



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2016 Sunrise Review: Art Therapists

October 14, 2016



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 14, 2016

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 General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Since that time, Colorado's sunrise process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. To emphasize the statewide nature and impact of this endeavor, COPRRR recently launched a series of initiatives aimed at encouraging greater public participation in the regulatory reform process, including publication of a new "Citizen's Guide to Rulemaking" (available online at www.dora.colorado.gov/opr).

Section 24-34-104.1, Colorado Revised Statutes, directs the Department of Regulatory Agencies to conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

Accordingly, COPRRR has completed its evaluation of the sunrise application for regulation of art therapists and is pleased to submit this written report.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

Joe Neguse
Executive Director



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Background

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.

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA's Colorado Office of Policy, Research and Regulatory Reform (COPRRR) must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner; and

¹ § 24-34-104.1(4)(b), C.R.S.

(IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

Methodology

COPRRR has completed its evaluation of the proposal for the regulation of art therapists. During the sunrise review process, COPRRR staff performed a literature search; contacted and interviewed the sunrise applicant; reviewed licensure laws in other states; and interviewed art therapists and other stakeholders. To determine the amount and types of complaints filed against art therapists in Colorado, COPRRR staff contacted the mental health professions regulatory boards, which are housed in DORA's Division of Professions and Occupations, and the American Association of Art Therapists.

Profile of the Profession

According to the American Art Therapy Association (AATA), art therapy combines a knowledge and understanding of human development with psychological theories, visual arts, and creative processes to aid an individual's psychological health, cognitive abilities, and sensory-motor functions. Art therapists use art media to help alleviate problems, develop interpersonal skills, manage behavior, reduce stress, increase self-esteem and self-awareness, and achieve insight. Art therapy can enable non-verbal, emotional communication. Experience in art and art-making can reveal thoughts, feelings, and knowledge, and applying theory to manage thoughts and actions are what define art therapy as a profession.²

The theory behind art therapy is that art uses the brain and the body differently from verbal language. Art therapists use imagery, color, texture, and various art media to affect personality. Because art poses an alternative means of communication, art therapy may relieve anxiety from trauma, combat, physical abuse, loss of brain function, depression, and other debilitating health conditions. Clinical training with individuals, families, and groups prepares art therapists to make assessments and treat conditions.³ The Art Therapy Association of Colorado (Applicant) asserts that there were approximately 139 qualified art therapists in Colorado as of November 2015.⁴

In its sunrise review application, the Applicant writes that art therapy is used with children, adolescents, adults, older adults, Lesbian-Gay-Bisexual-Transgender individuals, and families to assess and treat: anxiety, depression, and other mental emotional problems and disorders; substance abuse and other addictions; mental illness; family and relationship issues; abuse and domestic violence; homelessness; social and emotional difficulties related to disability and illness; trauma and loss; physical, cognitive, and neurological problems; and psychosocial difficulties related to medical illness.⁵

Colorado law requires that any individual who practices psychotherapy to be a regulated mental health professional. The professions that are currently regulated are psychologist, social worker, marriage and family therapist, professional counselor, psychotherapist, and addiction counselor.

Art therapists work in many settings as part of a health-care team, as consultants, as private practitioners, as researchers, and as academic researchers.⁶

² American Art Therapy Association. *What is Art Therapy?*, Retrieved January 14, 2016, from <http://arttherapy.org/aata-aboutus/>

³ *Ibid.*

⁴ Sunrise Review Application for the Field of Art Therapy, Colorado Art Therapy Association, p.6.

⁵ *Ibid.*, p.7.

⁶ *Ibid.*, p.8.

AATA offers therapist registration or an ATR. Registration requires a master's degree from an AATA-approved program and clinical experience. AATA's Educational Program Approval Board has approved 39 art therapy master's degree programs nationwide.⁷ Colorado has one approved program, located in Boulder.⁸ However, a person does not graduate from that program with a Master of Arts in art therapy. The approved degree is a Master of Arts in Clinical Mental Health Counseling. This degree offers a concentration in transpersonal art therapy, as well as concentrations in somatic: body psychotherapy, mindful-based transpersonal counseling, and transpersonal wilderness therapy, among others.⁹

The Art Therapy Credentials Board Inc. offers a "Board Certification" to those registered art therapists who pass an examination and complete 1,000 hours of direct client contact, with 100 hours of direct supervision.¹⁰ It has also developed a professional code of conduct (see Appendix C, page 26) to which credentialed art therapists are expected to adhere. The code covers:

- General Ethical Principles,
- Credentials,
- Standards of Conduct,
- Standards of Conduct: Discipline Process, and
- Disciplinary Procedures.

