



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2010 Sunset Review: Regulation of Physical Therapists

October 15, 2010





Executive Director's Office

Barbara J. Kelley
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2010

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

Dear Members of the General Assembly:

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

DORA has completed the evaluation of the regulation of physical therapists. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2011 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 41 of Title 12, C.R.S. The report also discusses the effectiveness of the Division of Registrations and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley
Executive Director





Bill Ritter, Jr.
Governor

Barbara J. Kelley
Executive Director

2010 Sunset Review: Regulation of Physical Therapists

Summary

What Is Regulated?

Physical therapists (PTs) are healthcare professionals who diagnose and treat individuals whose ability to move and perform basic functions is inhibited due to an illness, injury, or health condition.

Why Is It Regulated?

To assure that PTs meet a standard level of competency.

Who Is Regulated?

In June 2010, there were 6,001 licensed PTs.

How Is It Regulated?

The Director of the Division of Registrations (Director) within the Colorado Department of Regulatory Agencies is vested with the authority to regulate physical therapists. The Physical Therapy Advisory Committee assists the Director in fulfilling his or her statutory responsibilities. In order to qualify for a license to practice physical therapy, applicants must provide evidence that they have completed an accredited physical therapy education program and passed a written examination.

What Does It Cost?

In fiscal year 08-09, the total cost of the PT licensing program was \$185,746, and there were 0.7 full-time equivalent employees associated with the program.

What Disciplinary Activity Is There?

From fiscal year 04-05 to 08-09, the Director took a total of 33 disciplinary actions against PTs, including letters of admonition, suspensions, relinquishments, revocations, probations, and injunctions.

Where Do I Get the Full Report?

The full sunset review can be found on the internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the regulation of physical therapists for seven years, until 2018.

Colorado's licensure program ensures that PTs have the knowledge and skills to practice safely by requiring prospective PTs to meet specific minimum requirements, including completing an accredited education program and passing a comprehensive examination. Through its licensing, rulemaking and disciplinary activities, the PT licensure program protects the public health, safety and welfare of Coloradans.

Re-establish the Board of Physical Therapy and repeal the Physical Therapy Advisory Committee.

Since the last sunset review, in 2000, the profession of physical therapy has undergone significant changes. PT practice has become increasingly independent, and an increasingly complex healthcare environment means that an entry-level PT in 2010 must possess a greater body of knowledge, skills and abilities than an entry-level PT in 2000. These changes have led to more scope of practice questions, and the number of substandard practice complaints has risen steadily. The Director does not have the specific professional expertise to address these matters without assistance; consequently, the Director has increasingly relied upon the Committee's expertise. In essence, although the Director is ultimately the regulatory authority, the Committee has been functioning more and more as a board. For these reasons, the General Assembly should re-establish the Board of Physical Therapy (Board).

Establish that a PT's failure to properly address his or her own physical or mental condition is grounds for discipline, and authorize the Board to enter into confidential agreements with PTs to address their respective conditions.

Under current law, the Director may take disciplinary action against a PT who has a physical or mental condition which renders the PT unable to treat patients with reasonable skill and safety. Simply having such a condition should not be grounds for discipline, but failing to limit one's practice to accommodate such a condition should be. The General Assembly should clarify the grounds for discipline accordingly, and grant the newly created Board the authority to enter into confidential agreements with PTs having such conditions.

Major Contacts Made During This Review

Colorado Department of Regulatory Agencies
Physical Therapy Advisory Committee
American Physical Therapy Association, Colorado Chapter
Acupuncture Association of Colorado
Colorado Chiropractic Association
Federation of State Boards of Physical Therapy

What is a Sunset Review?

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

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

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

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

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

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

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

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

There are also several levels of regulation.

Licensure

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

Certification

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

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

Registration

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

Title Protection

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

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

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

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

The regulation of physical therapists by the Director of the Division of Registrations (Director and Division, respectively) relating to Article 41 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2011, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Division pursuant to section 24-34-104, C.R.S.

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

Methodology

As part of this review, DORA staff interviewed the Director and Division staff, attended Physical Therapy Advisory Committee (Committee) meetings, reviewed Committee records and minutes, reviewed complaint and disciplinary actions, interviewed officials with state and national professional associations, observed PTs treating patients, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Profession

Physical therapists (PTs) are healthcare professionals who diagnose and treat individuals whose ability to move and perform basic functions is inhibited due to an illness, injury, or health condition. PTs treat people across the lifespan. Potential consumers of physical therapy services include an infant who is unable to sit up due to a developmental delay, a teenager with a sports-related injury, someone who has had knee replacement surgery, and an elderly person who lost physical capabilities following a stroke. PTs seek to increase patients' mobility, strength, and independence, mitigate pain and discomfort, promote wellness, and prevent injury.

PTs may treat patients with therapeutic exercise, manual therapy, adaptive or assistive devices or equipment, or modalities such as heat, cold, ultrasound, or electrical stimulation. PTs often work as part of a rehabilitative healthcare team that includes physicians, nurses, occupational therapists, and speech therapists. PTs work in hospitals, outpatient clinics, private offices, mobile clinics, and in home health.

All 50 states require PTs to be licensed. Though licensing requirements vary from state to state, most states require applicants to complete a doctoral program in physical therapy and pass the National Physical Therapy Examination.

The Bureau of Labor Statistics expects the employment of PTs to grow much faster than the average for all occupations over the next 10 years.² The aging of the baby-boom generation, the growing popularity of procedures such as joint replacement, the increasing acuity of people requiring rehabilitative care, and the evolving role of mid-level healthcare providers in the American healthcare system are all likely to fuel demand for the services PTs provide.

² Bureau of Labor Statistics. *Occupational Outlook Handbook 2010-11*. Retrieved on June 23, 2010, from <http://www.bls.gov/oco/ocos080.htm>

Legal Framework

History of Regulation

Colorado began regulating physical therapists (PTs) in 1959, when the Colorado General Assembly created a Colorado State Board of Physical Therapy (Board) within the Secretary of State's Office. The Board was charged with licensing PTs by examination, endorsement, or waiver. At that time, PTs could only provide physical therapy to clients pursuant to a physician's order, and could only practice under physician supervision. The Board consisted of three licensed PTs, all of whom were required to have a minimum of five years of experience either as a practicing PT or as a teacher in an accredited PT education program.

The Administrative Organization Act of 1968 transferred the Board to the Department of Regulatory Agencies (DORA).

In 1971, the Physical Therapy Practice Act (Act) was revised to permit PTs to provide care under the prescription and direction of a licensed dentist, podiatrist, or physician.³

In 1977, the General Assembly expanded the Board from three members to five, with the addition of two members representing the public. The statutory language specifically prohibited the two public members from being engaged, directly or indirectly, in the provision of health services.⁴

Senate Bill 79-449 made numerous changes to the Act pursuant to the 1979 sunset review. PTs were granted title protection, and the definition of physical therapy was expanded to include the administration and evaluation of physical therapy tests and the use of medical devices.⁵

The Board underwent sunset again in 1985. Pursuant to a sunset recommendation, Senate Bill 86-11 dissolved the Board and reconfigured PT regulation as a registration program under the authority of the Director of DORA's Division of Registrations (Director and Division, respectively). The bill transferred all powers previously vested in the Board—such as the authority to promulgate rules, and to license and discipline PTs—to the Director; however, it also required the Director to form the Physical Therapy Advisory Committee (Committee) comprised of at least five licensed PTs to help the Director meet his or her statutory responsibilities.⁶ Although the bill removed all references to PT "licensing," substituting the term "registration," it did not change the required qualifications for PTs.

