the date of candling and the name and address of the~~
 66 ~~firm, and stating, in letters not less than one fourth inch in height,~~
 67 ~~the grade and weight designation as specified in section~~
 68 ~~35-21-102.~~

69 (7) ~~Any person advertising eggs for sale in this state~~
 70 ~~shall include in the advertisement, in type at least one half the size~~
 71 ~~of the statement of price, a statement of the correct grade and~~
 72 ~~weight of such eggs; but a person may add a special name,~~
 73 ~~design, or trademark to the grade and weight if such special~~
 74 ~~name, design, or trademark is not misleading or contradictory to~~
 75 ~~the actual grade and weight and if such special name, design, or~~
 76 ~~trademark is first approved by and registered with the~~
 77 ~~commissioner.~~

78 (8) It is unlawful for any person to sell or offer for sale
 79 eggs in any carton or container on which there is evidence of
 80 adhering filth or contamination on the inside or outside of such
 81 carton, or in any used carton on which there is printed, stamped,
 82 or affixed any trademark, design, or other identification of any

83 person other than the person so selling such eggs.
84 (9) It is unlawful to sell eggs labeled as "fertile" unless
85 seventy five percent of the eggs are actually fertile as determined
86 for inspection purposes by candling, by incubation, or by any
87 other means, including breaking out for physical examination.
88 SECTION 3. 35-21-104, Colorado Revised Statutes,
89 1984 Repl. Vol., is amended to read:
90 35-21-104. Licenses - application - fees. (1) Every
91 person buying POULTRY EGGS FOR RESALE OR selling ~~candling, or~~
92 ~~receiving on consignment~~ poultry eggs within this state shall
93 obtain, on or before July 1 of each year, from the department, a
94 retailer's OR wholesaler's ~~or eandler's~~ license applicable for each
95 place where such business is conducted. A license shall not be IS
96 NOT transferable and shall expire EXPIRES on June 30 of each
97 year. and No reduction of license fee shall MAY be made for a
98 fractional part of a year.
99 (2) ~~(a) No person shall, without first obtaining a license~~
100 ~~from the commissioner, engage commercially in the business of~~
101 ~~removing eggs from their shells in the preparation of frozen,~~
102 ~~liquid, egg solids, or any other forms of whole eggs, any mixture~~
103 ~~of yolks, whites, sugared yolks, salted yolks, or any preparation~~
104 ~~of egg meat with or without other wholesome ingredients.~~
105 ~~(b) Before such license is granted, the commissioner~~
106 ~~shall inspect the establishment and the equipment to be used in the~~
107 ~~egg breaking process, and shall also determine whether or not the~~
108 ~~building, equipment, and method of operation comply with the~~
109 ~~sanitary regulations established by the commission or other~~

110 recognized regulatory authority.
111 (c) If, after such inspection, it is evident that the
112 establishment complies with the sanitary requirements, the
113 commissioner shall issue an egg breaker license to the
114 establishment. Such license shall not be transferable and shall
115 expire on June 30 of each year, and no reduction of license fees
116 shall be made for a fractional part of a year.
117 (d) Every egg-breaking establishment shall include its
118 license number as a part of the proper labeling of all cans or
119 containers in which frozen eggs or egg products are sold or
120 offered for sale for human consumption.
121 (3) An application for any A license shall state:
122 (a) The name of the applicant; and
123 (b) If THE APPLICANT IS a firm, the names of its
124 members; and
125 (c) If THE APPLICANT IS a corporation, the names of its
126 officers;
127 (d) The location of the business; and
128 (e) The telephone number, if any.
129 (4) (a) The annual license fees for retailers shall be ARE
130 based on the total annual gross sales, EXCLUDING THE SALE OF
131 GASOLINE, of the establishment for the previous calendar year, as
132 reported to the department of revenue. or; In the case of chain
133 stores, THE ANNUAL LICENSE FEE IS BASED ON total annual gross
134 sales, EXCLUDING THE SALE OF GASOLINE, of individual stores for
135 the previous calendar year as reported by the home office of such
136 chain to the department. except that, for NOTWITHSTANDING ANY

137 PROVISION OF THIS PARAGRAPH (a) TO THE CONTRARY, a retailer
138 who has not been engaged in business during the previous
139 calendar year ~~the fee shall be~~ SHALL PAY two dollars FOR ITS
140 ANNUAL LICENSE FEE. Retail classes and fees ~~shall be~~ ARE as
141 follows:

142 Class I. Retailer - Gross sales up to and including
143 \$50,000, fee \$2.00.

144 Class II. Retailer - Over \$50,000 to and including
145 \$100,000 gross sales, fee \$5.00.

146 Class III. Retailer - Over \$100,000 to and including
147 \$200,000 gross sales, fee \$8.00.

148 Class IV. Retailer - Over \$200,000 to and including
149 \$500,000 gross sales, fee \$15.00.

150 Class V. Retailer - Over \$500,000 gross sales, fee
151 \$25.00.

152 (b) The annual license fees for wholesalers ~~shall be~~ ARE
153 based on the average number of cases of eggs (thirty dozen per
154 case) sold per week during the previous year; except that for a
155 wholesaler who has not been engaged in business during the
156 previous calendar year, the fee ~~shall be~~ IS twenty-five dollars.
157 The applicant for a wholesale license shall keep such records as
158 may be necessary to indicate accurately the quantity of eggs sold
159 per week during the year and shall allow the commissioner to
160 examine these records in determining the quantity of eggs sold.

161 A WHOLESALER SHALL RETAIN such records of quantity sold ~~shall~~
162 ~~be held by a wholesaler~~ for a period of two years. The wholesale
163 classes and fees ~~shall be~~ ARE as follows:

164 Class I. Wholesaler - Up to and including 50 cases per
165 week, fee \$25.00.

166 Class II. Wholesaler - Over 50 cases to and including
167 100 cases per week, fee \$50.00.

168 Class III. Wholesaler - Over 100 cases to and including
169 250 cases per week, fee \$100.00.

170 Class IV. Wholesaler - Over 250 cases to and including
171 750 cases per week, fee \$300.00.

172 Class V. Wholesaler - Over 750 cases per week, fee
173 \$500.00.

174 (c) ~~Any out-of-state wholesaler or trucker selling eggs~~
175 ~~in this state shall be classified as a Class IV wholesaler and shall~~
176 ~~obtain a Class IV wholesaler license. This includes any person,~~
177 ~~other than a common or contract carrier, hauling eggs into this~~
178 ~~state for the account of a person other than himself.~~

179 (d) ~~Any person receiving eggs on consignment to be~~
180 ~~shipped to a first receiver for candling shall obtain a license to~~
181 ~~carry on such business. The license fee for a consignment~~
182 ~~receiver shall be fifteen dollars per year.~~

183 (e) Any person operating retail delivery trucks or other
184 vehicles and selling eggs from ~~these~~ SUCH trucks or vehicles to
185 the consumer shall obtain a Class I retailer license for each
186 vehicle so used.

187 (f) ~~Any Colorado resident not holding a wholesale~~
188 ~~license for a place of business who uses a truck or other vehicle~~
189 ~~in buying eggs from producers or other dealers shall obtain a~~
190 ~~license for each vehicle so used, the fee for which shall be~~

218 **SECTION 4. 35-21-106 (1) and (2), Colorado Revised**
 219 **Statutes, 1984 Repl. Vol., are amended to read.**
 220 **35-21-106. Rules - commissioner to enforce -**
 221 **procedure. (1) The commission is authorized to formulate such**
 222 **rules and regulations as it may deem proper and necessary for the**
 223 **enforcement of the provisions of this article.**
 224 **(2) (a) THE COMMISSIONER IS RESPONSIBLE FOR**
 225 **ENFORCING THIS ARTICLE. THE COMMISSIONER OR THE**
 226 **COMMISSIONER'S DESIGNEE SHALL HAVE ACCESS DURING REGULAR**
 227 **BUSINESS HOURS TO THOSE PLACES OF BUSINESS AND THOSE**
 228 **BUSINESS RECORDS PERTINENT TO ACTIVITIES REGULATED UNDER**
 229 **THIS ARTICLE.**
 230 **(b) IF THE COMMISSIONER UPON DETERMINING DETERMINES**
 231 **that the provisions of this article or the rules and regulations**
 232 **promulgated for its enforcement are being violated, THE**
 233 **COMMISSIONER may cause "stop sale notices" to be placed on all**
 234 **eggs being sold or offered for sale in violation of the provisions**
 235 **of this article or the SAID rules. and regulations thereof. No**
 236 **PERSON MAY SELL OR OTHERWISE DISPOSE OF eggs upon which a**
 237 **"stop sale notice" has been issued shall not be sold or otherwise**
 238 **disposed of until such "stop sale notice" has been cancelled by the**
 239 **commissioner or his A duly authorized agent.**
 240 **SECTION 5. 35-21-107 (2), Colorado Revised Statutes,**
 241 **1984 Repl. Vol., is amended to read:**
 242 **35-21-107. Penalty. (2) The commissioner may After**
 243 **proper hearing as provided in article 4 of title 24, C.R.S., THE**
 244 **COMMISSIONER MAY DENY AN APPLICATION FOR LICENSURE, PLACE**

191 **twenty-five dollars per year.**
 192 **(g) The license fee for egg breakers shall be based on**
 193 **the establishment's annual production in pounds. Class I breaker's**
 194 **license up to and including fifty thousand pounds per year,**
 195 **twenty-five dollars; Class II breaker's license, over fifty thousand**
 196 **pounds per year, fifty dollars; except that, for any egg breaker**
 197 **who has not been engaged in business during the previous year,**
 198 **the fee shall be twenty-five dollars.**
 199 **(h) Any person selling frozen eggs or egg solids (dried**
 200 **eggs) shall obtain the applicable wholesale license based on the**
 201 **number of pounds sold per week per year converted to cases at**
 202 **the rate of thirty-six pounds per case on frozen eggs or twelve**
 203 **pounds per case on egg solids. If the person has a wholesale**
 204 **license for shell eggs or a breaker's license, he shall be credited**
 205 **for such license on his frozen egg or egg solids license.**
 206 **(i) Any person candling eggs in this state shall obtain a**
 207 **candler's license. This includes producers selling candled and**
 208 **graded eggs of their own production to retailers, restaurants, or**
 209 **manufacturers. The fee for such license shall be two dollars per**
 210 **year. This license shall entitle the holder to candle and grade**
 211 **eggs in this state.**
 212 **(5) All LICENSE fees from licensees shall be deposited**
 213 **with the state treasurer and credited to the general fund.**
 214 **Commencing with the fiscal year beginning July 1, 1965, the**
 215 **general assembly shall appropriate to the department of agriculture**
 216 **from the general fund such moneys as are necessary for the**
 217 **administration of this article.**

245 A LICENSEE ON PROBATION, OR RESTRICT, suspend, ~~or~~ revoke, ~~any~~
246 OR REFUSE TO RENEW THE license ~~issued to any~~ OF A person who
247 violates any of the provisions of this article or any ~~rules and~~
248 ~~regulations issued by the commission pursuant thereto~~ RULE
249 ADOPTED UNDER THIS ARTICLE. Such RESTRICTION, revocation, ~~or~~
250 suspension of OR REFUSAL TO RENEW a license may be in addition
251 to, or in lieu of, any penalties or fines imposed in subsection (1)
252 of this section.

253 SECTION 6. Article 21 of title 35, Colorado Revised
254 Statutes, 1984 Repl. Vol., as amended, is amended BY THE
255 ADDITION OF A NEW SECTION to read:

256 35-21-107.5. Civil penalties. (1) (a) THE
257 COMMISSIONER MAY IMPOSE A CIVIL PENALTY ON ANY PERSON
258 WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY RULE
259 ADOPTED UNDER THIS ARTICLE. SUCH PENALTY SHALL NOT
260 EXCEED SEVEN HUNDRED FIFTY DOLLARS PER DAY PER VIOLATION.

261 (b) BEFORE IMPOSING A CIVIL PENALTY, THE
262 COMMISSIONER MAY CONSIDER THE EFFECT OF SUCH PENALTY ON
263 THE ABILITY OF THE VIOLATOR TO STAY IN BUSINESS.

264 (2) (a) THE COMMISSIONER SHALL NOT IMPOSE A CIVIL
265 PENALTY UNLESS THE PERSON CHARGED IS GIVEN NOTICE AND AN
266 OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 4 OF TITLE
267 24, C.R.S.

268 (b) UPON A FINDING THAT THE COMMISSIONER DID NOT
269 HAVE PROBABLE CAUSE TO IMPOSE A CIVIL PENALTY, THE PERSON
270 CHARGED MAY RECOVER FROM THE DEPARTMENT SUCH PERSON'S
271 COSTS AND ATTORNEY FEES.

272 (3) IF THE COMMISSIONER IS UNABLE TO COLLECT A CIVIL
273 PENALTY OR IF ANY PERSON FAILS TO PAY ALL OR ANY PORTION OF
274 A CIVIL PENALTY IMPOSED PURSUANT TO THIS SECTION, THE
275 COMMISSIONER MAY RECOVER THE AMOUNT OF THE PENALTY,
276 PLUS COSTS AND ATTORNEY FEES, BY ACTION IN A COURT OF
277 COMPETENT JURISDICTION.

278 (4) ALL MONEYS COLLECTED PURSUANT TO THIS SECTION
279 SHALL BE TRANSMITTED TO THE STATE TREASURER AND CREDITED
280 TO THE GENERAL FUND.

281 SECTION 7. 35-21-108, Colorado Revised Statutes,
282 1984 Repl. Vol., as amended, is amended to read:

283 35-21-108. Repeal - review of functions. Sections
284 35-21-104 and 35-21-107 (2) are repealed, effective July 1, 1995
285 JULY 1, 2010. Prior to such repeal, the licensing functions of the
286 department shall be reviewed as provided for in section
287 24-34-104, C.R.S.