The elements of this code are very similar to what one would typically see in a governmentally regulated profession's regulatory scheme. Many licensing practice acts contain the steps to become credentialed, standards of practice and conduct, procedures for administering discipline, and sometimes professional ethics.

⁷ American Art Therapy Association. *How do I become an art therapist?*, Retrieved January 14, 2016, from <http://arttherapy.org/aata-aboutus/>

⁸ American Art Therapy Association. *EPAB Approved Graduate Degree Programs*, Retrieved January 14, 2016, from <http://arttherapy.org/aata-educational-programs/>

⁹ Naropa University. *Clinical Mental Health Counseling MA*. Retrieved September 12, 2016, from <http://www.naropa.edu/academics/masters/clinical-mental-health-counseling/index.php>

¹⁰ American Art Therapy Association. *How are credentials approved and maintained?*, Retrieved January 14, 2016, from <http://arttherapy.org/aata-aboutus/>

Proposal for Regulation

The Art Therapy Association of Colorado (Applicant) has submitted a sunrise application to the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies licensing of art therapists as the appropriate level of regulation to protect the public.

In the sunrise application, the Applicant provided no specific justification(s) for full licensure versus a different level of regulation. However, the application did state that currently an art therapist must obtain licensure in another mental health discipline to act as an art therapist. Currently in Colorado, to practice psychotherapy, one must be regulated as a psychologist, social worker, marriage and family therapist, professional counselor, or addiction counselor, or a psychotherapist. This is the licensure referred to by the Applicant.

The Applicant writes that the alternative licensing creates several hardships for an art therapist. Among the effects the Applicant expects to gain through regulation are,

...gaining a distinct professional identity, with well-defined qualifications and scope of practice in state law that accurately reflect the specialized academic and clinical training required to practice Art Therapy; and removing the recurring threat of proposed changes in eligibility requirements for current mental health licenses that could exclude Art Therapists.¹¹

The Applicant also posits that since Colorado does not license art therapists, art therapists licensed in other states have difficulty maintaining their license after relocating to Colorado.

The Applicant writes that to be a “competent” art therapist one “must have a master’s degree in Art Therapy and appropriate clinical experience.”¹² The application does not elaborate as to why. There is currently one school in Colorado that offers an American Art Therapy Association (AATA)-approved program, Naropa University in Boulder. The approved degree is a Master of Arts in Clinical Mental Health Counseling with a concentration in art therapy.¹³

To obtain an AATA-approved master’s degree, a person must have a bachelor’s degree. He or she must also have completed 18 semester hours of studio art demonstrating proficiency and commitment in art making, and 12 semester hours in psychology prior to admission or within 12 months of entering the program.¹⁴

¹¹ Sunrise Review Application for the Field of Art Therapy, Colorado Art Therapy Association, p.13-14.

¹² Sunrise Review Application for the Field of Art Therapy, Colorado Art Therapy Association, p.15.

¹³ Naropa University. *Clinical Mental Health Counseling MA*. Retrieved September 12, 2016, from <http://www.naropa.edu/academics/masters/clinical-mental-health-counseling/index.php>

¹⁴ American Art Therapy Association. *Masters Education Standards, For Master’s Degree Programs Providing Art Therapy Education, Effective Date June 30, 2007; II. Admission of Students*. Retrieved January 27, 2016, from <http://www.arttherapy.org/upload/masterseducationstandards.pdf>

Once a student has matriculated, he or she must complete a minimum of 48 graduate semester hours. Of those hours, at least 24 semester hours must be in art therapy areas including:¹⁵

- History and theory of art therapy,
- Techniques of practice in art therapy,
- Application of art therapy with people in different treatment settings,
- Group work,
- Art therapy assessment,
- Ethical and legal issues of art therapy practice,
- Standards of practice in art therapy,
- Cultural and social diversity, and
- Thesis or culminating project.

A student must also complete a practicum or internship that includes least 100 hours involving observation and practice in preparation for the internship. The internship is a minimum of 600 supervised hours over at least two academic terms. Of those 600 hours, 300 must be working directly with clients. A minimum of 350 client contact hours must be amassed during the practicum or internship. The remaining hours must cover:¹⁶

- Case review;
- Record keeping;
- Preparation;
- Treatment team meetings;
- In-service conferences, and related milieu activities;
- Evaluation of outcome; and
- Successful termination of therapy.

The Applicant also proposes that 20 hours of continuing education should be required during every two-year licensing period to be eligible for license renewal.