³ *Sunset Review of the Physical Therapy Practice Act*, Colorado Department of Regulatory Agencies (2000), p.5.

⁴ House Bill 77-1244.

⁵ *Sunset Review of the Physical Therapy Practice Act*, Colorado Department of Regulatory Agencies (2000), p.5.

⁶ Senate Bill 86-11.

The next major change occurred in 1988, when statutory language prohibiting direct access to PTs was repealed:⁷ patients no longer had to have a prescription from a physician, dentist, or podiatrist in order to receive physical therapy. Rather, patients could directly seek the services of a PT without going through an intermediary.

House Bill 91-1136 made numerous changes to the Act in light of the 1990 sunset report. The bill reinstated the term “license” to refer to PTs, arguing that this term better described the regulatory model for PTs. The bill revised the definition of physical therapy to reflect current practice more accurately, and expanded the grounds for discipline of a PT license to include, among other things, failure to properly refer patients to the appropriate healthcare provider, patient abandonment, inadequate supervision of unlicensed persons, and offering or receiving commissions or rebates in exchange for the referral of clients. The bill also granted the Director the authority to summarily suspend the license of a PT if there were reasonable cause to believe that the PT cannot practice safely. The bill also increased the number of Committee members from five to seven: five PTs and two individuals with specific healthcare knowledge.

Several changes were made after the 2000 sunset review. Substantive revisions included removing the requirement that PTs perform wound debridement only under the direct supervision of a physician. The legislation also permitted the Division to pay members of the Committee a standard per diem for their service, and removed all references to temporary permits and licenses.⁸

In 2007, the General Assembly passed House Bill 07-1126, which authorized PTs to perform physical therapy on animals, and required the Director to establish, by rule, the minimum educational and clinical requirements PTs must meet before performing such therapy.

Finally, the General Assembly passed two bills affecting PTs during the 2010 session.

Senate Bill 10-124 added PTs to the list of healthcare providers who must provide profile information to the Division pursuant to the Michael Skolnik Medical Transparency Act of 2010. Such information includes, but is not limited to, education and training history, any specialties or certifications, practice location(s), and any disciplinary actions or malpractice settlements.

House Bill 10-1175 revised the statutory language regarding licensing by endorsement to permit the Director to promulgate rules establishing ways for PT endorsement applicants to demonstrate their professional competency.

⁷ Senate Bill 88-11.

⁸ Senate Bill 01-113.

Physical Therapy Practice Act

The laws governing PT regulation are housed within Article 41 of Title 12, Colorado Revised Statutes (C.R.S.), and are known collectively as the “Physical Therapy Practice Act” (Act). The Director is vested with the authority to regulate PTs in Colorado.

The primary responsibilities of the Director include:⁹

- Issuing licenses to qualified applicants;
- Adopting all rules necessary for the administration of the Act;
- Conducting hearings and prosecuting individuals who violate the Act;
- Establishing fines and fees, and making necessary expenditures to administer the Act; and
- Promoting consumer protection and education.

The Act requires the Director to appoint the seven-member Committee, which assists in the performance of the Director’s duties under the Act. The Committee is comprised of:¹⁰

- Five licensed PTs; and
- Two members who are not PTs, but possess specific knowledge in the healthcare field.

The Committee must meet at least twice a year. Members receive a standard per diem for their service, and are reimbursed for actual expenses incurred in the performance of their duties.¹¹

Scope of Practice

The Act defines physical therapy as:¹²

...the examination, treatment, or instruction of patients and clients to detect, assess, prevent, correct, alleviate, or limit physical disability, movement dysfunction, bodily malfunction, or pain from injury, disease, and other bodily conditions.

⁹ §12-41-125(2), C.R.S.

¹⁰ § 12-41-126, C.R.S.

¹¹ § 12-41-126, C.R.S.

¹² § 12-41-103(6)(a)(I), C.R.S.

In assessing patients, PTs may administer, evaluate and interpret tests and measurements.¹³ For example, a PT might perform tests to determine:¹⁴

- Muscle strength, endurance, and tone;
- Joint motion, mobility, and stability;
- Sensation and perception;
- Posture and body mechanics; and
- The nature and locus of any pain the patient is experiencing, and the conditions under which pain varies.

PTs treat patients using physical agents, measures, activities, and devices.¹⁵ Examples of physical agents include:¹⁶

- Heat;
- Cold;
- Water;
- Light;
- Compression; and
- Electricity.

Examples of measures, activities and devices include:¹⁷

- Resistive, active, and passive exercise;
- Joint mobilization;
- Massage;
- Training in locomotion and other functional activities, with or without assistive devices; and
- Correction of posture, body mechanics, and gait.

PTs may administer topical and aerosol medications as prescribed by an authorized healthcare practitioner.¹⁸ PTs may also perform wound debridement¹⁹ pursuant to a physician's order.²⁰

¹³ § 12-41-103(6)(a)(II)(A), C.R.S.

¹⁴ § 12-41-103(6)(b)(III), C.R.S.

¹⁵ § 12-41-103(6)(a)(II)(C), C.R.S.

¹⁶ § 12-41-103(6)(b)(I), C.R.S.

¹⁷ § 12-41-103(6)(b)(II)(A), C.R.S.

¹⁸ § 12-41-113(2), C.R.S.

¹⁹ Wound debridement is the process of removing dead tissue or foreign material from a wound to expose healthy tissue. This can be performed using enzymes, mechanical devices, chemicals, or surgical devices such as scalpels or scissors. Source: Encyclopedia of Surgery. *Debridement*. Retrieved on September 20, 2010, from <http://www.surgeryencyclopedia.com/Ce-Fi/Debridement.html>

²⁰ § 12-41-113(3), C.R.S.

The Director may authorize PTs who meet specific educational and experiential requirements to perform physical therapy on animals. To qualify for such authorization, a PT must complete at least 80 additional hours of coursework and accrue at least 120 hours of practice experience under the supervision of either a PT authorized to perform physical therapy on animals, or a Colorado-licensed veterinarian.²¹ PTs must get veterinary medical clearance from a veterinarian before performing physical therapy on an animal.²²

PTs meeting specific requirements may perform an intervention known as dry-needling. In dry-needling, a PT uses a filiform needle²³ to stimulate trigger points, and diagnose and treat neuromuscular pain and functional movement deficits.²⁴ In order to perform this intervention, a PT must complete a dry-needling course consisting of at least 46 hours of face-to-face instruction and have two years of experience as a licensed PT.²⁵

The law specifically prohibits PTs from practicing medicine or surgery and from diagnosing disease.²⁶ PTs may not use X-rays or radioactive materials, and may not use electricity for either surgical or lifesaving measures.²⁷

Licensing

Colorado has a mandatory practice act, meaning that in order to practice physical therapy, a person must be licensed under the Act.²⁸ Applicants may apply for licensure by examination or by endorsement.

All applicants must submit an application and pay the required fee.²⁹

Applicants for licensure by examination must submit evidence documenting that they:

- Completed a physical therapy program that is either accredited by a nationally recognized agency, or is substantially equivalent to an accredited program;³⁰ and
- Passed a written examination.³¹

²¹ Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, 10.

²² §12-41-113(4), C.R.S.

²³ A filiform needle is a solid, extremely fine needle commonly used in acupuncture. Retrieved on September 20, 2010, from <http://medical-dictionary.thefreedictionary.com/filiform+needles>

²⁴ Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, 11A.

²⁵ Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, 11D.

²⁶ §12-41-105(1), C.R.S.

²⁷ §12-41-105(1), C.R.S.

²⁸ § 12-41-106, C.R.S.

²⁹ §§ 12-41-107(1)(c) and (d), and 12-41-109(1)(b) and (c), C.R.S.