288 SECTION 8. 24-34-104 (24.1) (e), Colorado Revised
289 Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

290 24-34-104. General assembly review of regulatory
291 agencies and functions for termination, continuation, or
292 reestablishment. (24.1) The following functions of the specified
293 agencies shall terminate on July 1, 1995:

294 (e) ~~The issuance of licenses relating to poultry eggs~~
295 ~~through the department of agriculture or the commissioner of~~
296 ~~agriculture in accordance with article 21 of title 35, C.R.S.;~~

297 SECTION 9. 24-34-104, Colorado Revised Statutes,
298 1988 Repl. Vol., as amended, is amended BY THE ADDITION

299 OF A NEW SUBSECTION to read:

300 (41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH,
301 SHALL TERMINATE ON JULY 1, 2010:

302 (a) THE FOLLOWING FUNCTION OF THE COMMISSIONER OF
303 THE DEPARTMENT OF AGRICULTURE:

304 (I) THE ISSUANCE OF LICENSES RELATING TO POULTRY
305 EGGS IN ACCORDANCE WITH ARTICLE 21 OF TITLE 35, C.R.S.

306 **SECTION 10. Effective date - applicability.** This act
307 shall take effect July 1, 1995, and shall apply to acts occurring on
308 or after said date.

309 **SECTION 11. Safety clause.** The general assembly
310 hereby finds, determines, and declares that this act is necessary
311 for the immediate preservation of the public peace, health, and
312 safety.

313 LLS NO. 95-0017.01 MTH SENATE BILL 95-

314 Joint Legislative Sunrise and Sunset Review Committee

315 November 17, 1994

A BILL FOR AN ACT

101 CONCERNING THE REGULATION BY THE DEPARTMENT OF
102 AGRICULTURE OF PERSONS DEALING IN AGRICULTURAL
103 PRODUCTS.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.
Continues the regulatory and licensing authority of the department of agriculture over certain handlers of farm products.

Deregulates transporters of farm products. Adds having a license revoked, suspended, or not renewed or having been placed on probation in another jurisdiction to the list of grounds for which a licensee or applicant may be disciplined in this state.

Adds new definitions to the "Farm Products Act" and the "Commodity Warehouse Act" so that certain key terms used in those acts are defined.

Requires persons who act as agents for commodity handlers to be licensed. Allows a person who is bonded pursuant to the "Farm Products Act" to use that bond to fulfill the bonding requirements of the "Commodity Warehouse Act".

Eliminates licensing requirements for apple storage. Allows the commissioner of agriculture to adopt rules for the voluntary inspection of apples stored in compliance with the "Controlled Atmosphere Storage of Apples Act".

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

2 SECTION 1. 12-16-103 (3.5) and (11), Colorado
3 Revised Statutes, 1991 Repl. Vol., are amended, and the said

1 12-16-103, as amended, is further amended BY THE ADDITION
2 OF A NEW SUBSECTION, to read:

3 12-16-103. Definitions. As used in this part 1, unless
4 the context otherwise requires:

5 (3.5) "Credit sale contract" means a contract for the sale
6 of a ~~commodity~~ FARM PRODUCT when the sale price is to be paid
7 on a date later than sixty days after delivery of the ~~commodity~~
8 FARM PRODUCT to the buyer and includes but is not limited to
9 those contracts commonly referred to as deferred payment
10 contracts, deferred pricing contracts, and price later contracts.

11 (5.5) "LIVESTOCK" HAS THE SAME MEANING AS SET
12 FORTH IN SECTION 35-1-102 (6), C.R.S.

13 (11) ~~"Transporter" means any person, other than a~~
14 ~~dealer or agent, who transports for hire any farm products or~~
15 ~~commodities originating in Colorado.~~

16 SECTION 2. 12-16-104 (1) and (4), Colorado Revised
17 Statutes, 1991 Repl. Vol., as amended, as they will become
18 effective March 1, 1995, are amended to read:

19 12-16-104. Application for license. (1) No person shall
20 act as a dealer, small-volume dealer, OR agent ~~or transporter~~
21 without having obtained a license as provided in this part 1.
22 Every person acting as a dealer, small-volume dealer, OR agent
23 ~~or transporter~~ shall file an application in writing with the
24 commissioner for a license to transact the business of dealer,
25 small-volume dealer, OR agent, ~~or transporter~~, and such
26 application shall be accompanied by the license fee provided for
27 in section 12-16-105 for each specified class of business.

1 (4) Upon the applicant's filing of the proper application
 2 with the commissioner, accompanied by the proper fee, and when
 3 the commissioner is satisfied that the convenience and necessity
 4 of the industry and the public will be served thereby, the
 5 commissioner shall issue to such applicant a license entitling the
 6 applicant to conduct the business described in the application at
 7 the place named in the application until the last day of February
 8 next following or until the license has been suspended or revoked.
 9 The license of an agent shall expire upon the date of expiration of
 10 the license of the principal for whom the agent acts. The
 11 commissioner may also issue a license to each agent, with a
 12 separate agent's license being required for each principal. Any
 13 dealer, small-volume dealer, or agent shall show said license upon
 14 the request of any interested person. Each licensed dealer,
 15 small-volume dealer, or agent shall post such person's license or
 16 a copy thereof in the person's office or salesroom in plain view
 17 of the public. ~~Transporters must carry the license or a copy~~
 18 ~~thereof in each vehicle used to transport farm products.~~

19 **SECTION 3.** 12-16-105 (1) (c), Colorado Revised
 20 Statutes, 1991 Repl. Vol., is repealed as follows:

21 **12-16-105. License fee - renewal.** (1) For filing the
 22 application described in section 12-16-104, each applicant shall
 23 pay the following fee to the commissioner, who shall transmit all
 24 such fees to the state treasurer for credit to the general fund:

25 (c) ~~Transporters, fifty dollars for each year.~~

26 **SECTION 4.** 12-16-108 (1), Colorado Revised Statutes,
 27 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW

1 PARAGRAPH to read:

2 **12-16-108. Disciplinary powers - licenses.** (1) The
 3 commissioner may deny any application for a license, or may
 4 refuse to renew a license, or may revoke or suspend a license, or
 5 may place a licensee on probation, as the case may require, if the
 6 licensee or applicant has:

7 (g) HAD A LICENSE REVOKED, SUSPENDED, OR NOT
 8 RENEWED OR HAS BEEN PLACED ON PROBATION IN ANOTHER STATE
 9 FOR CAUSE, IF SUCH CAUSE COULD BE THE BASIS FOR THE SAME OR
 10 SIMILAR DISCIPLINARY ACTION IN THIS STATE.

11 **SECTION 5.** 12-16-115 (1) (e) and (1) (k), Colorado
 12 Revised Statutes, 1991 Repl. Vol., as amended, as they will
 13 become effective March 1, 1995, are amended to read:

14 **12-16-115. Unlawful acts.** (1) It is unlawful and a
 15 violation of this part 1 for any person to:

16 (e) Act as a dealer, small-volume dealer, OR agent ~~or~~
 17 ~~transporter~~ without having obtained a license or act as a dealer ~~or~~
 18 ~~agent~~ without having filed a surety bond or an irrevocable letter
 19 of credit, as provided in this part 1. Violation of this paragraph
 20 (e) shall constitute a class 6 felony.

21 (k) Act as a dealer, small-volume dealer, OR agent ~~or~~
 22 ~~transporter~~ and, with intent to defraud, make, draw, utter, or
 23 deliver any check, draft, or order for the payment of money upon
 24 any bank or other depository to the owner for the purchase price
 25 of any farm products or any part thereof upon obtaining
 26 possession or control thereof, when at the time of the making,
 27 drawing, uttering, or delivery the maker or drawer has not

1 sufficient funds in or credit with such bank or other depository for
 2 the payment of such check, draft, or order in full upon its
 3 presentation. The making, drawing, uttering, or delivery of such
 4 check, draft, or order shall be prima facie evidence of an intent
 5 to defraud. "Credit", as used in this paragraph (k), means an
 6 arrangement or understanding with the bank or depository for the
 7 payment of such check, draft, or order. Violation of this
 8 paragraph (k) shall constitute fraud by check, as defined in section
 9 18-5-205, C.R.S.

10 **SECTION 6.** 12-16-202 (1), Colorado Revised Statutes,
 11 1991 Repl. Vol., is amended, and the said 12-16-202, as
 12 amended, is further amended BY THE ADDITION OF THE
 13 FOLLOWING NEW SUBSECTIONS, to read:

14 **12-16-202. Definitions.** As used in this part 2, unless
 15 the context otherwise requires:

16 (1) ~~"Bailee" means the person who by a negotiable~~
 17 ~~warehouse receipt or other document of title acknowledges~~
 18 ~~possession of goods and contracts to deliver them.~~ "AGENT"
 19 MEANS A PERSON WHO, ON BEHALF OF A COMMODITY HANDLER,
 20 BUYS, RECEIVES, CONTRACTS FOR, OR SOLICITS FARM PRODUCTS
 21 FROM OR SELLS FARM PRODUCTS FOR THE OWNER THEREOF OR
 22 WHO NEGOTIATES THE CONSIGNMENT OR PURCHASE OF FARM
 23 PRODUCTS ON BEHALF OF A COMMODITY HANDLER.

24 (1.5) "BAILEE" MEANS A PERSON WHO, BY A NEGOTIABLE
 25 WAREHOUSE RECEIPT OR OTHER DOCUMENT OF TITLE,
 26 ACKNOWLEDGES POSSESSION OF GOODS AND CONTRACTS TO
 27 DELIVER THEM.

1 (9.5) "LIVESTOCK" HAS THE SAME MEANING AS SET
 2 FORTH IN SECTION 35-1-102 (6), C R.S.

3 **SECTION 7.** 12-16-203 (1) and (2), Colorado Revised
 4 Statutes, 1991 Repl. Vol., are amended to read:

5 **12-16-203. Licenses - commodity handler - agent.**

6 (1) No person shall act as a commodity handler OR AS AN AGENT
 7 FOR A COMMODITY HANDLER in this state without having first
 8 obtained a license from the department.

9 (2) Every person intending to act as a commodity
 10 handler OR AS AN AGENT FOR A COMMODITY HANDLER in this state
 11 shall, before March 1 of each year, obtain a license from the
 12 department.

13 **SECTION 8.** 12-16-205 (1) and the introductory portion
 14 to 12-16-205 (2), Colorado Revised Statutes, 1991 Repl. Vol., are
 15 amended, and the said 12-16-205 is further amended BY THE
 16 ADDITION OF A NEW SUBSECTION, to read:

17 **12-16-205. Commodity handler or agent licenses -**
 18 **application requirements.** (1) Each applicant FOR A COMMODITY
 19 HANDLER LICENSE shall pay a license fee of fifty dollars for each
 20 year, which the department shall collect and transmit to the state
 21 treasurer, who shall credit the same to the general fund.

22 (2) Application for a COMMODITY HANDLER license
 23 under this section shall be made to the department upon forms
 24 furnished by the department. The application shall include the
 25 following information:

26 (2.5) (a) APPLICATION FOR AN AGENT LICENSE UNDER
 27 THIS SECTION SHALL BE MADE TO THE DEPARTMENT UPON FORMS

1 FURNISHED BY THE DEPARTMENT. THE APPLICATION SHALL
2 INCLUDE THE FOLLOWING INFORMATION:

3 (I) THE NAME AND PRINCIPAL BUSINESS ADDRESS OF THE
4 APPLICANT IN COLORADO AND IN EACH STATE IN WHICH THE
5 APPLICANT OPERATES;

6 (II) THE NAME OF THE PERSON AUTHORIZED TO RECEIVE
7 AND ACCEPT SERVICE OF SUMMONS AND LEGAL NOTICES OF ALL
8 KINDS ON BEHALF OF THE APPLICANT IN EACH STATE;

9 (III) THE NAME AND ADDRESS OF THE COMMODITY
10 HANDLER REPRESENTED OR THAT WILL BE REPRESENTED UPON
11 LICENSURE OF THE AGENT;

12 (IV) A WRITTEN LETTER OF INTENTION FROM THE
13 COMMODITY HANDLER NAMED IN SUBPARAGRAPH (III) OF THIS
14 PARAGRAPH (a) TO NAME THE APPLICANT AS SUCH COMMODITY
15 HANDLER'S AGENT UPON LICENSURE;

16 (V) THE NAME AND ADDRESS OF ANY COMMODITY
17 HANDLER FOR WHOM THE AGENT HAS BEEN ISSUED A LICENSE
18 PURSUANT TO THIS SUBSECTION (2.5); AND

19 (VI) ANY OTHER INFORMATION THAT THE COMMISSIONER
20 DEEMS REASONABLY NECESSARY TO CARRY OUT THE PURPOSES OF
21 THIS PART 2.

22 (b) (I) NO PERSON MAY BE LICENSED AS AGENT FOR ANY
23 COMMODITY HANDLER THAT IS NOT LICENSED.

24 (II) A SEPARATE LICENSE SHALL BE REQUIRED FOR EACH
25 COMMODITY HANDLER THAT AN AGENT SEEKS TO REPRESENT.

26 (c) A LICENSE ISSUED PURSUANT TO THIS SUBSECTION
27 (2.5) SHALL EXPIRE UPON EXPIRATION OF THE LICENSE OF THE

1 COMMODITY HANDLER THE AGENT REPRESENTS.

2 SECTION 9. 12-16-206, Colorado Revised Statutes,
3 1991 Repl. Vol., is amended to read:

4 12-16-206. Licenses - requirements. (1) To receive or
5 maintain a license, each applicant or ~~commodity handler~~ LICENSEE
6 shall satisfy the following requirements:

7 (a) The applicant or ~~commodity handler~~ LICENSEE shall
8 furnish the commissioner with evidence of minimum provisional
9 insurance coverage in an amount sufficient to protect the
10 applicant's storage obligations. If, at any time, the commissioner
11 evaluates an applicant's provisional insurance coverage to be
12 insufficient, the commissioner may require such additional
13 insurance as ~~he~~ THE COMMISSIONER considers sufficient. Failure
14 to provide evidence of the additional insurance within thirty days
15 after written notice from the commissioner constitutes grounds for
16 the suspension or revocation of the license.