¹⁵ American Art Therapy Association. *Masters Education Standards, For Master's Degree Programs Providing Art Therapy Education, Effective Date June 30, 2007; IV Required Curriculum: A(1)*. Retrieved January 27, 2016, from <http://www.arttherapy.org/upload/masterseducationstandards.pdf>

¹⁶ American Art Therapy Association. *Masters Education Standards, For Master's Degree Programs Providing Art Therapy Education, Effective Date June 30, 2007; IV Required Curriculum: B(1)*. Retrieved January 27, 2016, from <http://www.arttherapy.org/upload/masterseducationstandards.pdf>

Though the materials submitted by the Applicant do not explicitly state that acquiring a license would entail passing the Art Therapy Credentials Board Inc.'s examination, passing that examination is what is implied in the application. The Applicant indicated that the states that currently offer some level of licensure require passing that examination and the application refers to the prerequisites for examination as important to being a competent art therapist. Still, while an inference requiring the examination appears logical, the application was not clear on its necessity for a Colorado license. Because of the confusion, COPRRR contacted the Applicant for clarification and it confirmed that the examination should be required for licensure.

Summary of Current Regulation

The Colorado Regulatory Environment

Art therapists are not specifically regulated under Colorado law. Nonetheless, it is a class 2 misdemeanor to practice psychotherapy in Colorado without first being licensed, registered, or certified under Colorado's mental health practice act.¹⁷

The mental health practice act defines psychotherapy as:

"Psychotherapy" means the treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors which interfere with effective emotional, social, or intellectual functioning. Psychotherapy follows a planned procedure of intervention which takes place on a regular basis, over a period of time, or in the cases of testing, assessment, and brief psychotherapy, it can be a single intervention.¹⁸

The American Art Therapy Association (AATA) writes:

Art therapists understand the science of imagery and the therapeutic potentials of color, texture, and various art media and how these affect a wide range of potential clients and personalities. Rigorous clinical training in working with individuals, families, and groups prepare art therapists to make parallel assessments of clients' general psychological disposition and how art as a process is likely to moderate conditions and corresponding behavior. Recognizing the ability of art and art-making to reveal thoughts and feelings, and knowledge and skill to safely manage the reactions they may evoke, are competencies that define art therapy as a profession.¹⁹

Comparing the definitions it becomes clear that art therapists perform psychotherapy as defined by Colorado law. Some of the key common elements are assessment of individuals and groups, evaluation of disposition or personalities, and modifying or moderating behaviors.

Therefore, to practice art therapy an individual must currently be licensed, registered, or certified to practice psychology, social work, marriage and family therapy, licensed professional counseling, psychotherapy, or addiction counseling, under Colorado's mental health practice act. According to the Art Therapy Association of Colorado (Applicant), the majority of those who practice in Colorado do so as licensed professional counselors.

¹⁷ § 12-43-226, C.R.S.

¹⁸ § 12-43-201(9)(a), C.R.S.

¹⁹ American Art Therapy Association. *What is Art Therapy?* Retrieved January 28, 2016, from <http://arttherapy.org/aata-aboutus/>

Regulation in Other States

Information the Applicant provided indicates that nine states regulate art therapists at some level and the remaining 41 do not. Kentucky, Maryland, Mississippi, New Jersey, New York, New Mexico, Pennsylvania, Texas, and Wisconsin regulate. All of these states require a master's degree by a state-approved and/or a AATA-approved program and passage of the Art Therapy Credentials Board Inc. (ATCB Inc.) national examination.

Kentucky, Maryland, Mississippi, New Jersey, New York, and New Mexico grant a stand-alone license to art therapists. In addition to the above requirements, licensure requires passing a state-approved examination and completion of a specified number of client contact hours. In some cases the ATCB Inc. examination is actually named in state law as the state-approved licensing examination.

Pennsylvania and Texas grant a named specialty for individuals who are licensed as Licensed Professional Counselors (LPC). Requirements to be an LPC-art therapist are extremely similar to the stand-alone license requirements above. An individual must complete a master's degree, perform specified client contact hours, and pass the ATCB Inc. national examination. The difference appears to be that the degree can be from an accredited school rather than an AATA-approved program. However, this difference is nominal. To be eligible to sit for the ATCB Inc. examination one must have earned a degree from an AATA-approved program and completed a specified number and type of practice hours.

Wisconsin offers art therapist registration to any person licensed to practice psychotherapy who is, "certified, registered, or accredited as an art therapist by the ATCB Inc. or by another national organization that certifies, registers or accredits art therapists."²⁰ Again the requirements are substantially similar to those of the stand-alone and LPC-specialty licenses explained above. There is only one national organization that certifies, registers or accredits art therapists, the ATCB Inc. To become board certified a person must pass the ATCB Inc. examination.

Examining these state programs shows that regardless of the level of licensure offered in each state, the requirements for regulation are similar: master's degree from an AATA-approved program and passing the ATCB Inc. national examination. What is variable among the states, is the number of client contact hours required for licensure.