³⁰ §§ 12-41-107(1)(a) and 12-41-111(1)(a), C.R.S.

³¹ §§ 12-41-107(1)(b) and 12-41-111(1)(c), C.R.S.

Examination applicants who received their education and training outside of the United States must also submit evidence that they possess an active, valid PT license (or other authorization to practice physical therapy) in the country where the applicant is practicing or has practiced.³²

Applicants for licensure by endorsement must possess an active license in good standing from another U.S. state or territory, and have done one of the following:³³

- Graduated from an accredited physical therapy education program within the past two years and passed an examination substantially equivalent to Colorado's;
- Passed an examination substantially equivalent to Colorado's and demonstrated their continued competence either by completing an internship or by another method as established in rule; or
- Practiced as a licensed PT for at least two of the past five years.

The Director may deny a license to any applicant who has violated the Act.³⁴

PTs must renew their licenses every two years by submitting a renewal application and paying a required fee.³⁵

Individuals meeting certain defined criteria are exempt from the Act. For example, students enrolled in an accredited physical therapy program may practice physical therapy, provided they are under the direction and immediate supervision of a Colorado-licensed PT. PTs licensed in other states who are in Colorado for an educational program, such as a fellowship or internship, may practice for up to six weeks without a Colorado license. A PT from another state or country may care for a particular patient who is in Colorado temporarily, but the PT cannot provide physical therapy services for any other individuals and cannot represent himself or herself as a Colorado-licensed PT.

Use of Unlicensed Personnel

PTs may use unlicensed personnel in their practices. Such personnel include physical therapy aides, physical therapy students, and physical therapist assistants (PTAs). PTs may supervise no more than three such unlicensed individuals at one time.³⁶

³² § 12-41-111(1)(b), C.R.S.

³³ § 12-41-109(3), C.R.S.

³⁴ §§ 12-41-107(3), 12-41-109(5), and 12-41-111(3), C.R.S.

³⁵ § 12-41-112(3), C.R.S.

³⁶ §12-41-113(1), C.R.S., and Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, 1C.

Although Colorado does not regulate PTAs, the Act defines a PTA as someone who:³⁷

- Has successfully completed an accredited PTA program;
- Is registered, licensed, or certified as a PTA in another state; or
- Has otherwise qualified to take the physical therapy examination.

PTAs must practice under the responsible direction and supervision of a PT.³⁸ By rule, “responsible direction and supervision” means that the supervising PT is accountable for all acts delegated to the PTA.³⁹

Unlicensed personnel who do not fall under the definition of PTA are considered physical therapy aides.⁴⁰ PTs must directly supervise physical therapy aides, meaning they must be on the premises and in the same building when an unlicensed person is performing a delegated task.⁴¹

The rules of the Director prohibit PTs from delegating certain duties to unlicensed personnel, namely:⁴²

- Interpretation of referrals from physicians and other healthcare providers;
- Initial examinations and evaluations;
- Diagnosis and prognosis;
- Development and modification of plans of care;
- Determination of discharge criteria;
- Supervision of all care rendered to the patient/client; and
- Sharp, enzymatic, selective, and pharmacological wound debridement.⁴³

The supervising PT bears responsibility for all delegated tasks performed by unlicensed individuals and is legally accountable for the care they provide.⁴⁴

³⁷ §12-41-113(1), C.R.S.

³⁸ §12-41-113(1), C.R.S.

³⁹ Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, 2D.

⁴⁰ Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, 3A.

⁴¹ §12-41-113(1), C.R.S. and Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, 3D.

⁴² Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, 1D and E.

⁴³ PTAs—but not physical therapy aides or students—may perform soft or non-selective wound debridement, per Colorado Physical Therapy Licensure Rule 1E.

⁴⁴ Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, 2A, 2C, 3A, 3B, and 3F.

Complaints and Enforcement

One of the Director's critical responsibilities under the Act is to investigate complaints against PTs, and take disciplinary action against PTs who violate the Act. PTs may be subject to discipline if they are found to have:⁴⁵

- Committed any act which does not meet generally accepted standards of physical therapy practice or failed to perform an act necessary to meet generally accepted standards of physical therapy practice;
- Engaged in a sexual act with a patient while a patient-PT relationship exists;
- Failed to refer a patient to the appropriate healthcare practitioner when the patient needs services that are beyond the level of competence of the PT or beyond the scope of physical therapy practice;
- Abandoned a patient by any means;
- Failed to provide adequate or proper supervision of unlicensed personnel;
- Failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records;
- Ordered or performed tests or treatments that are either demonstrably unnecessary or contrary to recognized standards of physical therapy practice;
- Committed abuse of health insurance or a fraudulent insurance act;
- Offered, given, or received commissions, rebates, or other forms of remuneration for the referral of clients;
- Falsified information in any application or attempted to obtain or obtained a license by fraud, deception, or misrepresentation;
- Engaged in the habitual or excessive use of any habit-forming drug or has a dependence on or addiction to alcohol or any habit-forming drug;
- A physical or mental condition or disability which renders them unable to treat patients with reasonable skill and safety;
- Failed to notify the Director, in writing, of the entry of a final judgment for malpractice or any settlement in response to charges or allegations of malpractice of physical therapy;
- Been convicted of a felony or pled guilty or *nolo contendere* to a felony; or
- Advertised, represented, or held themselves out as PTs or practiced physical therapy without a license.

If an investigation reveals that a PT has violated the Act, the Director may take formal disciplinary action. Possible actions include suspending or revoking the PT's license, imposing a fine of up to \$1,000, or placing the PT on probation.⁴⁶ In any disciplinary action that allows a PT to continue to practice, the Director may place conditions on the PT, such as requiring the PT to undergo therapy, complete additional education, or complete a period of supervised practice. The Director may also place specific restrictions on a PT's scope of practice to ensure that the PT does not go beyond his or her level of competence.⁴⁷

⁴⁵ § 12-41-115, C.R.S.

⁴⁶ §§ 12-41-116(1)(a), and 122(2), C.R.S.

⁴⁷ § 12-41-116(3), C.R.S.

If the Director has reason to believe that a PT poses an imminent threat to the public health and safety, or if a person is practicing physical therapy without a license, the Director can issue an order to cease and desist such activity.⁴⁸

The Director may order a PT to undergo a physical or mental examination to determine whether the PT is able to practice with reasonable skill and safety.⁴⁹

If the Director determines that the violation does not warrant formal disciplinary action, but is still too significant to be dismissed, the Director may issue a letter of admonition.⁵⁰

If the Director finds that a PT's conduct does not warrant formal action, the Director dismisses the complaint. However, if the complaint reveals behavior on the part of the PT that, if repeated, might lead to serious consequences, the Director has the option of dismissing the complaint via a confidential letter of concern.⁵¹

Corporate Practice

The Act permits PTs to form professional service corporations for the practice of physical therapy.⁵² The corporation's president and all shareholders must be Colorado-licensed PTs. The Act forbids directors and officers who are not PTs from exercising any authority over professional matters.⁵³ Employment of PTs in specified settings, including hospitals, nursing or rehabilitation facilities, and educational entities are not considered the corporate practice of physical therapy as long as:⁵⁴

- The PT's ability to exercise independent judgment is unaffected;
- The PT is not required to exclusively refer any patient to a particular provider or supplier or take any other action he or she determines not to be in the patient's best interest; and
- The policies of the employing entity include a procedure for hearing and resolving complaints alleging that any of the above provisions have been violated.

Pursuant to section 6-18-303(2), C.R.S., a PT may work in a physician-owned physical therapy clinic only if such clinic takes specific measures to safeguard the PT's ability to exercise independent judgment.