17 (b) The applicant or ~~commodity handler~~ LICENSEE shall
18 furnish the commissioner with a financial statement ~~which~~ THAT
19 presents accurately his or her financial condition. The
20 commissioner may promulgate rules ~~which~~ THAT clearly state the
21 information required from each applicant or ~~commodity handler~~
22 LICENSEE under this section. Any financial statement submitted
23 to the commissioner in support of a license application made
24 pursuant to the provisions of this part 2 shall be confidential.

25 (2) If any ~~commodity handler~~ LICENSEE fails to apply for
26 license renewal before March 1 of each year, such ~~handler~~
27 LICENSEE shall, upon application for a renewal license and before

1 such license is issued, pay a penalty fee equal to the license fee.

2 Such penalty fee shall be in addition to the license fee.

3 **SECTION 10.** 12-16-206.5 (1), Colorado Revised
4 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF
5 A NEW PARAGRAPH to read:

6 **12-16-206.5. Disciplinary powers - licenses.** (1) The
7 commissioner may deny any application for a license, or may
8 refuse to renew a license, or may revoke or suspend a license, or
9 may place a licensee on probation, as the case may require, if the
10 licensee or applicant has:

11 (h) HAD A LICENSE REVOKED, SUSPENDED, OR NOT
12 RENEWED OR HAS BEEN PLACED ON PROBATION IN ANOTHER STATE
13 FOR CAUSE, IF SUCH CAUSE COULD BE THE BASIS FOR SIMILAR
14 DISCIPLINARY ACTION IN THIS STATE.

15 **SECTION 11.** 12-16-218 (1), Colorado Revised
16 Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF
17 A NEW PARAGRAPH to read:

18 **12-16-218. Bonds or irrevocable letters of credit -**
19 **exemptions.** (1) (e) ANY PERSON LICENSED PURSUANT TO PART
20 1 OF THIS ARTICLE MAY APPLY FOR A LICENSE AS A COMMODITY
21 HANDLER OR AGENT AND SHALL NOT BE SUBJECT TO THE LICENSE
22 FEE REQUIRED BY SECTION 12-16-205. THE BOND OR
23 IRREVOCABLE LETTER OF CREDIT REQUIRED BY SECTION 12-16-106
24 SHALL ALSO APPLY TO SUCH PERSON'S ACTIVITIES AS A
25 COMMODITY HANDLER OR AGENT AND SHALL BE SUBJECT TO THE
26 PROVISIONS OF THIS SECTION AND SECTION 12-16-215.

27 **SECTION 12.** 12-16-221 (1) (e) and (1) (l), Colorado

1 Revised Statutes, 1991 Repl. Vol., are amended to read:

2 **12-16-221. Unlawful acts.** (1) It is unlawful and a
3 violation of this part 2 for any person to:

4 (e) Act as a commodity handler OR AGENT without
5 having obtained a license or ACT AS A COMMODITY HANDLER
6 without having filed a surety bond or irrevocable letter of credit,
7 as provided in this part 2. Violation of this paragraph (e) shall
8 constitute a class 6 felony.

9 (l) Act as a commodity handler OR AGENT and, with
10 intent to defraud, make, draw, utter, or deliver any check, draft,
11 or order for the payment of money upon any bank or other
12 depository to the owner for the purchase price of any commodities
13 or any part thereof upon obtaining possession or control thereof,
14 when at the time of the making, drawing, uttering, or delivery the
15 maker or drawer has not sufficient funds in or credit with such
16 bank or other depository for the payment of such check, draft, or
17 order in full upon its presentation. The making, drawing,
18 uttering, or delivery of such check, draft, or order shall be prima
19 facie evidence of an intent to defraud. "Credit", as used in this
20 paragraph (l), means an arrangement or understanding with the
21 bank or depository for the payment of such check, draft, or order.
22 Violation of this paragraph (l) shall constitute fraud by check, as
23 defined in section 18-5-205, C.R.S.

24 **SECTION 13.** 12-16-223, Colorado Revised Statutes,
25 1991 Repl. Vol., is amended to read:

26 **12-16-223. Repeal of article.** This article is repealed,
27 effective ~~July 1, 1995~~ JULY 1, 2010. Prior to such repeal, the

1 licensing functions of the commissioner shall be reviewed as
2 provided for in section 24-34-104, C.R.S.

3 **SECTION 14.** 24-34-104 (24.1) (i), Colorado Revised
4 Statutes, 1988 Repl. Vol., as amended, is amended, and the said
5 24-34-104 is further amended BY THE ADDITION OF A NEW
6 SUBSECTION, to read:

7 **24-34-104. General assembly review of regulatory**
8 **agencies and functions for termination, continuation, or**
9 **reestablishment.** (24.1) The following functions of the specified
10 agencies shall terminate on July 1, 1995:

11 (i) ~~The licensing functions of the commissioner of~~
12 ~~agriculture pursuant to article 16 of title 12, C.R.S.~~

13 (41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH,
14 SHALL TERMINATE ON JULY 1, 2010:

15 (a) THE FOLLOWING FUNCTION OF THE COMMISSIONER OF
16 AGRICULTURE:

17 (I) THE LICENSING AND REGULATION OF PERSONS
18 PURSUANT TO ARTICLE 16 OF TITLE 12, C.R.S.

19 **SECTION 15.** 35-23.5-103, Colorado Revised Statutes,
20 1984 Repl. Vol., is amended to read:

21 **35-23.5-103. Voluntary inspection of facility - rules -**
22 ~~fee. On or after July 1, 1977, no person shall operate a controlled~~
23 ~~atmosphere storage facility for the storage of apples without~~
24 ~~applying for and receiving a license therefor from the~~
25 ~~commissioner. A fee established by the commissioner to cover~~
26 ~~the costs of issuing the license and making the inspection shall~~
27 ~~accompany the application. Prior to the issuance of the license,~~

1 ~~the commissioner or his authorized agent shall inspect the storage~~
2 ~~facility to determine compliance with this article and the rules~~
3 ~~adopted pursuant thereto. Each license shall expire three years~~
4 ~~after issuance but may be renewed upon paying the current fee~~
5 ~~established by the commissioner for an original license, unless his~~
6 ~~license has been revoked or suspended for a violation of this~~
7 ~~article or the rules adopted pursuant thereto within the last two~~

8 ~~years.~~ THE COMMISSIONER MAY INSPECT A CONTROLLED
9 ATMOSPHERE STORAGE FACILITY UPON REQUEST BY THE OPERATOR
10 OR UNDER CONDITIONS SET FORTH IN RULES ADOPTED BY THE
11 COMMISSIONER PURSUANT TO SECTIONS 24-4-103, C.R.S., AND
12 35-23.5-104. THE COMMISSIONER MAY FIX, ASSESS, AND COLLECT
13 FEES IN AMOUNTS THAT COVER ACTUAL COSTS ASSOCIATED WITH
14 INSPECTION AND THE ISSUANCE OF CERTIFICATES OF INSPECTION.

16 **SECTION 16.** 35-23.5-104, Colorado Revised Statutes,
17 1984 Repl. Vol., is amended to read:

18 **35-23.5-104. Commissioner to develop rules.** The
19 commissioner shall develop reasonable rules concerning the
20 VOLUNTARY INSPECTION OF APPLES STORED PURSUANT TO THIS
21 ARTICLE AND THE controlled atmosphere storage of apples,
22 including, among other factors, the following: Storage facility
23 regulations; record keeping and reports; length of storage time,
24 including the maximum time allowed to reach prescribed
25 atmospheric conditions of temperature, oxygen, and carbon
26 dioxide; quality regulations; and labeling and marketing.

27 **SECTION 17.** The introductory portion to 35-23.5-107

1 (1) and 35-23.5-107 (1) (a) and (1) (b), Colorado Revised
2 Statutes, 1984 Repl. Vol., are amended to read:

3 **35-23.5-107. Penalty.** (1) ~~On or after July 1, 1977, It~~
4 ~~shall be~~ IS unlawful for any person to:

5 (a) Operate a facility for the storage of apples that is
6 represented as being a controlled atmosphere storage facility
7 unless it ~~has been licensed~~ MEETS THE STANDARDS SET PURSUANT
8 TO RULE by the commissioner under the provisions of this article;

9 (b) Sell, exchange, or offer for sale, ADVERTISE, LABEL,
10 OR OTHERWISE REPRESENT THAT apples ~~grown in Colorado which~~
11 ~~are represented as having been~~ HAVE BEEN exposed to controlled
12 atmosphere storage, unless such apples have been stored in a
13 facility ~~licensed~~ THAT MEETS THE STANDARDS SET PURSUANT TO
14 RULE by the commissioner under provisions of this article.

15 **SECTION 18.** 35-23.5-108, Colorado Revised Statutes,
16 1984 Repl. Vol., as amended, is amended to read:

17 **35-23.5-108. Repeal - review of functions.** Sections
18 ~~35-23.5-103, 35-23.5-106 AND 35-23.5-107 (1) (a), (1) (b), and~~
19 (1) (c) are repealed, effective July 1, 1995. Prior to such repeal,
20 the licensing functions of the commissioner shall be reviewed as
21 provided for in section 24-34-104, C.R.S.

22 **SECTION 19. Effective date - applicability.** This act
23 shall take effect upon passage, and shall apply to acts occurring
24 on or after said date.

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

Joint Legislative Sunrise and Sunset Review Committee
November 17, 1994

A BILL FOR AN ACT

101 CONCERNING THE LICENSING FUNCTION OF THE DEPARTMENT OF
102 AGRICULTURE UNDER THE "SLAUGHTER, PROCESSING,
103 AND SALE OF MEAT ANIMALS ACT".

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.
Continues the licensing function of the department of agriculture with respect to the slaughter, processing, and sale of meat animals.

Removes certain temperature requirements from the statutes and allows the department to specify temperature requirements by rule. Authorizes the department to adopt rules concerning the sale of meat and food plan operators. Makes it unlawful to sell adulterated meat and sets out penalties for doing so.

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

102 SECTION 1. 35-33-103 (18), Colorado Revised
103 Statutes, 1984 Repl. Vol., as amended, is amended to read:

104 35-33-103. Definitions. As used in this article, unless
105 the context otherwise requires:

106 (18) "Locker plant" means a location or establishment
107 in which space in individual lockers is rented for the storage of

101 FROZEN food. ~~at or below a temperature of forty degrees~~
102 ~~Fahrenheit.~~

103 SECTION 2. 35-33-104 (1) and (7), Colorado Revised
104 Statutes, 1984 Repl. Vol., as amended, are amended to read:

105 35-33-104. Department of agriculture - powers and
106 duties. (1) The department is hereby authorized to formulate
107 reasonable rules ~~regulations~~, and standards of construction,
108 operation, and sanitation for all meat processing facilities and
109 shall establish ~~regulations~~ RULES and standards pertaining to
110 containers, packaging materials, mobile slaughter units, slaughter
111 rooms, processing rooms, chill rooms, storage and locker rooms,
112 sharp freezing facilities, and premises of meat processing
113 facilities, with respect to the service of slaughtering, cutting,
114 preparing, wrapping, and packaging meat and meat products
115 necessary for the proper preservation of food, AND SHALL
116 ESTABLISH RULES AND STANDARDS PERTAINING TO THE SALE OF
117 MEAT OR MEAT PRODUCTS AND FOR FOOD PLAN OPERATORS to the
118 end of protecting the public health and protecting the public from
119 deception, fraud, or unethical sales practices.

120 (7) ~~The licensing functions of the department as set forth~~
121 ~~in this article are terminated on July 1, 1995. Prior to such~~
122 ~~termination, the licensing functions shall be reviewed as provided~~
123 ~~in section 24-34-104, C.R.S.~~

124 SECTION 3. 35-33-107 (3) and (5), Colorado Revised
125 Statutes, 1984 Repl. Vol., as amended, are amended to read:

126 35-33-107. Exemptions. (3) Any person who holds an
127 establishment number issued by the United States department of

101 agriculture for purposes of inspection and does not sell meat or
102 meat products at retail or engage in the custom processing of meat
103 animals shall be exempt from the requirements of this article;
104 EXCEPT THAT ANY SUCH PERSON SHALL BE SUBJECT TO THE
105 REQUIREMENTS OF SECTION 35-33-204.

106 (5) ~~This section is repealed, effective July 1, 1995.~~

107 SECTION 4. 35-33-201 (7), Colorado Revised Statutes,
108 1984 Repl. Vol., as amended, is amended to read:

109 35-33-201. Processing facilities - operation. (7) All
110 poultry and rabbits shall be chilled immediately after processing
111 so that the internal temperature is reduced to ~~forty degrees~~
112 ~~Fahrenheit or less~~ A TEMPERATURE ESTABLISHED BY THE
113 DEPARTMENT BY RULE AND SUFFICIENT TO PROTECT THE PUBLIC
114 HEALTH.

115 SECTION 5. 35-33-204, Colorado Revised Statutes,
116 1984 Repl. Vol., as amended, is amended to read:

117 35-33-204. Sale of adulterated or diseased meat.

118 (1) Notwithstanding any other provision of this article, it is
119 unlawful for any person to receive for the purpose of slaughter,
120 slaughter, sell, expose for sale, can or pack for the purposes of
121 transportation or sale, or give away for use as human food, any
122 meat which he SUCH PERSON knows or has reason to know is:

123 (a) ADULTERATED, AS DEFINED IN SECTION 25-5-410,
124 C.R.S.; OR

125 (b) Diseased or came from the carcass of an animal that
126 died from disease or exposure or was not slaughtered for the
127 purpose of human consumption.

101 (2) (a) ANY PERSON WHO VIOLATES PARAGRAPH (a) OF
102 SUBSECTION (1) OF THIS SECTION COMMITS A CLASS 2
103 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION
104 18-1-106, C.R.S.

105 (b) Any person who violates PARAGRAPH (b) OF
106 SUBSECTION (1) OF this section commits a class 5 felony and shall
107 be punished as provided in section 18-1-105, C.R.S.