²⁰ Wisconsin Administrative Code, Chapter SPS 141.01(4)(b)

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

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

To reiterate, in Colorado today, no person legally practices art therapy, as defined by the American Art Therapy Association (AATA), without first being licensed, registered, or certified to practice psychology, social work, marriage and family therapy, licensed professional counseling, psychotherapy, or addiction counseling, under Colorado's mental health practice act.

In conjunction with this sunrise review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) contacted the Colorado Division of Professions and Occupations. This is the division of Colorado state government that houses the regulatory regimes for all of the mental health professions. Contact was made to uncover possible, imminent, or substantiated harm due to dereliction in the practice of art therapy. Staff did not have record of a complaint against any licensee, in any regulated mental health profession, which included art therapy as part of the complaint.

The Art Therapy Association of Colorado (Applicant) submitted examples of what it considers harm as part of the sunrise review application. Examples are included in their entirety in Appendix A.

This first sunrise analytical criterion asks for clear, easily recognizable harm that is neither remote nor dependent on tenuous argument. This implies that objective examples of harm ought to be presented. Generally, this standard is determined by clear harm to the health, safety, or welfare of a consumer and a clear nexus to the practice that is being analyzed.

Many of the examples submitted by the Applicant are subjective and dependent on tenuous cases. It could possibly be inferred that these cases illustrate some level of injury, but even then the cause of injury is often speculative. For example:

An early childhood education school psychologist looked at a student's art work and made conclusions based on little information and understanding of the artistic elements and no formal training. He made assumptions of home abuse based on a single image which affected the student.

This example states that the school psychologist made an assumption that affected the student. A reader does not know why the student was affected, the type of harm experienced, or how training would have changed the outcome.

In short, there does not appear to be a direct correlation apparent between the administered therapy and harm in many of the examples provided. Malpractice in the mental health fields is not as clear as it is in many other occupations. Regulatory boards are not likely to discipline a practitioner for a particular treatment modality or intervention without evidence of clear harm to a patient.

COPRRR also reached out to the AATA to help document harm related to unregulated practice of art therapy. It sent an analysis which included the following:

...it is unlikely that many documented complaints or disciplinary actions have been filed against art therapists, especially for actions involving affirmative injury or harm to their clients. In a document submitted for a recent licensure sunrise review in Vermont, the Art Therapy Credentials Board, Inc., reported that it had conducted 17 investigations of complaints of unethical or unprofessional conduct by art therapists between 2009 and 2014, with only two resulting in disciplinary actions.

AATA elaborated that the, “current state regulatory structure for art therapists also does not lend itself to identifying and documenting serious complaints against art therapists.”

The AATA reply also included data from some of the states that regulate art therapists. The data showed that in Maryland, of the 25 actions brought by the State Board of Professional Counselors and Therapists since 2014 when art therapist licensing began, none involved a Licensed Professional Art Therapist. In Texas there has not been a disciplinary action in the 15 years of art therapist regulation. In Kentucky, where regulation started in 2009, there has been one complaint made against an art therapist. It was dismissed.

Finally, the AATA claim that regulatory structure does not lend itself to identifying serious complaints is not accurate when applied to Colorado’s currently regulated mental health professions. In Colorado, records indicate that mental health professionals are disciplined for unprofessional conduct such as unsafe practice, boundary violations, and having dual relationships among others. All of these are very serious breaches of professional standards and causes of serious harm.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

The Applicant posits that regulation would protect the mental health consumer or public by ensuring that those in need of art therapy services receive them from adequately educated, trained, qualified, and experienced professionals. The Applicant proposes that for an initial license, an art therapist must have a master's degree in Art Therapy and appropriate clinical experience.

The Applicant endorses the educational requirements and standards required by the AATA and the post-master's clinical requirements to obtain an ATR (Art Therapy Registered) credential issued by the ATCB Inc. ATR applicants must meet education and clinical experience requirements, obtain three professional references, and agree to provide services outlined in the ethical guidelines of the ATCB Inc.'s Code of Professional Practice.

To maintain the ATR, an art therapist must be re-certified every five years and fulfill continuing education obligations. The obligation averages 20 hours of approved continuing education each year during the five-year period.

The Applicant further posits that defining art therapy and the scope of practice of art therapy in Colorado law will provide professional standards and enforcement of those standards. Enforcement includes protection from other mental health practitioners practicing art therapy with limited, or no, art therapy training and experience.

The AATA also weighed in on this subject, "We urge the Department to consider licensure of art therapists from the standpoint of your state's second sunrise criterion." The AATA reasons:

Given growing numbers of individuals and organizations claiming to provide art therapy or services intended to resemble art therapy, but without the academic and clinical training required of credentialed art therapists, we believe substantial potential for harm exists in continued unregulated practice of art therapy. Licensing of art therapists will enhance protections for Colorado consumers by establishing relevant standards of initial and continuing professional competence in the practice of art therapy, by expanding access to qualified mental health professionals, and by assuring that needed art therapy services are provided only by clinically-trained and experienced art therapy professionals

These arguments advance that enhanced training benefits consumers by establishing standards. What the arguments do not explain is, How? There is no established harm based on the lack of training so the benefit is not obvious.