⁴⁸ § 12-41-117(11)(a), C.R.S.

⁴⁹ § 12-41-118(1), C.R.S.

⁵⁰ § 12-41-116(2)(a), C.R.S.

⁵¹ § 12-41-116(3.5), C.R.S.

⁵² § 12-41-144(1), C.R.S.

⁵³ §§ 12-41-144(1)(d) and (f), C.R.S.

⁵⁴ § 12-41-144(5)(b), C.R.S.

Program Description and Administration

The Director of the Division of Registrations (Director and Division, respectively) within the Colorado Department of Regulatory Agencies (DORA) is vested with the authority to regulate physical therapists (PTs). By policy, the Director delegates specified powers and duties to the director of the Health Services section within the Division, and to the director of the Office of Physical Therapy Licensure (Office).⁵⁵

The Director appoints an advisory committee to assist him or her. The seven-member Physical Therapist Advisory Committee (Committee) meets quarterly. At a typical meeting, the Committee considers policy issues and current topics of interest to the PT community, and reviews complaints against PTs.

Table 1 illustrates, for the five fiscal years indicated, the expenditures and staff associated with PT regulation.

**Table 1
Agency Fiscal Information**

| Fiscal Year | Total Program Expenditure | FTE |
|--------------------|----------------------------------|------------|
| 04-05 | \$131,632 | 0.7 |
| 05-06 | \$127,289 | 0.7 |
| 06-07 | \$154,733 | 0.55 |
| 07-08 | \$188,513 | 0.75 |
| 08-09 | \$185,746 | 0.7 |

For fiscal year 09-10, there were 0.80 full-time equivalent employees (FTE) allocated to the Office, including:

- General Professional VII (Section Director) = 0.05 FTE: Promulgates rules, takes disciplinary actions, and oversees all regulatory functions mandated in the Physical Therapy Practice Act (Act).
- General Professional VI (Program Director) = 0.10 FTE: Administers the day-to-day operations of the Office.
- Technician IV (Program Assistant) = 0.15 FTE: Processes complaints and disciplinary actions.
- Administrative Assistant III = 0.50 FTE: Provides general administrative support to the Office.

This number does not include employees in the centralized offices of the Division, which provide licensing, administrative, technical, and investigative support to the Office. However, the cost of those employees is reflected in the Total Program Expenditures. The slight fluctuations in the number of FTE from fiscal year 06-07 to 07-08 are due to administrative restructuring that occurred during that period.

⁵⁵ Office of Physical Therapy Licensure Policy 10-2.

Increased spending on legal services due to an unusually complex case explains the considerable increase in program expenditures from fiscal year 05-06 to 07-08.

Table 2 shows the fees associated with PT regulation for fiscal year 08-09.

**Table 2
Office of Physical Therapy Licensure Fees
FY 08-09**

| | |
|---|------|
| Original License by Examination | \$50 |
| Original License by Endorsement | \$50 |
| Renewal | \$70 |
| Late Fee (for renewals submitted after the expiration date) | \$15 |
| Reinstatement | \$85 |
| Duplicate License | \$5 |

Pursuant to section 24-34-105, Colorado Revised Statutes (C.R.S.), fees are subject to change every July 1.

Licensing

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

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

**Table 3
New PT Licenses Issued by Method**

| Fiscal Year | Licensed by Examination | Licensed by Endorsement |
|-------------|-------------------------|-------------------------|
| 04-05 | 121 | 200 |
| 05-06 | 138 | 209 |
| 06-07 | 124 | 232 |
| 07-08 | 149 | 252 |
| 08-09 | 147 | 231 |

Although the number of new licenses has varied somewhat from year to year, the overall data show general growth in the PT profession over the five-year period. There are fewer new licenses issued by examination than by endorsement because the number of accredited physical therapy education programs nationwide is relatively low. This means the number of new graduates seeking to take the examination is also low.

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

Table 4
Total Number of Licensed PTs

| Fiscal Year | Total |
|-------------|-------|
| 04-05 | 4,972 |
| 05-06 | 5,356 |
| 06-07 | 5,237 |
| 07-08 | 5,689 |
| 08-09 | 5,537 |

Again, although the number of licensed PTs has fluctuated from year to year, the overall pattern from fiscal year 04-05 to 08-09 demonstrates steady growth in the PT profession.

Examinations

To qualify for PT licensure, candidates must pass the National Physical Therapy Examination (NPTE), which was developed by the Federation of State Boards of Physical Therapy (FSBPT). The NPTE is intended to determine whether candidates have the knowledge and skills required of entry-level PTs. The examination focuses on the clinical application of knowledge, concepts and principles necessary to provide safe and effective patient care.⁵⁶

The NPTE has 200 questions that cover four broad content areas.

⁵⁶ 2010 NPTE Candidate Handbook, Federation of State Boards of Physical Therapy (2010), p. 20.

Table 5 indicates the content areas covered by the NPTE and the number of questions in each area.

Table 5
Content Areas for the National Physical Therapy Examination (NPTE)⁵⁷

| Content Area Description | Number of Questions | Percent of Questions |
|---|----------------------------|-----------------------------|
| Clinical Application of Foundational Sciences | 29 | 14.5 |
| Examination/ Foundations for Evaluation, Differential Diagnosis, & Prognosis | 73 | 36.5 |
| Interventions/ Equipment & Devices; Therapeutic Modalities | 59 | 29.5 |
| Safety, Protection, & Professional Roles; Teaching & Learning; Research & Evidence-Based Practice | 39 | 19.5 |
| Total | 200 | 100 |

Prometric provides computer-based testing services for the NPTE, offering the examination at approximately 300 testing locations nationwide⁵⁸ including four in Colorado, which are located in Colorado Springs, Grand Junction, Greenwood Village, and Longmont. Prometric charges candidates an examination fee of \$70.60.⁵⁹

Table 6 illustrates the number of PT examinations administered to Colorado PT applicants for the five fiscal years indicated, and the respective pass rates. The national average pass rates compiled by the FSBPT are provided for comparison.

Table 6
Number of Colorado Candidates Taking the NPTE and Pass Rates

| Fiscal Year | Number of Examinations Given* | Colorado Pass Rate (%) | National Pass Rate (%) |
|--------------------|--------------------------------------|-------------------------------|-------------------------------|
| 04-05 | 195 | 65.6 | 75 |
| 05-06 | 195 | 65.6 | 78 |
| 06-07 | 173 | 75.7 | 74 |
| 07-08 | 216 | 72.7 | 74 |
| 08-09 | 193 | 76.2 | 77 |

* Includes first-time test takers only.

The pass rate for Colorado examinees has improved over the past five years, and now hovers near the national pass rate. Division staff had no specific explanation for the considerable improvement in the pass rate from fiscal year 05-06 to 06-07.

⁵⁷ 2010 NPTE Candidate Handbook, Federation of State Boards of Physical Therapy (2010), p. 20.

⁵⁸ 2010 NPTE Candidate Handbook, Federation of State Boards of Physical Therapy (2010), p. 8.

⁵⁹ 2010 NPTE Candidate Handbook, Federation of State Boards of Physical Therapy (2010), p. 10.

Complaints/Disciplinary Actions

Anyone, including consumers, employers, insurance companies, and the Director, can file a complaint against a licensed PT or anyone who may have violated the Act.

Operating under the authority delegated by the Director, Office staff reviews incoming complaints to determine whether they might constitute a violation of the Act. If so, Office staff notifies the PT being complained against of the complaint and allows the PT 30 days to respond to the allegations. When the response is received, staff forwards the complaint and the response, as well as a preliminary recommendation for how the case should be handled, to the Director. Staff might recommend dismissing the case, forwarding the complaint to the Division's Office of Investigations, or forwarding the case to the Committee.