108 SECTION 6. 35-33-205, Colorado Revised Statutes,
109 1984 Repl. Vol., as amended, is repealed as follows:

110 35-33-205. Repeal of part. ~~This part 2 is repealed,~~
111 ~~effective July 1, 1995. Prior to such repeal, the licensing~~
112 ~~functions of the department shall be reviewed as provided for in~~
113 ~~section 24-34-104, C.R.S.~~

114 SECTION 7. 35-33-407, Colorado Revised Statutes,
115 1984 Repl. Vol., as amended, is amended to read:

116 35-33-407. Repeal of article. This ~~part 4~~ ARTICLE is
117 repealed, effective ~~July 1, 1995~~ JULY 1, 2010. Prior to such
118 repeal, the licensing functions of the department shall be reviewed
119 as provided for in section 24-34-104, C.R.S.

120 SECTION 8. 24-34-104 (24.1) (c), Colorado Revised
121 Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

122 24-34-104. General assembly review of regulatory
123 agencies and functions for termination, continuation, or
124 reestablishment. (24.1) The following functions of the specified
125 agencies shall terminate on July 1, 1995:

126 (c) ~~The issuance of licenses relating to slaughter,~~
127 ~~processing, and sale of meat through the commissioner of~~

101 ~~agriculture and the department of agriculture in accordance with~~
102 ~~article 33 of title 35, C.R.S.;~~

103 **SECTION 9.** 24-34-104, Colorado Revised Statutes,
104 1988 Repl. Vol., as amended, is amended BY THE ADDITION
105 OF A NEW SUBSECTION to read:

106 **24-34-104. General assembly review of regulatory**
107 **agencies and functions for termination, continuation, or**
108 **reestablishment.** (41) THE FOLLOWING AGENCIES, FUNCTIONS,
109 OR BOTH, SHALL TERMINATE JULY 1, 2010:

110 (a) THE FOLLOWING FUNCTION OF THE COMMISSIONER OF
111 THE DEPARTMENT OF AGRICULTURE:

112 (I) THE ISSUANCE OF LICENSES RELATING TO SLAUGHTER,
113 PROCESSING, AND SALE OF MEAT IN ACCORDANCE WITH ARTICLE
114 33 OF TITLE 35, C.R.S.

115 **SECTION 10. Effective date - applicability.** This act
116 shall take effect July 1, 1995, and shall apply to acts occurring on
117 or after said date.

118 **SECTION 11. Safety clause.** The general assembly
119 hereby finds, determines, and declares that this act is necessary
120 for the immediate preservation of the public peace, health, and
121 safety.

101 LLS NO. 95-0023.01 JLB SENATE BILL 95-

102 Joint Legislative Sunrise and Sunset Review Committee

103 October 6, 1994

104 A BILL FOR AN ACT
105 CONCERNING THE REGULATION OF PODIATRISTS BY THE COLORADO
106 PODIATRY BOARD.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.
Extends the regulatory authority of the Colorado podiatry board. Requires persons to purchase professional liability insurance in specified amounts to lawfully practice podiatry in this state. Authorizes the board to exempt from this requirement any person who signs an affidavit stating that the person will not perform surgical operations.

Expands the definition of "unprofessional conduct" to include misleading omissions or material deception in renewing or seeking the reinstatement of a license, engaging in a sexual act with a patient during the period of treatment or for a specified period immediately thereafter, and conviction of any crime that would constitute a violation of the podiatry statutes. Includes within the definition of "conviction" the imposition of a deferred sentence.

Provides that letters of concern shall be confidential. Eliminates provisions that empower the director of the department of regulatory agencies to order the podiatry board to investigate a complaint whenever one is received by the department.

Eliminates current continuing education requirements. Empowers the board to establish by rule the requirements for license reinstatement when the applicant has been unlicensed for more than two years.

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

1 SECTION 1. 12-32-102, Colorado Revised Statutes.

2 1991 Repl. Vol. is amended to read:

3 12-32-102. Podiatry license required - professional
4 liability insurance required - exceptions. (1) It is unlawful for
5 any person to practice podiatry within the state of Colorado who
6 does not hold a license to practice medicine issued by the
7 Colorado state board of medical examiners or a license to practice
8 podiatry issued by the Colorado podiatry board as provided by
9 this article. A podiatry license is not required for a person
10 serving a one-year or two-year approved residency program.
11 Such persons must register with the Colorado podiatry board in
12 such manner and form as such board shall prescribe. As used in
13 this section, an "approved residency" is a residency in a hospital
14 conforming to the minimum standards for residency training
15 established or approved by the Colorado podiatry board, which
16 has the authority, upon its own investigation, to approve any
17 residency.

18 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3)
19 OF THIS SECTION, IT IS UNLAWFUL FOR ANY PERSON TO PRACTICE
20 PODIATRY WITHIN THE STATE OF COLORADO UNLESS SUCH PERSON
21 PURCHASES AND MAINTAINS PROFESSIONAL LIABILITY INSURANCE
22 IN AN AMOUNT NOT LESS THAN FIFTY THOUSAND DOLLARS PER
23 CLAIM AND ONE HUNDRED FIFTY THOUSAND DOLLARS PER YEAR
24 FOR ALL CLAIMS.

25 (3) THE BOARD MAY EXEMPT ANY LICENSED PODIATRIST
26 FROM THE INSURANCE REQUIREMENT SPECIFIED IN SUBSECTION (2)
27 OF THIS SECTION IF SAID PODIATRIST SIGNS AN AFFIDAVIT STATING

1 THAT SAID PODIATRIST WILL NOT PERFORM SURGICAL OPERATIONS.

2 SECTION 2. 12-32-103 (4) (b), Colorado Revised
3 Statutes, 1991 Repl. Vol., is amended to read:

4 12-32-103. Appointment of members of podiatry
5 board - terms - repeal of article. (4) (b) This article is repealed,
6 effective July 1, 1995 JULY 1, 2010.

7 SECTION 3. 12-32-107 (3) (b), (3) (e), (3) (s), and (3)
8 (x), Colorado Revised Statutes, 1991 Repl. Vol., are amended to
9 read:

10 12-32-107. Issuance, revocation, or suspension of
11 license - probation - immunity in professional review.

12 (3) "Unprofessional conduct" as used in this article means:

13 (b) Resorting to fraud, misrepresentation, or MATERIAL
14 deception, OR MAKING A MISLEADING OMISSION, in applying for,
15 or in securing, RENEWING, OR SEEKING REINSTATEMENT OF A
16 license or in taking the examination provided for REQUIRED in this
17 article;

18 (e) Conviction of a felony or ANY CRIME THAT WOULD
19 CONSTITUTE A VIOLATION OF THIS ARTICLE. FOR PURPOSES OF
20 THIS PARAGRAPH (e), "CONVICTION" INCLUDES THE ENTRY OF A
21 plea of guilty or nolo contendere to a felony OR THE IMPOSITION
22 OF A DEFERRED SENTENCE;

23 (s) Engaging in a sexual act with a patient during the
24 course of patient care OR DURING THE SIX-MONTH PERIOD
25 IMMEDIATELY FOLLOWING THE TERMINATION OF SUCH CARE.
26 "Sexual act", as used in this paragraph (s), means sexual contact,
27 sexual intrusion, or sexual penetration as defined in section

1 18-3-401, C.R.S.;

2 (x) Misstating or omitting a material fact in procuring or
3 attempting to procure a license or in taking the examination
4 provided for in this article;

5 SECTION 4. 12-32-108.3 (2) (c) (V), Colorado Revised
6 Statutes, 1991 Repl. Vol., is amended to read:

7 12-32-108.3. Disciplinary action by board. (2) (c) On
8 completion of an investigation, the board shall make a finding
9 that:

10 (V) The investigation discloses an instance of conduct
11 which, in the opinion of the board, does not warrant formal action
12 but in which the board has noticed indications of possible errant
13 conduct by the licensee that could lead to serious consequences if
14 not corrected, in which case, a CONFIDENTIAL letter of concern
15 shall be sent to the podiatrist against whom a complaint was
16 made. If the board learns of second or subsequent actions of the
17 same or similar nature by the licensee, the board shall not issue
18 a CONFIDENTIAL letter of concern but shall take such other course
19 of action as it deems appropriate.

20 SECTION 5. 12-32-108.3 (14), Colorado Revised
21 Statutes, 1991 Repl. Vol., is repealed as follows:

22 12-32-108.3. Disciplinary action by board.
23 (14) (a) The executive director of the department of regulatory
24 agencies may direct the Colorado podiatry board to conduct an
25 investigation of a person licensed to practice podiatry about whom
26 the executive director has received complaints.

27 (b) The Colorado podiatry board, within sixty days,

1 shall accept or reject the directive of the executive director under
 2 paragraph (a) of this subsection (14), and the board shall notify
 3 the executive director of its decision. If said board rejects the
 4 investigation or if, upon review, the executive director and the
 5 attorney general find that the board has not proceeded with a
 6 thorough investigation, the executive director may then cause an
 7 investigation to be made of the complaints presented to him; but
 8 no new investigation shall be made by the executive director for
 9 the sole reason of disagreement with the findings and conclusions
 10 of the board. In any investigation conducted by the executive
 11 director pursuant to this paragraph (b), the executive director may
 12 utilize the staff, records, and moneys of the Colorado podiatry
 13 board. After an investigation and, if necessary, a hearing, the
 14 executive director shall submit to the board the findings of fact
 15 and conclusions of law for further action.

16 (e) Except as specifically provided in this subsection
 17 (14), actions taken by the executive director are subject to the
 18 limitations imposed by section 24-1-105 (1), C.R.S., relating to
 19 the powers, duties, and functions of the Colorado podiatry board
 20 under a type 1 transfer.

21 SECTION 6. 12-32-111 (1), Colorado Revised Statutes,
 22 1991 Repl. Vol., is repealed as follows:

23 12-32-111. Renewal of license. (1) The Colorado
 24 podiatry board shall set reasonable continuing education
 25 requirements for renewal of license, but in no event shall the
 26 board require more than fourteen hours' credit of continuing
 27 education per year. A podiatrist desiring to renew his license to

1 practice podiatry shall submit to the Colorado podiatry board the
 2 information the board believes necessary to show that he has
 3 fulfilled the board's continuing education requirements and a fee
 4 to be determined and collected pursuant to section 24-34-105,
 5 C.R.S.

6 SECTION 7. 12-32-115 (1) and (3), Colorado Revised
 7 Statutes, 1991 Repl. Vol., are amended to read:

8 12-32-115. Procedure - registration - fees. (1) (a) The
 9 Colorado podiatry board shall establish procedures for the
 10 maintenance of licensee lists and the establishment of renewal fees
 11 and schedules, which fees and schedules shall be established
 12 subject to the provisions of section 24-34-102 (8), C.R.S. Every
 13 licensee shall pay the secretary a registration fee to be determined
 14 and collected pursuant to section 24-34-105, C.R.S., and shall
 15 obtain a registration certificate for the current calendar year.

16 (b) A licensee desiring to obtain a registration certificate
 17 shall submit the information necessary to show that he has
 18 fulfilled the Colorado podiatry board's continuing education
 19 requirements. Any licensee aggrieved by a decision relating to
 20 such continuing education requirements may ask the executive
 21 director of the department of regulatory agencies to review such
 22 requirements in accordance with the procedures established by
 23 section 24-34-102 (11), C.R.S.

24 (3) Upon application to the Colorado podiatry board
 25 within two years from the date of the lapse of a license by any
 26 such licensee on a form prescribed by the board, his THE license
 27 shall be reinstated, subject to the payment to the board of the

1 current renewal fee and a reinstatement fee determined by the
2 board pursuant to section 24-34-105, C.R.S. If, before or after
3 such application for reinstatement has been made, charges are
4 preferred against the licensee by the board or by any person, as
5 provided by section 12-32-108.3, the board shall defer action on
6 the pending application for reinstatement, if any, and proceed with
7 a hearing on such charges in accordance with section 12-32-108.3,
8 and thereupon shall impose such disciplinary action as the board
9 deems appropriate. No license to practice podiatry which has
10 been delinquent for more than two years shall be reinstated unless
11 the applicant fulfills and meets the requirements and conditions
12 required of an applicant applying for the issuance of an original
13 license BY THE BOARD. THE BOARD SHALL ESTABLISH THE
14 CRITERIA FOR REINSTATEMENT OF A LICENSE THAT HAS BEEN
15 DELINQUENT FOR MORE THAN TWO YEARS.

16 SECTION 8. 24-34-104 (24) (e), Colorado Revised
17 Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

18 24-34-104. General assembly review of regulatory
19 agencies and functions for termination, continuation, or
20 reestablishment. (24) The following boards in the division of
21 registrations shall terminate on July 1, 1995:

22 (e) ~~The Colorado podiatry board, created by article 32~~
23 ~~of title 12, C.R.S.~~

24 SECTION 9. 24-34-104, Colorado Revised Statutes,
25 1988 Repl. Vol., as amended, is amended BY THE ADDITION
26 OF A NEW SUBSECTION to read:

27 24-34-104. General assembly review of regulatory

1 agencies and functions for termination, continuation, or
2 reestablishment. (41) THE FOLLOWING AGENCIES, FUNCTIONS,
3 OR BOTH, SHALL TERMINATE ON JULY 1, 2010: THE COLORADO
4 PODIATRY BOARD, CREATED BY ARTICLE 32 OF TITLE 12, C.R.S.

5 SECTION 10. Effective date - applicability. This act
6 shall take effect July 1, 1995, and shall apply to acts committed
7 on or after said date.

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

1 year A ONE-, TWO-, OR THREE-YEAR PERIOD from the date of
2 issuance upon a finding:

3 ~~(5) Any certificate that has lapsed shall be deemed to~~
4 ~~have expired. A certificate issued pursuant to this section may be~~
5 ~~renewed prior to expiration upon payment of a renewal fee set by~~
6 ~~the commission. An individual may reinstate an expired~~
7 ~~certificate within two years of such expiration upon payment of a~~
8 ~~reinstatement fee set by the commission. An individual whose~~
9 ~~certificate has lapsed for a period longer than two years after~~
10 ~~expiration shall apply to the division for certification as required~~
11 ~~by this section and shall not be recertified until the division~~
12 ~~determines that such individual has complied with the provisions~~
13 ~~of subsections (1) and (2) of this section.~~

14 **SECTION 3.** Part 5 of article 7 of title 25, Colorado
15 Revised Statutes, 1989 Repl. Vol., as amended, is amended BY
16 THE ADDITION OF A NEW SECTION to read:

17 **25-7-507.5. Renewal of certificates - recertification.**

18 (1) ANY CERTIFICATE ISSUED PURSUANT TO THIS PART 5 THAT HAS
19 LAPSED SHALL BE DEEMED TO HAVE EXPIRED.