This analysis does not contend that specialized training is a negative thing for any profession or professional to complete. Still, it is quite another argument to recommend that the state should mandate that an activity be closed to all but a select few, without an illustration of what harm happens without the specialized training. In this case the Applicant has stated that there were approximately 139 qualified people in Colorado at the time of application. All others would be prohibited from participating in the activity regardless of the level of licensure or experience a person may acquire. Regulation would severely restrict the marketplace with questionable consumer benefit.

Alternatives to Regulation

The third sunrise criterion asks:

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

Art therapy, as it is currently defined by its practitioners, is regulated in Colorado. As staged earlier, the AATA definition of art therapy and the Colorado Revised Statutes (C.R.S.) definition of psychotherapy illustrate close similarity. Psychotherapy is regulated in Colorado. To perform psychotherapy one must be regulated as a psychologist, social worker, marriage and family therapist, professional counselor, psychotherapist, or an addiction counselor, under the Colorado Mental Health Practice Act. In this regard, while the individual art therapist is not regulated per se, the practice of art therapy, to the extent it is psychotherapy, is regulated.

Beyond the licensing of those who practice art therapy as part of their profession, the ATCB Inc., credentials art therapists at multiple levels.

To obtain an ATR involves completing a qualifying master's degree and supervised clinical experience. Maintaining the ATR involves adhering to the ATCB Inc.'s Code of Practice²¹ (see Appendix C for a copy of the code). Analysis reveals that it is quite comprehensive.

An ATR may become a Board Certified Art Therapist (ATR-BC). To reach this credential level, one must pass an ATCB Inc. examination. According to the ATCB Inc., the ATR-BC provides:²²

- The highest credential one can earn as an art therapist.
- Assurance to employers, clients and the public that an art therapist has met rigorous standards.
- A national credential that is portable from state-to-state and is accredited by the National Commission on Certifying Agencies.

²¹ Art Therapy Credentials Board, Inc. Registered Art Therapist. Retrieved April 21, 2016, from http://www.atcb.org/Credential_Holders/ATRs

²² Art Therapy Credentials Board, Inc. Board Certification (ATR-BC). Retrieved April 21, 2016, from http://www.atcb.org/New_Applicants/Apply_ATR_BC

To maintain an ATR-BC an art therapist must be re-certified every five years by completing and documenting continuing education or through re-examination.

The ATCB Inc. offers one other credential, the Art Therapy Certified Supervisor (ATCS). This credential allows the holder to supervise lower credentialed art therapists. To maintain the ATCS one must be recertified every five years.

There are, currently in Colorado, two separate systems in which the public is protected from being harmed by art therapists: the licensure requirement to perform psychotherapy and the credentials issued by the ATCB Inc. Thus, it appears that the current systems work in a more cost-effective manner than establishing a governmental regulatory program.

Collateral Consequences

The fourth sunrise criterion asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

The Applicant did not propose any specific disqualifications based on criminal history. However, the Colorado Mental Health Practice Act which governs the currently regulated mental health professions reads:

A person licensed, registered, or certified under this article violates this article if the person:

(a) Has been convicted of or pled guilty or nolo contendere to a felony or received a deferred sentence to a felony charge. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, each board is governed by section 24-5-101, C.R.S.²³

This means that a licensee may lose a license for a felony charge or conviction. Section 24-5-101, C.R.S., directs a process by which cases are determined by the licensing entity using individual consideration.

²³ § 12-43-222(1)(a), C.R.S.

Conclusion

A sunrise review is conducted on professions and occupations that apply for regulation. The review determines if the unregulated activities conducted by the profession's practitioners have harmed consumers. It must also determine if government intervention into the marketplace, by establishing some level of regulation, is likely to mitigate the harm. The General Assembly has directed the analysis occur employing objective standards for determining harm, the need for standards, and the need for regulation. In the case of the Applicant's request for regulation:

- Analysis uncovered few, if any, objective instances of harm.
- Analysis uncovered no need or reasonable expectation of benefit from initial or continuing professional competence.
- Analysis found that there are other, more cost-effective, alternatives to governmental intervention.

Based on the application submitted by the Applicant and analysis conducted by COPRRR, there is not enough confirmation of harm to support a recommendation that a state regulatory program is needed to protect public health, safety, and welfare.

Recommendation – Do not regulate art therapists.