Table 7 illustrates the number and types of complaints received by the Office for the five fiscal years indicated.

Table 7
Complaints Filed against PTs

| Nature of Complaints | FY 04-05 | FY 05-06 | FY 06-07 | FY 07-08 | FY 08-09 |
|--|-----------------|-----------------|-----------------|-----------------|-----------------|
| Practicing without a License | 0 | 1 | 0 | 4 | 6 |
| Standard of Practice | 6 | 6 | 6 | 10 | 13 |
| Scope of Practice | 0 | 0 | 0 | 0 | 1 |
| Sexual Misconduct | 1 | 2 | 1 | 1 | 1 |
| Patient Abandonment | 0 | 0 | 1 | 3 | 2 |
| Substance Abuse | 0 | 1 | 0 | 0 | 0 |
| Insurance Fraud | 2 | 2 | 3 | 3 | 1 |
| Failure to Make Essential Entries | 1 | 0 | 1 | 0 | 1 |
| Supervision of Physical Therapist Assistants | 0 | 0 | 3 | 0 | 3 |
| Failed to Notify Director of Criminal Convictions or Disciplinary Actions in Other Jurisdictions | 0 | 0 | 0 | 0 | 2 |
| Falsified Information | 0 | 0 | 1 | 2 | 1 |
| TOTAL | 10 | 12 | 16 | 23 | 31 |

Office staff attributes the increasing number of substandard practice complaints to increasingly sophisticated healthcare consumers who are aware of their rights and know what avenues to take if they are not satisfied with the care they receive.

Table 8 illustrates the number and types of final actions taken by the Director for the five fiscal years indicated.

Table 8
Final Actions against PTs

| Type of Action | FY 04-05 | FY 05-06 | FY 06-07 | FY 07-08 | FY 08-09 |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|
| Revocation / Surrender / Voluntary Relinquishment | 0 | 0 | 0 | 4 | 1 |
| Suspension | 1 | 0 | 1 | 1 | 3 |
| Probation / Practice Limitation | 3 | 1 | 3 | 3 | 6 |
| Letter of Admonition | 2 | 2 | 2 | 2 | 0 |
| Injunctions | 1 | 0 | 1 | 0 | 0 |
| Total Disciplinary Actions | 7 | 3 | 7 | 6 | 10 |
| Dismissals | 28 | 7 | 27 | 13 | 13 |
| Dismissals with letters of concern | 1 | 0 | 2 | 2 | 6 |
| Total Dismissals | 29 | 7 | 29 | 15 | 19 |

The spike in the number of dismissals in fiscal years 04-05 and 06-07 correlates with the attestation that PTs must complete during each renewal period. When renewing, PTs must attest that they are in compliance with the Act. This triggers PTs who have not been in compliance to disclose to the Office any criminal convictions, malpractice settlements, or other actions that might violate the Act. During the two renewal periods reflected in the table above—fiscal year 04-05 and 06-07—the Office opened a new complaint for each disclosure. In most cases, further investigation was not required, and the cases were dismissed. Since then, the Office has discontinued the practice of automatically opening complaints based on self-disclosures. Instead, the Office reviews the supporting documentation for each self-disclosure and determines on a case-by-case basis whether it merits opening a complaint.

Although the Director has the statutory authority to issue fines, no fines have been imposed for the past five years.

Because a complaint might be received in one fiscal year and resolved the next, the total number of disciplinary actions and dismissals for a given year might not match the total number of complaints for that year as reflected in Table 7.

Analysis and Recommendations

Recommendation 1 – Continue the regulation of physical therapists for seven years, until 2018.

Article 41 of Title 12, Colorado Revised Statutes (C.R.S.), known as the “Colorado Physical Therapy Practice Act” (Act), vests the power to regulate physical therapists (PTs) with the Director of the Division of Registrations (Director and Division, respectively) within the Department of Regulatory Agencies (DORA). The law authorizes the Director to license qualified applicants, promulgate rules, and discipline PTs found to have violated the Act.

The first sunset criterion asks whether this regulation protects the public health, safety and welfare.

In June 2010, there were 6,001 licensed PTs in Colorado.

PTs, like other health professionals, must be able to assess patients’ health status, develop treatment plans, educate patients and their families, and evaluate and document patients’ progress. However, at its core, physical therapy involves touching people who are injured, fragile, or in pain. This means that the potential for harm to the public is significant. Whether treating an athlete recovering from an injury or a person with multiple sclerosis learning to improve balance, PTs must possess considerable knowledge of anatomy and physiology, as well as the manual skills to treat patients safely and effectively. Colorado’s licensure program ensures that PTs have this knowledge and these skills by requiring prospective PTs to meet specific minimum requirements, including completing an accredited education program and passing a comprehensive examination.

The Director has also established, in rule, minimum requirements for PTs wishing to perform treatments, such as dry-needling, that are not typically taught as part of a basic physical therapy education program. These additional requirements assure that PTs are qualified to perform the treatment safely.

The Act and the corresponding rules also protect the public by establishing standards for PT supervision of unlicensed personnel. Although the Act does not regulate physical therapist assistants (PTAs) *per se*, it defines PTAs as individuals meeting certain requirements, thereby restricting whom PTs may utilize as PTAs. The PT is responsible for the practice of the PTA, and his or her license depends on the appropriate direction, training, and supervision of the PTA.

Under section 12-41-115(1)(e), C.R.S., a PT may be subject to disciplinary action for failing to provide adequate or proper supervision of unlicensed personnel. With unregulated professions, there is sometimes a problem where the public does not have a place to lodge complaints against practitioners. In this case, however, because the PT has ultimate responsibility for the PTA's practice, consumers may lodge complaints with the Director. Based on the low number of complaints filed against PTs based on improper supervision of PTAs (a total of six complaints in five years), it is reasonable to conclude that this system has worked well for Colorado consumers, and meets the standard established in the second sunset criterion as the "least restrictive regulation consistent with the public interest."

The Director also protects the public by disciplining PTs who have violated the Act. The Director has numerous enforcement tools at his or her disposal: if a PT has a practice issue that could be corrected with further education or supervision, the Director may put the PT on probation. If a PT has caused significant harm to a patient, the Director may revoke that PT's license.

Through its licensing, rulemaking and disciplinary activities, the PT licensure program protects the public health, safety and welfare of Coloradans. For these reasons, the General Assembly should continue the regulation of PTs for seven years, until 2018. A seven-year sunset date appropriately reflects the scope of the changes this report recommends.

Recommendation 2 – Re-establish the Board of Physical Therapy and repeal the Physical Therapy Advisory Committee.

Having established that regulation is necessary to protect the public, the first sunset criterion also compels DORA to consider:

... whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

PT licensure was established in 1959 under the authority of a Board of Physical Therapy (Board). In 1985, the General Assembly, following a sunset recommendation, sunset the Board and instituted a "director model" program for PTs under the authority of the Director. Over the past 25 years, the profession of physical therapy has undergone significant changes. These changes warrant the re-establishment of the Board.

First, consider the context of the 1985 sunset recommendation. The full recommendation reads:

The General Assembly should consider terminating the State Board of Physical Therapy and licensure for physical therapists.⁶⁰

Why was abolishing not only the Board but the entire regulatory program a viable option in 1985? There were two main reasons.

At that time, there were numerous constraints on the independent practice of PTs. Colorado patients could not seek the services of a PT without a referral from a physician, podiatrist, or dentist. In fact, only five states allowed PTs this level of independence. At that time, PTs could also practice under the Medical Practice Act as physician extenders, thereby calling into question the need for a separate practice act.