20 (2) (a) A CERTIFICATE ISSUED PURSUANT TO THIS PART
21 5 MAY BE RENEWED PRIOR TO EXPIRATION UPON PAYMENT OF A
22 RENEWAL FEE SET BY THE COMMISSION.

23 (b) RENEWAL OF A CERTIFICATE MAY BE MADE FOR TIME
24 PERIODS OF ONE, TWO, OR THREE YEARS PURSUANT TO RULES
25 PROMULGATED BY THE COMMISSION.

26 (3) AN INDIVIDUAL MAY REINSTATE AN EXPIRED
27 CERTIFICATE WITHIN ONE YEAR AFTER SUCH EXPIRATION UPON

1 PAYMENT OF A REINSTATEMENT FEE IN AN AMOUNT SET BY THE
2 COMMISSION.

3 (4) AN INDIVIDUAL WHOSE CERTIFICATE HAS LAPSED FOR
4 A PERIOD LONGER THAN ONE YEAR AFTER EXPIRATION SHALL
5 APPLY TO THE DIVISION FOR CERTIFICATION AS REQUIRED BY THIS
6 PART 5 AND SHALL NOT BE RECERTIFIED UNTIL THE DIVISION
7 DETERMINES THAT SUCH INDIVIDUAL HAS FULLY COMPLIED WITH
8 THE REQUIREMENTS OF THIS PART 5 AND ANY RULES
9 PROMULGATED PURSUANT THERETO.

10 (5) (a) ANY INDIVIDUAL WHOSE CERTIFICATE HAS LAPSED
11 BECAUSE SUCH INDIVIDUAL HAS NOT COMPLETED THE REFRESHER
12 COURSE REQUIRED PURSUANT TO SECTION 25-7-503 (1) (f), MAY
13 COMPLETE SUCH REFRESHER COURSE WITHIN ONE YEAR AFTER THE
14 DATE THE CERTIFICATE LAPSES.

15 (b) COMPLETION OF THE REFRESHER COURSE SHALL BE
16 A REQUIREMENT FOR RECERTIFICATION.

17 **SECTION 4.** 25-7-508 (2) (a) (II), (2) (b), and (6),
18 Colorado Revised Statutes, 1989 Repl. Vol., as amended, are
19 amended to read:

20 **25-7-508. Grounds for disciplinary action - letters of**
21 **admonition - denial of certification - suspension, revocation, or**
22 **refusal to renew - requirement for corrective education -**
23 **administrative fines.** (2) (a) The division may take disciplinary
24 action in the form of the issuance of a letter of admonition or, in
25 conformity with the provisions of article 4 of title 24, C.R.S., the
26 suspension, revocation, or refusal to renew certification pursuant
27 to section 25-7-505, 25-7-506, or 25-7-507, should the division

1 find that a person certified under this part 5:

2 (II) (A) Has been subject to a disciplinary action relating
3 to a certification or other form of registration or license to
4 practice asbestos abatement under this part 5 or any related
5 occupation in any other state, territory, or country for disciplinary
6 reasons, which action shall be deemed to be prima facie evidence
7 of grounds for disciplinary action, including denial of certification
8 by the division.

9 (B) This subparagraph (II) shall apply only to
10 disciplinary actions based upon acts or omissions in such other
11 state, territory, or country substantially similar to those set out as
12 grounds for disciplinary action pursuant to this part 5.

13 (C) A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT
14 TO A CHARGE OF VIOLATING A LAW OR REGULATION GOVERNING
15 THE PRACTICE OF ASBESTOS REMOVAL IN ANOTHER STATE,
16 TERRITORY, OR COUNTRY THAT IS ACCEPTED BY THE DISCIPLINING
17 BODY OF SUCH OTHER STATE, TERRITORY, OR COUNTRY MAY BE
18 CONSIDERED TO BE THE SAME AS A FINDING OF GUILT FOR
19 PURPOSES OF A HEARING CONDUCTED BY THE DIVISION PURSUANT
20 TO THIS SUBSECTION (2).

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

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

10 (6) If a certification is revoked by the division, the
11 person against whom such action was taken shall not apply for
12 recertification for a period of ~~six months~~ ONE YEAR after such
13 revocation and shall be required to demonstrate compliance with
14 any disciplinary action imposed by the division and to demonstrate
15 competency in asbestos abatement procedures prior to receiving
16 a new certificate.

17 SECTION 5. 25-7-512, Colorado Revised Statutes,
18 1989 Repl. Vol., as amended, is amended to read:

19 25-7-512. Repeal of part. This part 5 is repealed,
20 effective ~~July 1, 1996~~ JULY 1, 2010. Prior to such repeal, the
21 functions of the division under this part 5 shall be reviewed as
22 provided for in section 24-34-104, C.R.S.

23 SECTION 6. 24-34-104 (24.2), Colorado Revised
24 Statutes, 1988 Repl. Vol., as amended, is amended, and the said
25 24-34-104 is further amended BY THE ADDITION OF A NEW
26 SUBSECTION, to read:

27 24-34-104. General assembly review of regulatory

1 agencies and functions for termination, continuation, or
2 reestablishment. (24.2) ~~The functions of the division of~~
3 ~~administration in the department of public health and environment~~
4 ~~relating to asbestos control performed in accordance with part 5~~
5 ~~of article 7 of title 25, C.R.S., shall terminate on July 1, 1996.~~

6 (41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH,
7 SHALL TERMINATE ON JULY 1, 2010: THE CERTIFICATION OF
8 PERSONS IN CONNECTION WITH THE CONTROL OF ASBESTOS
9 PURSUANT TO PART 5 OF ARTICLE 7 OF TITLE 25, C.R.S.

10 **SECTION 7. Effective date - applicability.** This act
11 shall take effect July 1, 1995, and shall apply to applications
12 received, certificates issued, and acts committed on or after said
13 date.

14 **SECTION 8. Safety clause.** The general assembly
15 hereby finds, determines, and declares that this act is necessary
16 for the immediate preservation of the public peace, health, and
17 safety.

2 Joint Legislative Sunrise and Sunset Review Committee

3 November 17, 1994

4 A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF PERSONS WHO TREAT THE
102 HEARING IMPAIRED, AND, IN CONNECTION THEREWITH,
103 REQUIRING REGISTRATION OF AUDIOLOGISTS AND
104 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.)

Joint Legislative Sunrise and Sunset Review Committee.

Requires the registration of audiologists and hearing aid dealers by the director of the division of registrations in the department of regulatory agencies. Sets forth the filing requirements for applicants for registration. States that a person who registers as an audiologist may also practice as a hearing aid dealer without registering as a hearing aid dealer. Requires applicants to submit to the director proof that they have obtained a surety bond. Allocates registration fees to the division of registrations cash fund. Provides for future repeal of the registration provisions.

Empowers the director to discipline registered hearing aid dealers and audiologists after giving notice and holding a hearing. Authorizes the director to fine registrants or place them on probation, issue letters of admonition, or refuse, revoke, or suspend registration as disciplinary measures.

Increases the period during which a hearing aid dealer must refund the purchase price of a hearing aid. Tolls such rescission period for any period during which a hearing aid dealer takes possession of a hearing aid after its original delivery. Requires dealers to include in contracts of sale a statement that if the hearing aid is not delivered within a specified period of time after the sale the purchase price shall be fully refunded, and provides that such statement may not be waived by the purchaser.

Directs that fines collected pursuant to consumer protection act provisions be distributed to state and local law enforcement agencies and to the general fund.

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

2 SECTION 1. Title 12, Colorado Revised Statutes, 1991

3 Repl. Vol., as amended, is amended BY THE ADDITION OF A
4 NEW ARTICLE to read:

5 ARTICLE 5.5

6 Audiologists and Hearing Aid Dealers

7 PART 1

8 AUDIOLOGISTS

9 12-5.5-101. Definitions. AS USED IN THIS PART 1,

10 UNLESS THE CONTEXT OTHERWISE REQUIRES:

11 (1) "AUDIOLOGIST" MEANS A PERSON WHO:

12 (a) HOLDS A MASTER'S OR DOCTORAL DEGREE IN
13 AUDIOLOGY;

14 (b) HAS PASSED AN EXAMINATION CONDUCTED UNDER
15 THE AUSPICES OF THE AMERICAN SPEECH-LANGUAGE-HEARING
16 ASSOCIATION OR AN EQUIVALENT EXAMINATION, AS DETERMINED
17 BY THE DIRECTOR; AND

18 (c) HAS OBTAINED A CERTIFICATE OF COMPETENCY IN
19 AUDIOLOGY FROM A NATIONALLY RECOGNIZED CERTIFICATION
20 AGENCY OR HAS BEEN CERTIFIED AS A SCHOOL AUDIOLOGIST BY
21 THE COLORADO DEPARTMENT OF EDUCATION PURSUANT TO
22 SECTION 22-60-104, C.R.S.

23 (2) "DIRECTOR" MEANS THE DIRECTOR OF
24 REGISTRATIONS.

1 (3) "DIVISION" MEANS THE DIVISION OF REGISTRATIONS
2 IN THE DEPARTMENT OF REGULATORY AGENCIES.

3 (4) "REGISTRANT" MEANS AN AUDIOLOGIST WHO HOLDS
4 A CURRENT CERTIFICATE OF REGISTRATION FROM THE DIVISION OF
5 REGISTRATIONS PURSUANT TO THIS PART 1.

6 **12-5.5-102. Registration required - application -**
7 **bond.** (1) AN AUDIOLOGIST SHALL REGISTER WITH THE DIVISION
8 OF REGISTRATIONS BEFORE PERFORMING AUDIOLOGY SERVICES IN
9 THIS STATE. UPON REGISTERING, THE AUDIOLOGIST SHALL BE
10 GIVEN A CERTIFICATE OF REGISTRATION BEARING A UNIQUE
11 REGISTRATION NUMBER. THE AUDIOLOGIST SHALL INCLUDE THE
12 REGISTRATION NUMBER ON ALL WRITTEN CONTRACTS AND
13 RECEIPTS.

14 (2) AN AUDIOLOGIST DESIRING TO REGISTER PURSUANT
15 TO THIS SECTION SHALL SUBMIT TO THE DIRECTOR AN APPLICATION
16 CONTAINING THE INFORMATION DESCRIBED IN SUBSECTION (3) OF
17 THIS SECTION AND SHALL PAY A FEE TO BE DETERMINED AND
18 COLLECTED BY THE DIRECTOR PURSUANT TO SECTION 24-34-105,
19 C.R.S. THE DIRECTOR MAY DENY AN APPLICATION FOR
20 REGISTRATION IF THE REQUIRED INFORMATION IS NOT SUBMITTED.
21 IF AN APPLICANT OR REGISTRANT DOES NOT NOTIFY THE DIRECTOR
22 OF A CHANGE IN THE SUBMITTED INFORMATION WITHIN THIRTY
23 DAYS AFTER SUCH CHANGE. SUCH FAILURE SHALL BE CAUSE FOR
24 DISCIPLINARY ACTION.

25 (3) THE FOLLOWING INFORMATION SHALL BE INCLUDED
26 IN EVERY APPLICATION FOR REGISTRATION UNDER THIS SECTION:

27 (a) THE AUDIOLOGIST'S NAME, BUSINESS ADDRESS, AND

1 BUSINESS TELEPHONE NUMBER;

2 (b) A LISTING OF THE AUDIOLOGIST'S EDUCATION,
3 EXPERIENCE, AND DEGREES OR CREDENTIALS, INCLUDING ALL
4 DEGREES OR CREDENTIALS AWARDED TO SUCH AUDIOLOGIST THAT
5 ARE RELATED TO THE PRACTICE OF AUDIOLOGY;

6 (c) A STATEMENT INDICATING WHETHER ANY LICENSE,
7 CERTIFICATE, OR REGISTRATION IN AUDIOLOGY WAS ISSUED TO THE
8 AUDIOLOGIST BY A LOCAL, STATE, OR NATIONAL HEALTH CARE
9 AGENCY, WHETHER ANY SUCH LICENSE, CERTIFICATE, OR
10 REGISTRATION WAS SUSPENDED OR REVOKED, WHETHER CHARGES
11 OR COMPLAINTS ARE PENDING AGAINST SUCH LICENSE,
12 CERTIFICATE, OR REGISTRATION, AND WHETHER DISCIPLINARY
13 ACTION WAS TAKEN;

14 (d) THE LENGTH OF TIME AND THE LOCATIONS WHERE
15 THE APPLICANT HAS BEEN ENGAGED IN THE PRACTICE OF
16 AUDIOLOGY; AND

17 (e) PROOF THAT THE AUDIOLOGIST HAS OBTAINED A
18 SURETY BOND IN THE AMOUNT OF AT LEAST OF TWENTY-FIVE
19 THOUSAND DOLLARS, EXECUTED BY THE APPLICANT AS PRINCIPAL
20 AND BY A SURETY COMPANY QUALIFIED AND AUTHORIZED TO DO
21 BUSINESS IN THIS STATE AS SURETY. SUCH BOND SHALL BE
22 CONDITIONED UPON COMPLIANCE WITH THIS PART 1 AND RULES
23 PROMULGATED UNDER THIS PART 1.