Appendix A - ATACO Illustration of Consumer Harm



Evidence of Harm Provided for the 2015 Sunrise Review Application for Art Therapists

A school psychologist for early childhood education looked at student artwork and came to conclusions about the images based on little information or understanding of the artistic elements of the work. He made broad assumptions about a student coming from an abusive home based on a single image. He based his claims on minimal information and without formal training as an art therapist, which affected the student in question.

A trained art therapist worked in a residential treatment setting for children. She used interventions that were overly-stimulating for the children, and did not provide enough closure at the end of sessions to allow the children to contain their emotions. Several of the children became agitated and had to go into a "quiet room" to decompress after the sessions.

A non-art therapist facilitated a group art therapy intervention to "draw how you are feeling". A suicidal client drew an image of an angel hanging from a tree (in image related to her suicide attempt by hanging). The non-art therapist proceeded to allow the client to keep the art work, leave it on the unit for others to see and take it home where her husband and daughter (a minor) were exposed to it, also traumatizing them and exposing them to suicidal imagery.

Bridge ATU/ADMHN choose to use a LPC to supervise an art therapy intern, despite having a credentialed and experienced ATR to supervise. A board certified art therapist ran the intern program for years, as an AAMFT approved supervisor, and recruited the art therapy intern. Management decided that it was best to have an inexperienced, non-art therapist supervise her for his "professional development". Despite discussions about how this was not the best training for her, he felt he was appropriate and qualified to supervise her despite not being an art therapist.

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Bridge ATU/ADMHN management promotes that they offer art therapy services despite not having any art therapists on staff. Additionally, they used non-art therapists to provide vacation coverage to the art therapy groups and continued to call it "art therapy groups". This is a disservice to clients because the therapy is misrepresented as art therapy.

A therapist without any art therapy training facilitated a group art project with children about topics such as nightmares and worries. The therapists asked the group to draw on these themes without understanding the response the art materials might elicit. One child in the group became disturbingly triggered. Not realizing the child's behavior was a symptom of PTSD, caused by trauma, the therapist ostracized the child for his behavior.

An art therapist accepted a position at a residential treatment center for children, and was informed that they have an "Art Therapy Room." Upon viewing this room, she was made aware that any therapist working at the facility is permitted to use this room for "art therapy" though there were no other trained art therapists working in the agency. A clinical director at the center voiced surprise stating, "I didn't even know you could go to school for art therapy." Due to this misrepresentation, clients were led to believe, through use of the "art therapy room", they were receiving art therapy services although they were not provided by a trained art therapist at the time.

A therapist without any art therapy training used loose media and the prompt "draw your family" with children in a trauma-based, residential, group setting, and did not provide enough structure, support, or privacy for the clients. All of the children became dysregulated during the session. Some refused to participate at all and left the group, while some attempted to comply and then became increasingly upset. No closure or discussion followed the group and participants were reprimanded for their non-

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Appendix B - Perez Case

application of a variety of art modalities (drawing, painting, sculpture, and other media) for assessment and treatment.

Art Therapist Registered is the credential recognized nationally by the largest professional regulatory body for the practice of art therapy, the Art Therapy Credentials Board, which works closely with the American Art Therapy Association to establish standards of ethical practice for Art Therapists.

Interpretation of Data

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In reviewing Mr. Loeffler's report detailing the three sessions in which he met with Lilliana Perez, there are several elements that I find disconcerting. It is my professional viewpoint that the means Mr. Loeffler used for evaluation of Lilliana and the parent-child relationship between Lilliana and her biological father lacks structure and standardization, calling into question the validity and reliability of the measure.

Secondly, Mr. Loeffler is misinformed as to how he evaluated the graphic data in Lilliana's imagery. He does not take into account what is developmentally appropriate for a child with regard representation of the human figure. Finally, Mr. Loeffler is not an art therapist, nor is he a Licensed Psychologist or Psychiatrist. He does not elucidate in his report the nature of his training and expertise that would qualify him to be able to use and interpret drawings for the purpose of assessing the parent-child relationship. I am curious as to the training and experience Mr. Loeffler has in using children's drawing in a diagnostic capacity, for the purposes of psychological assessment, or to make decisions regarding parenting time/visitation. Is this something he has been trained to do, does often, or seeks supervision and consultation around? If not, I am concerned he could be practicing outside of his scope.