Secondly, there was little evidence that the practice of physical therapy posed harm to the public. According to the report, most complaints submitted to the Board alleged misuse of the term “physical therapy” in advertising materials, rather than actual instances of physical harm to the public. Moreover, although by 1985 the Board had been in existence for over 25 years, it had never disciplined a single licensee, implying that either the Board was ineffective or the regulation unneeded.⁶¹

However, there have been significant changes since 1985, and even since the 2000 sunset review, which recommended keeping the Director model program in place. These changes justify a return to the Board model.

The first important change occurred in 1988, when Colorado implemented “direct access” to PTs. Direct access permitted PTs to practice independently, and firmly established that PTs themselves, not the prescribing or supervising physician, dentist or podiatrist, are accountable for their own practices. Since then, PT practice has become increasingly independent. Across the healthcare spectrum, there is a general trend toward greater use of mid-level health care providers, such as PTs.

The second significant change that has occurred since the last sunset review is in the level of education of the average PT. In 1999, there were 199 accredited physical therapy programs: 24 offering bachelor’s degrees, 157 offering master’s degrees, and 8 offering doctoral degrees. In 2009, there were 212 physical therapist education programs: 12 offering master’s degrees and 200 offering doctoral degrees. There are no longer any accredited physical therapy programs that offer bachelor’s degrees.

⁶⁰ *Sunset Review: State Board of Physical Therapy*, Colorado Department of Regulatory Agencies (July 1985), p. 8.

⁶¹ *Sunset Review: State Board of Physical Therapy*, Colorado Department of Regulatory Agencies (July 1985), p. 8.

This dramatic increase in basic PT education represents how the rapid pace of scientific and technological advancements has affected the profession of physical therapy. For example, medical technology that allows increasingly sophisticated orthopedic surgeries, and scientific research that changes our understanding of how neurological disorders affect the brain, necessitate changes to the way PTs treat patients. Physical therapy education programs have evolved and expanded accordingly. An increasingly complex healthcare environment means that an entry-level PT in 2010 must possess a greater body of knowledge, skills and abilities than an entry-level PT in 2000.

These increased levels of independence and complexity have led to more practice questions—relating to, for example, PT scope of practice, and appropriate supervision—than there have been in the past. The Director does not have the specific professional expertise to address these matters without assistance. Consequently, although the Director possesses formal rulemaking authority for the PT program, the Committee plays a significant and critical role in rulemaking and policy-setting.

Finally, the number of substandard practice complaints has risen steadily. From 1995 to 2000, the Director reviewed 74 complaints, 24 percent of which alleged substandard practice. From fiscal year 04-05 to 08-09, the Director reviewed a total of 92 complaints, 41 of which—44 percent—related to substandard practice. A representative of DORA reviewed all complaints against PTs received during fiscal years 07-08 and 08-09. Of 48 cases, 18 could not be evaluated without professional expertise.

This shift has led the Director to refer more complaints to the Committee, and to rely on its expertise in this area, as well.

In essence, although the Director is ultimately the regulatory authority, the Committee has been functioning more and more as a board.

Division staff does not anticipate that returning to a Board model will be significantly more expensive than the current Director model program. Committee members already meet quarterly, receive a per diem, and are reimbursed for their expenses, and there is no indication that a Board model would require significantly more staff time and resources than are currently used in working with the Committee.

The practice of physical therapy has become increasingly independent and complex, resulting in more substandard practice complaints and practice issues requiring professional expertise. By advising the Director and providing this expertise, the Committee has essentially been acting as a Board. For these reasons, the General Assembly should re-establish the Board.

Over the course of this sunset review, DORA identified numerous developing issues in the PT profession the Board should address.

Telehealth. Telehealth is the use of telecommunication technology—including interactive audio, video, and data communications—to provide healthcare services, educate the public about health-related issues, and facilitate medical research across distances.⁶² For example, a rural clinic that might not have the resources to employ a PT on-site could hire a PT from another area of the state to treat patients via telehealth. This could involve the PT using interactive video to demonstrate a therapeutic exercise program to patients, and to observe patients performing the exercises to assure they are being done correctly.

Telehealth could potentially increase access to physical therapy services, particularly to people in underserved or rural areas.

However, the practice of telehealth presents a challenge to regulators. What is the standard of care for physical therapy provided via telehealth? How can Colorado adequately protect the health and safety of its citizens, without unnecessarily restricting access to physical therapy services?

The Board would have the professional expertise to explore this issue and establish parameters for this growing area of healthcare.

Supervision of unlicensed personnel. DORA identified two issues relating to the supervision of unlicensed personnel.

The first issue is the statutory cap on the number of unlicensed personnel a PT may supervise.

Currently, under section 12-41-113(1), C.R.S., PTs may supervise no more than three unlicensed personnel. That number may include PTAs, physical therapy aides, and physical therapy students.

It is not uncommon for the law to limit the number of assistants a health professional may supervise. For example, physicians may supervise no more than four physician assistants, and chiropractors may supervise no more than five chiropractic assistants. However, among the health professions, there is no other instance where the law limits the number of aides or students a healthcare provider may supervise. These decisions are left to employers and healthcare providers themselves.

Ultimately, PTs are responsible for the care provided by unlicensed personnel acting under their supervision. It is in PTs' best interest to assure that they do not assume more supervisory responsibility than they can safely handle.

⁶² The Free Dictionary. *Telehealth*. Retrieved on September 20, 2010, from <http://medical-dictionary.thefreedictionary.com/telehealth>

Increasing the number of personnel a PT may supervise, or removing the cap entirely, could potentially increase access to healthcare services by allowing PTs to include more unlicensed personnel in their practices.

The Board would have the professional expertise to determine whether the cap is justified, and if so, whether the ratio established by law is reasonable.

The second issue relates to the appropriate levels of supervision for PTAs, and for other unlicensed personnel.

Section 12-41-113(1), C.R.S., establishes two tiers of supervision for unlicensed personnel:

(Unlicensed) individuals shall at all times be under the **direct supervision** of the physical therapist unless such individuals are physical therapist assistants who shall be under **responsible direction and supervision** of the physical therapist. {emphasis added}

“Direct supervision” is subsequently defined as supervision that occurs on the premises where any such unlicensed individuals are practicing.⁶³ Rule 3C, within the Colorado Physical Therapy Licensure Rules and Regulations, clarifies this definition to mean supervision that is on the premises and in the same building where any such unlicensed personnel are practicing.

“Responsible direction and supervision” is defined only in rule. Rule 2D defines it as:⁶⁴

...direction and supervision provided by a physical therapist that assumes accountability for the delegated acts of the unlicensed person identified as a physical therapist assistant.

But Rule 3F establishes that PTs are equally accountable for the delegated acts of the unlicensed person defined as a physical therapy aide. This definition of “responsible direction and supervision” does not provide meaningful differentiation between the two types of supervision.

Since PTs can be subject to disciplinary action for improper supervision of unlicensed personnel, it is important that PTs’ supervisory obligations are clear.

The Board would have the professional knowledge to clarify the dual supervisory role of the PT, and any other issues regarding delegation or the supervision of licensed or unlicensed personnel.

⁶³ § 12-41-113(1), C.R.S.

⁶⁴ Colorado Physical Therapy Licensure Rules and Regulations, 4 CCR 732-1, Rule 2D.

Approval of dry-needling education programs. Currently, PTs wishing to perform the dry-needling technique may do so by meeting the educational requirements set forth in the Director’s Rule 11. However, there is no system in place for the review and approval of dry-needling education courses. This means that an education program could include training that is considerably beyond the scope of the Director’s narrow definition of what constitutes dry-needling.