24 **12-5.5-103. Registration procedure.** (1) THE DIRECTOR
25 SHALL REGISTER ALL APPLICANTS WHO MEET THE REQUIREMENTS
26 OF THIS PART 1 AND SHALL PROVIDE EACH REGISTRANT WITH A
27 CERTIFICATE INDICATING THAT THE PERSON NAMED IN SUCH

1 CERTIFICATE IS REGISTERED IN THE STATE OF COLORADO AS AN
2 AUDIOLOGIST.

3 (2) ALL CERTIFICATES ISSUED UNDER THIS SECTION
4 SHALL EXPIRE ON DECEMBER 31 FOLLOWING THE DATE OF
5 ISSUANCE, BUT MAY BE RENEWED BY PAYMENT OF THE RENEWAL
6 FEE ESTABLISHED BY THE DIRECTOR PURSUANT TO SECTION 24-34-
7 105, C.R.S., AND CONTINUED COMPLIANCE WITH THE PROVISIONS
8 OF THIS PART 1. A REGISTRATION THAT HAS EXPIRED MAY BE
9 REINSTATED WITHIN TWO YEARS AFTER SUCH EXPIRATION UPON
10 PAYMENT OF THE APPROPRIATE RENEWAL FEE IF THE APPLICANT
11 MEETS ALL OTHER REQUIREMENTS OF THIS PART 1.

12 (3) ALL FEES COLLECTED UNDER THIS PART I SHALL BE
13 DEPOSITED IN ACCORDANCE WITH SECTION 12-5.5-104.

14 **12-5.5-104. Division of registrations cash fund.** IT IS
15 THE INTENT OF THE GENERAL ASSEMBLY THAT ALL DIRECT AND
16 INDIRECT COSTS INCURRED IN THE IMPLEMENTATION OF THIS PART
17 1 BE FUNDED BY ANNUAL REGISTRATION AND RENEWAL FEES. ALL
18 FEES COLLECTED BY THE DIRECTOR SHALL BE TRANSMITTED TO
19 THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE
20 DIVISION OF REGISTRATIONS CASH FUND, CREATED BY SECTION
21 24-34-105, C.R.S.

22 **12-5.5-105. Grounds for discipline - disciplinary**
23 **actions.** (1) (a) IF, AFTER INVESTIGATION, NOTICE, AND THE
24 OPPORTUNITY FOR HEARING IN ACCORDANCE WITH ARTICLE 4 OF
25 TITLE 24, C.R.S., THE DIRECTOR DETERMINES THAT AN APPLICANT
26 OR REGISTRANT HAS COMMITTED ANY OF THE ACTS SPECIFIED IN
27 PARAGRAPH (b) OF THIS SUBSECTION (1), THE DIRECTOR MAY:

1 (I) IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED
2 TWO THOUSAND FIVE HUNDRED DOLLARS FOR EACH SEPARATE
3 OFFENSE;

4 (II) ISSUE A LETTER OF ADMONITION;

5 (III) PLACE A REGISTRANT ON PROBATION, WHICH SHALL
6 ENTAIL CLOSE SUPERVISION ON SUCH TERMS AND FOR SUCH TIME
7 AS THE DIRECTOR DEEMS APPROPRIATE; OR

8 (IV) DENY, REFUSE TO RENEW, REVOKE, OR SUSPEND
9 THE REGISTRATION OF AN APPLICANT OR REGISTRANT.

10 (b) THE FOLLOWING ACTS SHALL CONSTITUTE GROUNDS
11 FOR DISCIPLINE:

12 (I) USING FALSE OR MISLEADING ADVERTISING OR
13 MAKING A FALSE OR MISLEADING STATEMENT OR OMISSION IN AN
14 APPLICATION FOR REGISTRATION;

15 (II) CONVICTION OR ACCEPTANCE OF A PLEA OF GUILTY
16 OR NOLO CONTENDERE OR RECEIPT OF A DEFERRED SENTENCE IN
17 ANY COURT TO A CRIME INVOLVING FRAUD, DECEPTION, FALSE
18 PRETENSE, THEFT, MISREPRESENTATION, FALSE ADVERTISING, OR
19 DISHONEST DEALING;

20 (III) FAILING TO COMPLY WITH A STIPULATION OR
21 AGREEMENT MADE WITH THE DIRECTOR OR A FINAL AGENCY
22 ORDER;

23 (IV) VIOLATION OF ANY PROVISION OF THIS PART 1,
24 INCLUDING FAILURE TO COMPLY WITH THE REGISTRATION
25 REQUIREMENTS OF SECTION 12-5.5-102, OR VIOLATION OF ANY
26 RULE PROMULGATED BY THE DIRECTOR UNDER THIS PART 1;

27 (V) VIOLATING THE "COLORADO CONSUMER

1 PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S.;

2 (VI) EMPLOYING A SALES AGENT OR EMPLOYEE WHO
3 VIOLATES ANY PROVISION OF THIS PART 1;

4 (VII) FAILING TO NOTIFY THE DIRECTOR OF A CHANGE IN
5 THE INFORMATION FILED PURSUANT TO SECTION 12-5.5-102; AND

6 (VIII) INTENTIONALLY CAUSING PHYSICAL HARM TO A
7 CUSTOMER.

8 (2) ANY DISCIPLINARY ACTION TAKEN WITH RESPECT TO
9 AN AUDIOLOGIST BY ANOTHER STATE OR LOCAL JURISDICTION OR
10 THE FEDERAL GOVERNMENT SHALL BE DEEMED PRIMA FACIE
11 EVIDENCE OF GROUNDS FOR DISCIPLINARY ACTION, INCLUDING
12 DENIAL OF REGISTRATION UNDER THIS PART 1; EXCEPT THAT THIS
13 SUBSECTION (2) SHALL APPLY ONLY TO DISCIPLINARY ACTIONS
14 THAT ARE SUBSTANTIALLY SIMILAR TO THOSE SET OUT AS
15 GROUNDS FOR DISCIPLINARY ACTION UNDER THIS PART 1.

16 (3) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES
17 AN INSTANCE OF MISCONDUCT THAT IN THE OPINION OF THE
18 DIRECTOR DOES NOT WARRANT FORMAL ACTION BUT SHOULD NOT
19 BE DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY SEND
20 A LETTER OF ADMONITION BY CERTIFIED MAIL, RETURN RECEIPT
21 REQUESTED, TO THE REGISTRANT WHO IS THE SUBJECT OF THE
22 COMPLAINT OR INVESTIGATION AND A COPY THEREOF TO ANY
23 PERSON MAKING SUCH COMPLAINT. SUCH LETTER SHALL ADVISE
24 THE REGISTRANT OF HIS OR HER RIGHT TO REQUEST IN WRITING,
25 WITHIN TWENTY DAYS AFTER PROVEN RECEIPT, THAT FORMAL
26 DISCIPLINARY PROCEEDINGS BE INITIATED TO ADJUDICATE THE
27 PROPRIETY OF THE CONDUCT UPON WHICH THE LETTER OF

1 ADMONITION IS BASED. IF SUCH REQUEST IS TIMELY MADE, THE
2 LETTER OF ADMONITION SHALL BE DEEMED VACATED AND THE
3 MATTER SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY
4 PROCEEDINGS.

5 (4) ALL ADMINISTRATIVE FINES COLLECTED PURSUANT
6 TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE
7 TREASURER, WHO SHALL CREDIT THEM TO THE GENERAL FUND.

8 **12-5.5-106. Director - powers - duties.** (1) THE
9 DIRECTOR MAY MAKE SUCH INVESTIGATIONS AND INSPECTIONS AS
10 ARE NECESSARY TO DETERMINE WHETHER AN APPLICANT HAS
11 VIOLATED THIS PART 1 OR ANY RULE ADOPTED BY THE DIRECTOR.

12 (2) THE DIRECTOR MAY APPLY TO A COURT OF
13 COMPETENT JURISDICTION FOR AN ORDER ENJOINING ANY ACT OR
14 PRACTICE WHICH CONSTITUTES A VIOLATION OF THIS PART 1, AND,
15 UPON A SHOWING THAT A PERSON IS ENGAGING IN OR INTENDS TO
16 ENGAGE IN ANY SUCH ACT OR PRACTICE, AN INJUNCTION,
17 RESTRAINING ORDER, OR OTHER APPROPRIATE ORDER SHALL BE
18 GRANTED BY THE COURT REGARDLESS OF THE EXISTENCE OF
19 ANOTHER REMEDY. ALL PROCEEDINGS RELATED TO SUCH
20 INJUNCTION OR RESTRAINING ORDER SHALL BE GOVERNED BY THE
21 COLORADO RULES OF CIVIL PROCEDURE.

22 (3) THE DIRECTOR OR THE ADMINISTRATIVE LAW JUDGE
23 APPOINTED FOR A HEARING UNDER THIS PART 1 MAY ISSUE A
24 SUBPOENA COMPELLING THE ATTENDANCE AND TESTIMONY OF
25 WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, OR RECORDS.
26 THE DIRECTOR MAY ALSO ISSUE A SUBPOENA COMPELLING THE
27 TESTIMONY OF WITNESSES AND THE PRODUCTION OF BOOKS,

1 PAPERS, OR RECORDS FOR INVESTIGATION PURPOSES. ANY SUCH
2 SUBPOENA SHALL BE SERVED IN THE SAME MANNER AS SUBPOENAS
3 ISSUED BY DISTRICT COURTS.

4 (4) THE DIRECTOR SHALL ADOPT ALL RULES NECESSARY
5 FOR THE ENFORCEMENT AND ADMINISTRATION OF THIS PART 1,
6 INCLUDING, BUT NOT LIMITED TO, A REQUIREMENT THAT
7 REGISTRANTS MAINTAIN FOR AT LEAST SEVEN YEARS RECORDS
8 IDENTIFYING CUSTOMERS BY NAME, THE GOODS OR SERVICES
9 PROVIDED TO EACH CUSTOMER, AND THE DATE AND PRICE OF
10 EACH TRANSACTION.

11 PART 2

12 HEARING AID DEALERS

13 **12-5.5-201. Definitions.** AS USED IN THIS PART 2,
14 UNLESS THE CONTEXT OTHERWISE REQUIRES:

15 (1) "DIRECTOR" MEANS THE DIRECTOR OF
16 REGISTRATIONS.

17 (2) "DIVISION" MEANS THE DIVISION OF REGISTRATIONS
18 IN THE DEPARTMENT OF REGULATORY AGENCIES.

19 (3) "HEARING AID DEALER" HAS THE SAME MEANING AS
20 SET FORTH IN SECTION 6-1-105.5 (1) (c), C.R.S.

21 (4) "REGISTRANT" MEANS A HEARING AID DEALER WHO
22 HOLDS A CURRENT CERTIFICATE OF REGISTRATION FROM THE
23 DIVISION OF REGISTRATIONS PURSUANT TO THIS PART 2.

24 **12-5.5-202. Registration required - application -**
25 **bond.** (1) A HEARING AID DEALER SHALL REGISTER PURSUANT TO
26 THIS PART 2 BEFORE SELLING OR NEGOTIATING TO SELL, DIRECTLY
27 OR INDIRECTLY, ANY HEARING DEVICE FOR THE HEARING

1 IMPAIRED, UNLESS SUCH DEALER HOLDS A CURRENT REGISTRATION
2 PURSUANT TO PART 1 OF THIS ARTICLE. UPON REGISTERING, THE
3 HEARING AID DEALER SHALL BE GIVEN A CERTIFICATE OF
4 REGISTRATION BEARING A UNIQUE REGISTRATION NUMBER. THE
5 HEARING AID DEALER SHALL INCLUDE THE REGISTRATION NUMBER
6 ON ALL WRITTEN CONTRACTS AND RECEIPTS. A HEARING AID
7 DEALER WHO IS ALSO AN AUDIOLOGIST AND IS REGISTERED ONLY
8 UNDER PART 1 OF THIS ARTICLE SHALL INCLUDE THE
9 REGISTRATION NUMBER ISSUED PURSUANT TO SUCH PART 1 ON ALL
10 WRITTEN CONTRACTS AND RECEIPTS.

11 (2) (a) A HEARING AID DEALER DESIRING TO REGISTER
12 PURSUANT TO THIS SECTION SHALL SUBMIT TO THE DIRECTOR AN
13 APPLICATION CONTAINING THE INFORMATION DESCRIBED IN THIS
14 SUBSECTION (2), AND SHALL PAY A FEE TO BE DETERMINED AND
15 COLLECTED PURSUANT TO SECTION 24-34-105, C.R.S. THE
16 DIRECTOR MAY DENY AN APPLICATION FOR REGISTRATION IF THE
17 REQUIRED INFORMATION IS NOT SUBMITTED. IF AN APPLICANT OR
18 REGISTRANT DOES NOT NOTIFY THE DIRECTOR OF A CHANGE IN THE
19 SUBMITTED INFORMATION WITHIN THIRTY DAYS AFTER SUCH
20 CHANGE, SUCH FAILURE SHALL BE CAUSE FOR DISCIPLINARY
21 ACTION.

22 (b) THE FOLLOWING INFORMATION SHALL BE INCLUDED
23 IN EVERY APPLICATION FOR REGISTRATION UNDER THIS SECTION:

24 (I) THE NAME, BUSINESS ADDRESS, AND BUSINESS
25 TELEPHONE NUMBER OF THE HEARING AID DEALER;

26 (II) THE LOCATION OF EACH OFFICE FROM WHICH SALES
27 OF HEARING DEVICES FOR THE HEARING IMPAIRED ARE INTENDED

1 TO BE MADE;

2 (III) A STATEMENT INDICATING WHETHER ANY LICENSE,
3 CERTIFICATE, OR REGISTRATION FOR THE SALE OF HEARING AIDS
4 WAS ISSUED TO THE HEARING AID DEALER BY A LOCAL, STATE, OR
5 NATIONAL HEALTH CARE AGENCY, AND WHETHER ANY SUCH
6 LICENSE, CERTIFICATE, OR REGISTRATION WAS SUSPENDED OR
7 REVOKED;

8 (IV) A STATEMENT INDICATING WHETHER ANY HEARING
9 AID DEALER LICENSE, CERTIFICATE, OR REGISTRATION WAS ISSUED
10 TO THE HEARING AID DEALER BY A LOCAL, STATE, OR NATIONAL
11 HEALTH CARE AGENCY, WHETHER ANY SUCH LICENSE,
12 CERTIFICATE, OR REGISTRATION WAS SUSPENDED OR REVOKED,
13 WHETHER CHARGES OR COMPLAINTS ARE PENDING AGAINST SUCH
14 LICENSE, CERTIFICATE, OR REGISTRATION, AND WHETHER
15 DISCIPLINARY ACTION WAS TAKEN;

16 (V) PROOF THAT THE DEALER HAS OBTAINED A SURETY
17 BOND IN THE AMOUNT OF AT LEAST TWENTY-FIVE THOUSAND
18 DOLLARS, EXECUTED BY THE APPLICANT AS PRINCIPAL AND BY A
19 SURETY COMPANY QUALIFIED AND AUTHORIZED TO DO BUSINESS
20 IN THIS STATE AS SURETY. SUCH BOND SHALL BE CONDITIONED
21 UPON COMPLIANCE WITH THIS PART 2 AND RULES PROMULGATED
22 UNDER THIS PART 2.