1) Lack of reliability or validity: Mr. Loeffler's report lacks clarity and information with regard to how he used drawings with Lilliana in session for the purpose of assessing her relationship with her biological father. What was the directive? What materials were made available to Lilliana? Are the drawings attached the only images produced? Mr. Loeffler references other images that Lilliana created of herself, mother, and brothers, but these are not included in the report. Therefore it is difficult to establish baseline for how Lillianna constructs her figures. The assessment method Mr. Loeffler employs does not seem to be a standardized art therapy or psychological assessment. The House-Tree-Person (Buck, 1985) is probably one of the most well known drawing assessments and is utilized by psychologists and art therapists alike. Other standardized art therapy assessments include the Kinetic Family Drawing (Burns, 1987) and the Levick Emotional and Cognitive Art Therapy Assessment (Levick, 2009). All of these assessment methods are standardized and come with a manual used to identify clinically significant graphic data. Mr. Loeffler did not employ a standardized assessment technique in his work with Lilliana. Therefore the validity and reliability of the assessment methods as well as the inferred results used should be questioned.

2) Attributing Clinical Significance or Abnormality to what Developmentally Appropriate Imagery for a Child: Mr. Loeffler ascribes clinical significance to the fact that Lilliana depicts her father Jose as 'disembodied, with just a head with not feet or body', when in fact, it is both typical and

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developmentally appropriate for children approximately age 2-4 to depict figures in this manner. Viktor Lowenfeld's Stages of Artistic Development in Children is considered foundational for professionals working with children in the area of art education, art therapy, or child psychology. Lowenfeld's Stages outline drawing characteristics and human figure representation as they appear and progress in children's artwork (Lowenfeld and Brittain, 1987). Lowenfeld categorizes these into six stages beginning at age 2 and progressing until age 17 (see summary of stages attached in Appendix 2). Assuming Lilliana is within normal developmental milestones for her age, by four years old she should be between the "The Scribbling Stage" (Appendix 2-A), occurring between two to four years, and the "The Preschematic Stage" (Appendix 2-B), occurring between four to seven years. The Pre-Schematic stage is when a child is making his or her first attempts at representing the human figure. Children are forming new concepts of the figure at this time and as such their representational symbols are constantly changing. "They will represent a person differently today from the way they will represent a person tomorrow" (pg. 225 in Brittain and Lowenfeld, 1987). Often children in the Pre-schematic stage will only include the parts of the figure that is the most important to them, or leave out certain elements such as arms and legs, hands and feet. Lilliana's drawing of her father in both instances is typical with how children at the age of four tend to depict figures. Mr. Loeffler's assertion that this is somehow clinically significant or indicative of pathology in the relationship between Lilliana and her father is erroneous.

In another instance, Mr. Loeffler asserts that Lilliana adding "wheels" to Papa Jose could be an expression of her attempt to be empowered. One of the primary lessons for clinicians using art making in therapy is to describe imagery in phenomenological terms, and to not infer context about imagery that the client is not verbally supporting. To do otherwise is an example of the therapist's own projection. Unless Lilliana specifically said it was her intention to feel 'empowered' by including the circular forms in her drawing, (which is doubtful at age four), such should not be inferred by any therapist. Finally, at her age, Lilliana still borders on the Scribbling Stage of Artistic Development, where circular forms (the very first recognizable shape to appear in children's art) are often repeated as such is pleasurable for the child and serves to provide a sense of mastery of this particular kind of mark making.

Lastly Mr. Loeffler again makes the mistake of projecting his own thoughts onto Lilliana's drawings when he assumes that the reason Lilliana depicts her biological father on a separate page from the rest of the family is because she does not want to participate in forced visitation with her father. This is a possibility, however, one could also infer a number of additional possibilities from Lilliana's decision: one of which is that she is organizing her family to depict a bi-nuclear household. The directive Mr. Loeffler used when that resulted in these drawings should also be taken into account. Did Mr. Loeffler ask Lilliana to "draw her family" or "draw her families" or "draw who lives at Mom's house and who lives at Dad's house"? Each of these directives could have a different outcome. With the latter two, it would not be unusual for a child to draw their family members on two separate pages.

3) Scope of practice: Mr. Loeffler does not detail his training in art therapy in his report. It is disconcerting that Mr. Loeffler is using an assessment method that he does not seem to fully understand and his decision to use this method does not seem to be rooted in a particular evidence base. Unless Mr. Loeffler has had extensive art therapy training, it is inappropriate for him to use art for the purpose of

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assessing parent child relationships as he not an Art Therapist Registered, nor is he a Licensed Psychologist or Psychiatrist, where using art can be a part of a psychological assessment.

Conclusion and Recommendations

The drawing assessment employed by Mr. Loeffler is not standardized, and even if were, Mr. Loeffler appears to lack the specialized training that is critical to correctly implementing and interpreting the data gathered from the assessment. Therefore it seems imprudent to view the information Mr. Loeffler presents with regard to Lilliana’s drawings as valid or reliable, especially when making decisions regarding parenting time and visitation.