Because the practice of dry-needling could pose potentially significant harm—to cite an extreme example, an improperly placed needle could puncture a patient’s lung—there should be an approval process for entities wishing to offer the training in this procedure. The Board would have the professional expertise to develop and implement such a review and approval process.

The new Board should include seven Governor-appointed members: four licensed PTs, and three members of the public who are not licensed PTs and who do not have a direct or indirect financial interest in the practice of physical therapy. Whenever possible, the Governor should appoint members representing diverse geographic areas. In keeping with other healthcare boards, Board members should serve four-year terms, and should be able to serve no more than two consecutive terms.

The implementation date of the Board should be January 1, 2012, which will give the Governor sufficient time to appoint Board members. A January 1, 2012 implementation date also provides ample time for Division staff to transition from a Director model to formal board oversight.

In light of this change, the General Assembly should repeal the Committee created in section 12-41-126, C.R.S.

Recommendation 3 – Permit PTs to use automated external defibrillators.

Automated external defibrillators (AEDs) are computerized medical devices that can evaluate the rhythm of a person’s heart and advise rescuers when a shock is needed.⁶⁵ AEDs—which are widely available in high-traffic areas such as airports, shopping malls, and office buildings—were designed for use by ordinary citizens rather than medical personnel.

⁶⁵ American Heart Association. *AED Programs Q&A*. Retrieved on September 20, 2010, from <http://www.americanheart.org/presenter.jhtml?identifier=3011859>

Under Colorado's Good Samaritan Law, any person is permitted to provide emergency care at the scene of an emergency or accident, as long as such care is performed in good faith and at no cost.⁶⁶ Section 12-41-105(1)(b), C.R.S., however, specifically prohibits PTs from using potentially lifesaving devices such as AEDs. This prohibition creates a scenario where a layperson with no healthcare training whatsoever is permitted to use an AED, but a licensed PT is forbidden from doing so. While the intent of the legislation creating the prohibition is unknown, it seems odd that a licensed PT who intervenes in an emergency, perhaps even saving a person's life, might be faced with discipline for doing so.

In the interest of the public health, safety, and welfare, this prohibition should be lifted.

Recommendation 4 – Add the Program of All-inclusive Care for the Elderly (PACE) to the list of PT work settings that are exempt from the corporate practice law.

Section 12-41-124(5)(b), C.R.S., exempts certain work settings from the provisions regulating corporate practice. These settings include licensed or certified hospitals, skilled nursing facilities, home health agencies, hospices, comprehensive outpatient rehabilitation facilities, accredited educational entities, and other entities “wholly owned and operated by the government.”

The Program of All-inclusive Care for the Elderly (PACE) is a program for older adults and people over age 55 living with disabilities. PACE is intended to allow individuals who need the level of care typically provided in a nursing home to continue to live in their homes and communities. Individuals may pay for PACE services on their own, or, if they qualify, Medicare and Medicaid will pay for services. The PACE model offers a wide variety of services, including physical therapy.

A non-profit organization runs Colorado's PACE program, meaning that although the program receives public funding, it is not operated by the government. This means that the PACE program would not be able to employ PTs without being subject to the corporate practice provisions.

Generally speaking, the purpose of the regulation of corporate practice by healthcare providers, including PTs, is to assure that healthcare practitioners remain accountable to their patients rather than to shareholders. It is reasonable to assume that the General Assembly did not intend for the corporate practice provisions to apply to a program that receives government funding and is operated by a non-profit entity. Therefore, the General Assembly should add PACE to the list of PT work settings that may be exempted from the corporate practice law.

⁶⁶ § 13-21-108(1), C.R.S.

Recommendation 5 – Establish that a PT's failure to properly address his or her own physical or mental condition is grounds for discipline, and authorize the Board created in Recommendation 2 to enter into confidential agreements with PTs to address their respective conditions.

One of the Director's critical responsibilities is to take disciplinary action against PTs who pose a threat to the patients under their care. The Director may take disciplinary action against any PT who has:⁶⁷

A physical or mental condition or disability which renders such licensee unable to treat patients with reasonable skill and safety or which may endanger the health or safety of persons under the licensee's care.

Having such a condition may affect an applicant's ability to be licensed as a PT. The application for initial licensure asks:⁶⁸

Within the last five years, have you been diagnosed or treated for any physical or mental condition or disability which rendered you unable to treat patients with reasonable skill and safety or which may endanger the health or safety of persons under your care?

Further, at each two-year renewal, PTs must attest that they are in compliance with the Act, so in effect they are attesting that they do not have such a physical or mental condition. If they have acquired such a condition since the last renewal, they must disclose such to the Director.

The intent of these provisions is clear: to protect the public from unsafe practitioners. But in many cases, PTs with such conditions could continue to practice safely, under certain defined circumstances. For example, a PT with a spinal injury could continue to diagnose and evaluate patients, but would have to delegate certain manual therapies to another practitioner. A PT with bipolar disorder might be able to treat patients safely provided he or she takes the proper medication.

Under the current system, PTs with such conditions may enter into an agreement or practice limitation with the Director in order to continue practicing via a public disciplinary order. Section 12-41-116(3), C.R.S., states that:

In any disciplinary order which allows a physical therapist to continue to practice, the Director may impose upon the licensee such conditions as the Director deems appropriate to ensure that the physical therapist is physically, mentally, and professionally qualified to practice physical therapy in accordance with generally accepted professional standards.

⁶⁷ § 12-41-115(1)(m), C.R.S.

⁶⁸ Colorado Office of Physical Therapy Licensure, Application for Original License by Examination, May 2010, p. 2, question 2.

Such conditions may include requiring a PT to undergo a physical or mental examination; to complete therapy, training, or education; or to enter into a period of supervised practice. The Director may also restrict the scope of the PT's practice to ensure that the PT does not practice beyond the limits of his or her capabilities.⁶⁹

These orders provide a mechanism for these PTs to continue to practice, but are troubling philosophically. The orders are considered discipline, and become part of the PT's permanent record. Being injured in a car accident, suffering a stroke, or receiving a diagnosis of bipolar disorder is fundamentally different from committing an act that constitutes grounds for discipline under the Act. While these conditions might temporarily or permanently affect a PT's ability to treat patients, it seems unjust for a PT who successfully manages bipolar disorder with medication to be included in the same category as a PT who has stolen a car or committed insurance fraud. Not only does this stigmatize the person with the condition, it can affect his or her ability to participate in provider networks and can increase insurance rates.

Essentially, current law compels the Director to discipline PTs simply for having a physical or mental condition that might affect their practice.

During the 2010 legislative session, the General Assembly passed Senate Bill 10-1260 (SB 1260), which contains a provision allowing the Medical Board to enter into confidential agreements with physicians with physical or mental conditions that might affect their practice. These agreements establish the measures that physicians must adhere to in order to practice safely.

The legislation made another important change: previously, a physician would be subject to discipline simply for having a physical or mental condition that might affect his or her practice. Under SB 1260, the Medical Board may discipline a physician if he or she fails to:⁷⁰

Notify the board...of a physical or mental illness or condition that impacts the licensee's ability to perform a medical service with reasonable skill and with safety to patients, failing to act within the limitations created by a physical or mental illness or condition that renders the licensee unable to perform a service with reasonable skill and with safety to the patient, or failing to comply with the limitations agreed to under a confidential agreement (.)

⁶⁹ § 12-41-116(3), C.R.S.

⁷⁰ Senate Bill 10-1260, § 29.