23 **12-5.5-203. Registration procedure.** (1) THE DIRECTOR
24 SHALL REGISTER ALL APPLICANTS WHO MEET THE REQUIREMENTS
25 OF THIS PART 2 AND SHALL PROVIDE EACH REGISTRANT WITH A
26 CERTIFICATE INDICATING THAT THE PERSON NAMED IN SUCH
27 CERTIFICATE IS REGISTERED IN THE STATE OF COLORADO AS A

1 HEARING AID DEALER.

2 (2) ALL CERTIFICATES ISSUED UNDER THIS SECTION
3 SHALL EXPIRE ON DECEMBER 31 FOLLOWING THE DATE OF
4 ISSUANCE, BUT MAY BE RENEWED BY PAYMENT OF A RENEWAL FEE
5 ESTABLISHED BY THE DIRECTOR PURSUANT TO SECTION 24-34-105,
6 C.R.S., AND CONTINUED COMPLIANCE WITH THE PROVISIONS OF
7 THIS PART 2. A REGISTRATION THAT HAS EXPIRED MAY BE
8 REINSTATED WITHIN TWO YEARS AFTER SUCH EXPIRATION UPON
9 PAYMENT OF THE APPROPRIATE RENEWAL FEE IF THE APPLICANT
10 MEETS ALL OTHER REQUIREMENTS OF THIS PART 2.

11 (3) THE DIRECTOR SHALL ISSUE OR DENY A CERTIFICATE
12 OF REGISTRATION WITHIN SIXTY DAYS AFTER THE DATE OF RECEIPT
13 OF THE APPLICATION.

14 (4) ALL FEES COLLECTED UNDER THIS PART 2 SHALL BE
15 DEPOSITED IN ACCORDANCE WITH SECTION 12-5.5-204.

16 **12-5.5-204. Division of registrations cash fund.** IT IS
17 THE INTENT OF THE GENERAL ASSEMBLY THAT ALL DIRECT AND
18 INDIRECT COSTS INCURRED IN THE IMPLEMENTATION OF THIS PART
19 2 BE FUNDED BY ANNUAL REGISTRATION AND RENEWAL FEES. ALL
20 FEES COLLECTED BY THE DIRECTOR SHALL BE TRANSMITTED TO
21 THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE
22 DIVISION OF REGISTRATIONS CASH FUND, CREATED BY SECTION
23 24-34-105, C.R.S.

24 **12-5.5-205. Grounds for discipline - disciplinary**
25 **action.** (1) (a) IF, AFTER INVESTIGATION, NOTICE, AND THE
26 OPPORTUNITY FOR HEARING IN ACCORDANCE WITH ARTICLE 4 OF
27 TITLE 24, C.R.S., THE DIRECTOR DETERMINES THAT AN APPLICANT

1 OR REGISTRANT HAS COMMITTED ANY OF THE ACTS SPECIFIED IN
2 PARAGRAPH (b) OF THIS SUBSECTION (1), THE DIRECTOR MAY:

3 (I) IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED
4 TWO THOUSAND FIVE HUNDRED DOLLARS FOR EACH SEPARATE
5 OFFENSE;

6 (II) ISSUE A LETTER OF ADMONITION;

7 (III) PLACE A REGISTRANT ON PROBATION, WHICH SHALL
8 ENTAIL CLOSE SUPERVISION ON SUCH TERMS AND FOR SUCH TIME
9 AS THE DIRECTOR DEEMS APPROPRIATE; OR

10 (IV) DENY, REFUSE TO RENEW, REVOKE, OR SUSPEND
11 THE REGISTRATION OF AN APPLICANT OR REGISTRANT.

12 (b) THE FOLLOWING ACTS SHALL CONSTITUTE GROUNDS
13 FOR DISCIPLINE:

14 (I) MISREPRESENTING OR CONCEALING A MATERIAL FACT
15 FROM A PURCHASER OF A HEARING DEVICE FOR THE HEARING
16 IMPAIRED;

17 (II) EMPLOYING A DEVICE, SCHEME, OR ARTIFICE WITH
18 THE INTENT TO DEFRAUD A PURCHASER OF A HEARING DEVICE FOR
19 THE HEARING IMPAIRED;

20 (III) DISPOSING OF, CONCEALING, DIVERTING,
21 CONVERTING, OR OTHERWISE FAILING TO ACCOUNT FOR ANY
22 FUNDS OR ASSETS OF A PURCHASER OF A HEARING DEVICE FOR THE
23 HEARING IMPAIRED THAT IS UNDER THE CONTROL OF SUCH
24 PERSON;

25 (IV) VIOLATING THE "COLORADO CONSUMER
26 PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S.;

27 (V) REFUSING TO HONOR A BUYER'S REQUEST TO CANCEL

1 A CONTRACT FOR THE PURCHASE OF A HEARING DEVICE FOR THE
2 HEARING IMPAIRED, IF SUCH REQUEST WAS MADE DURING THE
3 RESCISSION PERIOD SET FORTH IN SECTION 6-1-105.5 (2) (e),
4 C.R.S.;

5 (VI) FAILING TO NOTIFY THE DIRECTOR OF ANY CHANGE
6 IN THE INFORMATION FILED PURSUANT TO SECTION 12-5.5-202;

7 (VII) CONVICTION OR ACCEPTANCE OF A PLEA OF GUILTY
8 OR NOLO CONTENDERE OR RECEIPT OF A DEFERRED SENTENCE IN
9 ANY COURT TO A CRIME INVOLVING FRAUD, DECEPTION, FALSE
10 PRETENSE, THEFT, MISREPRESENTATION, FALSE ADVERTISING, OR
11 DISHONEST DEALING;

12 (VIII) FAILING TO COMPLY WITH A STIPULATION OR
13 AGREEMENT MADE WITH THE DIRECTOR OR A FINAL AGENCY
14 ORDER;

15 (IX) INTENTIONALLY CAUSING PHYSICAL HARM TO A
16 CUSTOMER.

17 (2) ANY DISCIPLINARY ACTION TAKEN WITH RESPECT TO
18 A HEARING AID DEALER BY ANOTHER STATE OR LOCAL
19 JURISDICTION OR THE FEDERAL GOVERNMENT SHALL BE DEEMED
20 PRIMA FACIE EVIDENCE OF GROUNDS FOR DISCIPLINARY ACTION,
21 INCLUDING DENIAL OF REGISTRATION UNDER THIS PART 2; EXCEPT
22 THAT THIS SUBSECTION (2) SHALL APPLY ONLY TO DISCIPLINARY
23 ACTIONS THAT ARE SUBSTANTIALLY SIMILAR TO THOSE SET OUT AS
24 GROUNDS FOR DISCIPLINARY ACTION UNDER THIS PART 2.

25 (3) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES
26 AN INSTANCE OF MISCONDUCT THAT IN THE OPINION OF THE
27 DIRECTOR DOES NOT WARRANT FORMAL ACTION BUT SHOULD NOT

1 BE DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY SEND
2 A LETTER OF ADMONITION BY CERTIFIED MAIL, RETURN RECEIPT
3 REQUESTED, TO THE REGISTRANT WHO IS THE SUBJECT OF THE
4 COMPLAINT OR INVESTIGATION AND A COPY THEREOF TO ANY
5 PERSON MAKING SUCH COMPLAINT. SUCH LETTER SHALL ADVISE
6 THE REGISTRANT OF HIS OR HER RIGHT TO REQUEST IN WRITING,
7 WITHIN TWENTY DAYS AFTER PROVEN RECEIPT, THAT FORMAL
8 DISCIPLINARY PROCEEDINGS BE INITIATED TO ADJUDICATE THE
9 PROPRIETY OF THE CONDUCT UPON WHICH THE LETTER OF
10 ADMONITION IS BASED. IF SUCH REQUEST IS TIMELY MADE, THE
11 LETTER OF ADMONITION SHALL BE DEEMED VACATED AND THE
12 MATTER SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY
13 PROCEEDINGS.

14 (4) ALL ADMINISTRATIVE FINES COLLECTED PURSUANT
15 TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE
16 TREASURER, WHO SHALL CREDIT THEM TO THE GENERAL FUND.

17 **12-5.5-206. Director - powers - duties.** (1) THE
18 DIRECTOR MAY MAKE SUCH INVESTIGATIONS AND INSPECTIONS AS
19 ARE NECESSARY TO DETERMINE WHETHER AN APPLICANT HAS
20 VIOLATED THIS PART 2 OR ANY RULE PROMULGATED BY THE
21 DIRECTOR.

22 (2) THE DIRECTOR MAY APPLY TO A COURT OF
23 COMPETENT JURISDICTION FOR AN ORDER ENJOINING ANY ACT OR
24 PRACTICE WHICH CONSTITUTES A VIOLATION OF THIS PART 2, AND,
25 UPON A SHOWING THAT A PERSON IS ENGAGING IN OR INTENDS TO
26 ENGAGE IN ANY SUCH ACT OR PRACTICE, AN INJUNCTION,
27 RESTRAINING ORDER, OR OTHER APPROPRIATE ORDER SHALL BE

1 GRANTED BY THE COURT REGARDLESS OF THE EXISTENCE OF
2 ANOTHER REMEDY. ALL PROCEEDINGS RELATED TO SUCH
3 INJUNCTION OR RESTRAINING ORDER SHALL BE GOVERNED BY THE
4 COLORADO RULES OF CIVIL PROCEDURE.

5 (3) THE DIRECTOR OR THE ADMINISTRATIVE LAW JUDGE
6 APPOINTED FOR A HEARING UNDER THIS PART 2 MAY ISSUE A
7 SUBPOENA COMPELLING THE ATTENDANCE AND TESTIMONY OF
8 WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, OR RECORDS.
9 THE DIRECTOR MAY ALSO ISSUE A SUBPOENA COMPELLING THE
10 TESTIMONY OF WITNESSES AND THE PRODUCTION OF BOOKS,
11 PAPERS, OR RECORDS FOR INVESTIGATION PURPOSES. ANY SUCH
12 SUBPOENA SHALL BE SERVED IN THE SAME MANNER AS SUBPOENAS
13 ISSUED BY DISTRICT COURTS.

14 (4) THE DIRECTOR SHALL ADOPT ALL RULES NECESSARY
15 FOR THE ENFORCEMENT OR ADMINISTRATION OF THIS PART 2,
16 INCLUDING, BUT NOT LIMITED TO, RULES THAT REQUIRE:

17 (a) WRITTEN DISCLOSURES TO PURCHASERS, AS MAY BE
18 NEEDED TO PROTECT SUCH PURCHASERS; AND

19 (b) THAT REGISTRANTS MAINTAIN FOR AT LEAST SEVEN
20 YEARS RECORDS IDENTIFYING CUSTOMERS BY NAME, THE GOODS
21 OR SERVICES PROVIDED TO EACH CUSTOMER, AND THE DATE AND
22 PRICE OF EACH TRANSACTION.

23 (5) THE DIRECTOR MAY REQUIRE HEARING AID DEALERS
24 TO MAKE DISCLOSURES TO PURCHASERS IN THEIR WRITTEN
25 CONTRACTS OF SALE OR IN SEPARATE WRITTEN DOCUMENTS IF THE
26 DIRECTOR FINDS THAT SUCH DISCLOSURES ARE NECESSARY FOR
27 THE PROTECTION OF PURCHASERS.

1 **12-5.5-208. Repeal of article.** (1) THIS ARTICLE IS
2 REPEALED, EFFECTIVE JULY 1, 2005.

3 (2) PRIOR TO SUCH REPEAL, THE REGISTRATION
4 FUNCTIONS OF THE DIRECTOR SHALL BE REVIEWED AS PROVIDED IN
5 SECTION 24-34-104, C.R.S.

6 **SECTION 2.** 6-1-105.5 (2) (e), Colorado Revised
7 Statutes, 1992 Repl. Vol., as amended, is amended, and the said
8 6-1-105.5 is further amended BY THE ADDITION OF A NEW
9 SUBSECTION, to read:

10 **6-1-105.5. Hearing aid dealers - deceptive trade**
11 **practices.** (2) In addition to any other deceptive trade practices
12 under section 6-1-105, a hearing aid dealer engages in a deceptive
13 trade practice when such dealer:

14 (e) Fails to provide a ~~thirty-day~~ SIXTY-DAY rescission
15 period with the following terms:

16 (I) The buyer shall have the right to cancel the purchase
17 for any reason before the expiration of the ~~trial~~ RESCISSION period
18 by giving or mailing written notice of cancellation to the seller.
19 THE SIXTY-DAY RESCISSION PERIOD SHALL BE TOLLED FOR ANY
20 PERIOD DURING WHICH A HEARING AID DEALER TAKES POSSESSION
21 OR CONTROL OF A HEARING AID AFTER ITS ORIGINAL DELIVERY.

22 (II) The buyer, upon cancellation, is entitled to receive
23 a full refund of any payment made for the hearing aid within
24 thirty days of return of the hearing aid to the seller; except that,
25 if the hearing aid is returned for any reason other than a defect in
26 such hearing aid, the seller may retain an itemized amount to
27 cover the minimum costs of materials used by the dealer and a

1 manufacturer's return fee, but such amount may not be greater
2 than five percent of the total charge for the hearing aid.