Simply having a physical or mental condition or illness is no longer a reason to impose discipline. As long as the physician notifies the Medical Board of his or her condition or illness, enters into a confidential agreement outlining the measures he or she must take to assure safe practice, and adheres to the agreement, there is no violation of the Medical Practice Act. Consequently, these agreements do not constitute discipline and do not appear to be reportable to the National Practitioner Data Bank. If a physician fails to meet the requirements or stay within the limitations enumerated in the agreement, the Medical Board may then take disciplinary action. This assures adequate public protection.

The General Assembly should enact a similar provision for PTs by granting the Board created in Recommendation 2 the authority to enter into confidential agreements with PTs. To assure public protection, the General Assembly should also establish failure to properly address the PT's own physical or mental condition as grounds for discipline.

Recommendation 6 – Require PTs to maintain professional liability insurance.

Professional liability insurance provides a means by which consumers may be made financially whole in the event that they have to file a malpractice claim against a healthcare professional. Many healthcare providers, including chiropractors,⁷¹ podiatrists,⁷² optometrists,⁷³ dentists,⁷⁴ physicians,⁷⁵ and advanced practice nurses⁷⁶ are required to maintain such insurance coverage.

According to stakeholders interviewed over the course of this review, most—if not all—PTs already hold professional liability insurance; however, there is no requirement that they do so. This places the patients under their care at risk, in the event they have cause to pursue legal action.

Professional liability insurance is readily available for PTs. According to the Colorado chapter of the American Physical Therapy Association, PTs typically hold policies that provide coverage of at least \$1 million per occurrence, and \$3 million to \$5 million aggregate per year. Average annual premiums for such policies are \$450 to \$500 for full-time PTs and \$250 to \$300 for part-time PTs.

⁷¹ § 12-33-116.5, C.R.S.

⁷² § 12-32-102(2), C.R.S.

⁷³ § 12-40-126, C.R.S.

⁷⁴ § 13-64-301, C.R.S.

⁷⁵ § 13-64-301, C.R.S.

⁷⁶ § 12-38-111.8, C.R.S.

Because PTs practicing without professional liability insurance could place the public at risk, and because such insurance coverage appears to be available and reasonably priced, the General Assembly should require PTs to secure professional liability insurance. Based on current market standards, the General Assembly should require PTs to secure a policy that provides coverage of up to \$1 million per occurrence, and up to \$3 million aggregate per year.

In many professions, there are lesser financial responsibility requirements in place for practitioners meeting certain criteria, i.e., podiatrists who do not perform surgical procedures,⁷⁷ optometrists engaged primarily in non-clinical duties,⁷⁸ or physicians whose practice is confined to a federal or military agency.⁷⁹ The General Assembly should grant the Board created in Recommendation 2 the authority to promulgate rules establishing such lesser requirements as appropriate.

Recommendation 7 – Revise the language relating to drug and alcohol use.

The Director may take disciplinary action against a PT who has:

A dependence on or addiction to alcohol or any habit-forming drug or abuses or engages in the habitual or excessive use of any such habit-forming drug or any controlled substance(.)⁸⁰

This wording presents two problems. First, it can be difficult to prove conclusively that someone is addicted to or dependent on alcohol or drugs. Second, because addiction is now understood as an illness, disciplining someone for being addicted may have legal ramifications.⁸¹

The “excessive use or abuse of alcohol” has been established as the standard for disciplinary action in Colorado. This standard establishes the excessive use or abuse of alcohol or drugs as grounds for discipline, rather than the condition of being addicted to or dependent on such substances.

Therefore, the General Assembly should amend this provision to remove references to “addiction” and “dependence,” and state “the habitual or excessive use or abuse of alcohol, controlled substances, or any habit-forming drug.”

⁷⁷ § 12-32-102(2)(b), C.R.S.

⁷⁸ § 12-40-126(2), C.R.S.

⁷⁹ Colorado State Board of Medical Examiners *Rule 220, Rules and Regulations Regarding Financial Responsibility Standards*, § 2a.

⁸⁰ §12-41-115(1)(l), C.R.S.

⁸¹ The U.S. Supreme Court ruled in *Robinson v. California*, 370 U.S. 660 (1962), that addiction is an illness, which may be contracted innocently or involuntarily, and, therefore, the State of California could not punish a person based on such grounds.

Recommendation 8 – Require PTs who have had their licenses revoked, or who have surrendered their licenses in lieu of disciplinary action, to wait two years to reapply.

Most healthcare professionals who have had their licenses revoked, or who have surrendered their licenses in lieu of revocation, must wait two years to reapply for licensure. These professionals, including dentists, midwives, nurses, podiatrists, and pharmacists, are required to wait two years. Requiring individuals to wait a specified period before reapplying enhances public protection by assuring they possess minimal competency when they re-enter the workforce. Given the severity of the violations that result in revocation or surrender of a license, and the amount of time and resources it takes to process revocations and surrenders, two years is an appropriate waiting period.

The General Assembly should establish a two-year waiting period for PTs who have had their licenses revoked, or who have surrendered their licenses in lieu of disciplinary action.

Recommendation 9 – Establish failure to respond to a complaint as grounds for discipline.

When the Director receives a complaint against a PT, he or she sends a copy of the complaint to the licensee. The PT has 30 days to respond to the complaint in writing. It is critical that the PT respond promptly, because failing to respond to a complaint does not just create an administrative inconvenience and hinder the investigative process, it also poses a potential threat to the public: each day that an unsafe PT continues to work puts the public at risk. While there may be extenuating circumstances that prevent the PT from responding promptly, the Board created in Recommendation 2 should have the authority to discipline a PT for failing to respond.

Other health professionals—including physicians,⁸² nurses,⁸³ and chiropractors,⁸⁴ are subject to discipline for failing to respond to a complaint.

Therefore, the General Assembly should establish as grounds for discipline failure to respond to a complaint.

⁸² § 12-36-117(1)(gg), C.R.S.

⁸³ § 12-38-117(1)(u), C.R.S.

⁸⁴ § 12-33-117(1)(ff), C.R.S.

Recommendation 10 – Repeal the provision relating to denying renewal of an existing PT license.

Section 12-41-116(1)(b), C.R.S., states:

The denial of an application to renew an existing license shall be treated in all respects as a revocation. If an application to renew a license is denied, the applicant, within sixty days after the date of the notice of such action, may request a hearing as provided in section 24-4-105, C.R.S.

This language does not reflect current Division practice. If a PT against whom there is a pending complaint submits a renewal application, standard Division practice is not to deny the renewal. Rather, the Director continues with the investigative and disciplinary process, including revocation proceedings, if applicable. This process of stripping unsafe PTs of their licenses offers the same degree of public protection as the one outlined in statute, without sacrificing PTs' right to due process. Therefore, this provision should be repealed.

Recommendation 11 – Make technical changes to the Act.

During the course of this sunset review, the Division, its staff and researchers found several places in the Act that need to be updated and clarified to reflect current practices, conventions, and technology. While recommendations of this nature generally do not rise to the level of protecting the health, safety, and welfare of the public, unambiguous laws make for more efficient implementation. Unfortunately, all of the statutes pertaining to PTs are commonly only examined by the General Assembly during a sunset review.

The following list of such technical changes is provided as a means of illustrating examples only. It is not exhaustive of the types of technical changes that should be made:

- Revise the entire Act to make it gender-neutral.
- Delete all statutory references to the Director developing or administering the examination, because the Federation of State Boards of Physical Therapy, not the Director, now develops the examination content, and a computer based testing vendor administers the examination.
- Sections 12-41-103(5) and 104, C.R.S. – Delete all references to “physical therapy technician,” as that term is no longer commonly used.

Therefore, the General Assembly should make technical changes to the Act.