3 (III) (A) The seller shall provide a written receipt or
4 contract to the buyer which includes, in immediate proximity to
5 the space reserved for the signature of the buyer, the following
6 specific statement in all capital letters of no less than ten-point
7 bold-faced type:

8 **"THE BUYER HAS THE RIGHT TO**
9 **CANCEL THIS PURCHASE FOR ANY**
10 **REASON AT ANY TIME PRIOR TO 12**
11 **MIDNIGHT OF THE ~~30TH~~ 60TH**
12 **CALENDAR DAY AFTER RECEIPT OF**
13 **THE HEARING AID BY GIVING OR**
14 **MAILING THE SELLER WRITTEN**
15 **NOTICE OF CANCELLATION AND BY**
16 **RETURNING THE HEARING AID. BY**
17 **LAW, THE SELLER IS ALLOWED TO**
18 **RETAIN AN ITEMIZED AMOUNT, NOT**
19 **TO EXCEED FIVE PERCENT OF THE**
20 **TOTAL CHARGE FOR THE HEARING**
21 **AID, TO COVER THE COSTS OF A**
22 **MANUFACTURER'S RETURN FEE AND**
23 **THE MINIMUM COSTS OF MATERIALS**
24 **USED BY THE DEALER, UNLESS THE**
25 **HEARING AID IS RETURNED BECAUSE**
26 **IT IS DEFECTIVE."**

27 (B) THE WRITTEN CONTRACT OR RECEIPT PROVIDED TO

1 THE BUYER SHALL ALSO CONTAIN A STATEMENT, IN PRINT SIZE NO
 2 SMALLER THAN TEN-POINT TYPE, THAT THE SALE IS VOID AND
 3 UNENFORCEABLE IF THE HEARING AID BEING PURCHASED IS NOT
 4 DELIVERED TO THE CONSUMER WITHIN THIRTY DAYS AFTER THE
 5 DATE THE WRITTEN CONTRACT IS SIGNED OR THE RECEIPT IS
 6 ISSUED, WHICHEVER OCCURS LATER. THE WRITTEN CONTRACT OR
 7 RECEIPT SHALL ALSO INCLUDE THE HEARING AID DEALER'S
 8 REGISTRATION NUMBER AND A STATEMENT THAT THE HEARING AID
 9 DEALER SHALL PROMPTLY REFUND ALL MONEYS PAID FOR THE
 10 PURCHASE OF A HEARING AID IF IT IS NOT DELIVERED TO THE
 11 CONSUMER WITHIN SUCH THIRTY-DAY PERIOD. SUCH STATEMENT
 12 IS NOT SUBJECT TO WAIVER BY THE BUYER.

13 (IV) A refund request form shall be attached to each
 14 receipt and shall contain the information in subparagraph (I) of
 15 paragraph (a) of this subsection (2) and the statement, in all
 16 capital letters of no less than ten-point bold-faced type: "Refund
 17 request - this form must be postmarked by _____ (Date to be
 18 filled in). No refund will be given until the hearing aid or
 19 hearing aids are returned to the seller." A space for the buyer's
 20 address, telephone number, and signature must be provided. The
 21 buyer shall only be required to sign, list the buyer's current
 22 address and telephone number, and mail the refund request form
 23 to the seller. If the hearing aid is sold in the buyer's home, at the
 24 buyer's option, the seller shall be responsible for arranging the
 25 return of the hearing aid.

26 (3) FINES COLLECTED PURSUANT TO THIS PART 1 SHALL
 27 BE DISTRIBUTED IN THE FOLLOWING MANNER: FIFTY PERCENT

1 SHALL BE DIVIDED BY THE COURT BETWEEN STATE AND LOCAL
 2 LAW ENFORCEMENT AGENCIES ASSISTING WITH THE PROSECUTION,
 3 INCLUDING BUT NOT LIMITED TO THE OFFICE OF THE ATTORNEY
 4 GENERAL AND THE DISTRICT ATTORNEY'S OFFICE, AND FIFTY
 5 PERCENT SHALL BE PAID TO THE STATE TREASURER, WHO SHALL
 6 CREDIT THE SAME TO THE GENERAL FUND.

7 SECTION 3. 24-34-104, Colorado Revised Statutes,
 8 1988 Repl. Vol., as amended, is amended BY THE ADDITION
 9 OF A NEW SUBSECTION to read:

10 24-34-104. General assembly review of regulatory
 11 agencies and functions for termination, continuation, or
 12 reestablishment. (36) THE FOLLOWING AGENCIES, FUNCTIONS,
 13 OR BOTH, SHALL TERMINATE ON JULY 1, 2005: THE REGISTRATION
 14 OF AUDIOLOGISTS AND HEARING AID DEALERS BY THE DIVISION OF
 15 REGISTRATIONS, PURSUANT TO ARTICLE 5.5 OF TITLE 12, C.R.S.

16 SECTION 4. Effective date - applicability. This act
 17 shall take effect July 1, 1995, and shall apply to audiologists and
 18 hearing aid dealers practicing on or after January 1, 1996.

19 SECTION 5. Safety clause. The general assembly
 20 hereby finds, determines, and declares that this act is necessary
 21 for the immediate preservation of the public peace, health, and
 22 safety.

2 Joint Legislative Sunrise and Sunset Review Committee

3 A BILL FOR AN ACT

101 CONCERNING ADVISORY BODIES SCHEDULED FOR REPEAL JULY 1,
102 1995.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.
Continues the following advisory bodies scheduled for repeal July 1, 1995: The private occupational school policy advisory committee; the pollution prevention advisory board; the underground storage tank advisory committee; and the homeless prevention advisory committee.

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

2 SECTION 1. 2-3-1203 (3) (h) (II), (3) (h) (IV), (3) (h)
3 (V), and (3) (h) (VII), Colorado Revised Statutes, 1980 Repl.
4 Vol., as amended, are amended to read:

5 2-3-1203. Sunset review of advisory committees.

6 (3) The following dates are the dates for which the statutory
7 authorization for the designated advisory committees is scheduled
8 for repeal:

9 (h) July 1, 1995:

10 (II) ~~The advisory committee for underground storage~~
11 ~~tanks appointed pursuant to section 25-18-105, C.R.S., and The~~

12 advisory committee to the state inspector of oils for underground
13 storage tank installers appointed pursuant to section 8-20-603 (1)
14 (i), C.R.S.;

15 (IV) ~~The private occupational school policy advisory~~
16 ~~committee created pursuant to section 23-60-704, C.R.S.;~~

17 (V) ~~The homeless prevention advisory committee created~~
18 ~~pursuant to section 26-7.8-103 (1.5), C.R.S.;~~

19 (VII) ~~The pollution prevention advisory board appointed~~
20 ~~pursuant to section 25-16.5-104, C.R.S.;~~

21 SECTION 2. 23-60-704 (5), Colorado Revised Statutes,
22 1988 Repl. Vol., as amended, is repealed as follows:

23 23-60-704. Private occupational school policy advisory
24 committee - established - duties - membership. (5) (a) ~~This~~
25 ~~section is repealed, effective July 1, 1995.~~

26 (b) ~~Prior to said repeal, the advisory committee shall be~~
27 ~~reviewed as provided for in section 2-3-1203, C.R.S.~~

28 SECTION 3. 25-16.5-104 (2), Colorado Revised
29 Statutes, 1989 Repl. Vol., as amended, is repealed as follows:

30 25-16.5-104. Pollution prevention advisory board -
31 creation. (2) (a) ~~This section is repealed, effective July 1, 1995.~~

32 (b) ~~Prior to said repeal, the advisory board shall be~~
33 ~~reviewed as provided for in section 2-3-1203 (3) (h), C.R.S.~~

34 SECTION 4. 25-18-105 (5), Colorado Revised Statutes,
35 1989 Repl. Vol., is repealed as follows:

36 25-18-105. Regulations - advisory committee.
37 (5) (a) ~~This section is repealed, effective July 1, 1995.~~

38 (b) ~~Prior to said repeal, the advisory committee shall be~~

39 ~~reviewed as provided for in section 2-3-1203, C.R.S.~~

40 SECTION 5. 26-7.8-106, Colorado Revised Statutes,
41 1989 Repl. Vol., as amended, is repealed as follows:

42 26-7.8-106. Repeal of article. (1) ~~This article is~~
43 ~~repealed, effective July 1, 1995.~~

44 (2) ~~Prior to such repeal, the homeless prevention~~
45 ~~advisory committee established in section 26-7.8-103 (1.5) shall~~
46 ~~be reviewed as provided for in section 2-3-1203, C.R.S.~~

47 SECTION 6. Safety clause. The general assembly
48 hereby finds, determines, and declares that this act is necessary
49 for the immediate preservation of the public peace, health, and
50 safety.

Joint Legislative Sunrise and Sunset Review Committee
October 6, 1994

A BILL FOR AN ACT

101 CONCERNING THE ONE-YEAR EXTENSION OF CERTAIN FUNCTIONS
102 SUBJECT TO REVIEW BY THE JOINT LEGISLATIVE SUNRISE
103 AND SUNSET REVIEW COMMITTEE.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.
Continues the licensing authority of the department of public health and environment for persons who manufacture or distribute drug precursors.

Continues the regulatory authority of the coal mine board of examiners for persons required to be certified to work in coal mines.

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

2 **SECTION 1.** 12-22-304 (2.5) (d), (5.5) (b), and (5.6)
3 (b), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are
4 amended to read:

5 **12-22-304. License required - controlled substances -**
6 **drug precursors - fund created - repeal.** (2.5) (d) This
7 subsection (2.5) is repealed, effective ~~July 1, 1995~~ JULY 1, 1996.
8 Prior to said repeal, this subsection (2.5) shall be subject to
9 review by the sunrise and sunset review committee pursuant to the

1 provisions of ~~section 2-3-1201, C.R.S.~~ SECTION 24-34-104,
2 C.R.S.

3 (5.5) (b) This subsection (5.5) is repealed, effective ~~July~~
4 ~~1, 1995~~ JULY 1, 1996. Prior to said repeal, this subsection (5.5)
5 shall be subject to review by the sunrise and sunset review
6 committee pursuant to the provisions of ~~section 2-3-1201, C.R.S.~~
7 SECTION 24-34-104, C.R.S.

8 (5.6) (b) This subsection (5.6) is repealed, effective ~~July~~
9 ~~1, 1995~~ JULY 1, 1996. Prior to said repeal, this subsection (5.6)
10 shall be subject to review by the sunrise and sunset review
11 committee pursuant to the provisions of ~~section 2-3-1201, C.R.S.~~
12 SECTION 24-34-104, C.R.S.

13 **SECTION 2.** 12-22-305 (1.5) (c), Colorado Revised
14 Statutes, 1991 Repl. Vol., as amended, is amended to read:

15 **12-22-305. Issuance of license - fees - repeal.** (1.5) (c)
16 This subsection (1.5) is repealed, effective ~~July 1, 1995~~ JULY 1,
17 1996. Prior to said repeal, this subsection (1.5) shall be subject to
18 review by the sunrise and sunset review committee pursuant to the
19 provisions of ~~section 2-3-1201, C.R.S.~~ SECTION 24-34-104,
20 C.R.S.

21 **SECTION 3.** 12-22-318 (1) (b) (II), (7) (d), (8) (b), (9)
22 (b), (10) (c), and (11) (b), Colorado Revised Statutes, 1991 Repl.
23 Vol., as amended, are amended to read:

24 **12-22-318. Records to be kept - order forms - repeal.**
25 (1) (b) (II) This paragraph (b) is repealed, effective ~~July 1, 1995~~
26 JULY 1, 1996.

27 (7) (d) This subsection (7) is repealed, effective ~~July 1,~~

1 ~~1995~~ JULY 1, 1996.

2 (8) (b) This subsection (8) is repealed, effective ~~July 1,~~
3 ~~1995~~ JULY 1, 1996.

4 (9) (b) This subsection (9) is repealed, effective ~~July 1,~~
5 ~~1995~~ JULY 1, 1996.

6 (10) (c) This subsection (10) is repealed, effective ~~July~~
7 ~~1, 1995~~ JULY 1, 1996.

8 (11) (b) This subsection (11) is repealed, effective ~~July~~
9 ~~1, 1995~~ JULY 1, 1996.

10 SECTION 4. 34-22-113, Colorado Revised Statutes,
11 1984 Repl. Vol., as amended, is amended to read:

12 34-22-113. Board of examiners - repeal - review of
13 functions. Unless continued by the general assembly, this article
14 is repealed, effective ~~July 1, 1995~~ JULY 1, 1996, and the coal
15 mine board of examiners is abolished. The provisions of section
16 24-34-104 (5) to (12), C.R.S., concerning a wind-up period, an
17 analysis and evaluation, public hearings, and claims by or against
18 an agency shall apply to the powers, duties, and functions of the
19 board specified in this article.

20 SECTION 5. 24-34-104, Colorado Revised Statutes,
21 1988 Repl. Vol., as amended, is amended BY THE ADDITION
22 OF THE FOLLOWING NEW SUBSECTION to read:

23 24-34-104. General assembly review of regulatory
24 agencies and functions for termination, continuation, or
25 reestablishment. (25.7) THE FOLLOWING AGENCIES, FUNCTIONS,
26 OR BOTH, SHALL TERMINATE ON JULY 1, 1996:

27 (a) THE ISSUANCE OF LICENSES RELATING TO THE

1 MANUFACTURE OR DISTRIBUTION OF DRUG PRECURSORS THROUGH
2 THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT IN
3 ACCORDANCE WITH PART 3 OF ARTICLE 22 OF TITLE 12, C.R.S.;

4 (b) THE REGULATION OF PERSONS WORKING IN COAL
5 MINES BY THE COAL MINE BOARD OF EXAMINERS IN ACCORDANCE
6 WITH ARTICLE 22 OF TITLE 34, C.R.S.

7 SECTION 6. Safety clause. The general assembly
8 hereby finds, determines, and declares that this act is necessary
9 for the immediate preservation of the public peace, health, and
10 safety.