Should Jefferson County DHS wish to utilize a non verbal assessment method or modality in this case, my recommendation is that Lilliana meet with a qualified art therapy professional, carrying the credential of both a licensed master’s level clinician (LCSW, LPC, LMFT) as well as the Art Therapist Registered (ATR), who could more effectively assess Lilliana’s view of herself and others within her family system utilizing standardized assessment methods.

Signature

Date

_____*Erin Brumleve MA, LPC, ATR (ES)*_____

_____**05.04.10**_____

Appendices

- 1. Erin Brumleve CV**
- 2. Loewenfeld’s Stages of Children’s Artistic Development, Stages 1-3 included, for more please see Bibliography.**
- 3. Bibliography**

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Appendix C - ATCB Code of Professional Practice

Effective March 4, 2011

I. CODE OF PROFESSIONAL PRACTICE

PREAMBLE

The Art Therapy Credentials Board, Inc. (ATCB) is a nonprofit organization that seeks to protect the public by issuing registration, board certification, and clinical supervisor credentials to practitioners in the field of art therapy who meet certain established standards. The Board is national in scope and includes academicians, practitioners, and a public member who work to establish rigorous standards that have a basis in real-world practice. The ATCB art therapy registration, board certification, and clinical supervisor credentials, hereinafter sometimes referred to as credentials, are offered to art therapists from a wide variety of practice disciplines, who meet specific professional standards for the practice of art therapy.

The Code of Professional Practice is designed to provide art therapists with a set of Ethical Principles (Part I, Section 1) to guide them in the practice of art therapy, as well as Standards of Conduct (Part I, Section 3) to which every credentialed art therapist must adhere. The ATCB may decline to grant, withhold, suspend, or revoke the credentials of any person who fails to adhere to the Standards of Conduct. The ATCB does not guarantee the job performance of any person. The ATCB does not express an opinion regarding the competence of any registered or board certified art therapist or art therapy certified supervisor. Rather, registration, board certification or other credentialing offered through an ATCB program constitutes recognition by the ATCB that, to its best knowledge, an art therapist meets and adheres to minimum academic, preparation, professional experience, continuing education, and professional standards set by the ATCB, Inc. The ATCB Code of Professional Practice applies to all those credentialed by the ATCB regardless of any other professional affiliation. The ATCB can bring actions to discipline or sanction ATCB credential holders only if the provisions of the ATCB Code of Professional Practice (but not any other ethical code) are found to have been violated.

1. GENERAL ETHICAL PRINCIPLES

The Art Therapy Credentials Board, Inc. endorses the following general ethical principles, which shall guide the conduct of all art therapists who seek to obtain or maintain credentials under the authority of the ATCB.

1.1 Responsibility To Clients 1.1.1 Art therapists shall advance the welfare of all clients, respect the rights of those persons seeking their assistance, and make reasonable efforts to ensure that their services are used appropriately. 1.1.2 Art therapists will not discriminate against or refuse professional services to anyone on the basis of race, gender, religion, national origin, age, sexual orientation, or disability. 1.1.3 At the outset of the client-therapist relationship, art therapists must discuss and explain to clients the rights, roles, expectations, and limitations of the art therapy process. 1.1.4 Art therapists respect the rights of clients to make decisions and assist them in understanding the consequences of these decisions. Art therapists advise their clients that decisions on whether to follow treatment recommendations are the responsibility of the client. It is the professional responsibility of the art therapist to avoid ambiguity in the therapeutic relationship and to ensure clarity of roles at all times. 1.1.5 An art therapist continues a therapeutic relationship only so long as he or she believes that the client is benefiting from the relationship. It is unethical to maintain a professional or therapeutic relationship for the sole purpose of financial remuneration to the art therapist or when it becomes reasonably clear that the relationship or therapy is not in the best interest of the client. 1.1.6 Art therapists must not engage in therapy practices or procedures that are beyond their scope of practice, experience, training, and education.

1.1.7 Art therapists must not abandon or neglect clients receiving services. If an art therapist is unable to continue to provide professional help, he or she must assist the client in making reasonable alternative arrangements for continuation of services.

1.1.8 When providing services to minors or persons unable to give voluntary consent, art therapists seek the assent of clients to services, and include them in decision making as appropriate. Art therapists recognize the need to balance the ethical rights of clients to make choices, their capacity to give consent or assent to receive services, and parental or familial legal rights and responsibilities to protect these clients and make decisions on their behalf.

1.1.9 When appropriate, art therapists should obtain qualified medical or psychological consultation for cases in which such evaluation and/or administration of medication is required. Art therapists must not provide services other than art therapy unless certified or licensed to provide such other services. 1.1.10 Practitioners of art therapy must conform to relevant federal, provincial, state, and local statutes and ordinances that pertain to the provision of independent mental health practice. Laws vary based upon location of the practice. It is the sole responsibility of the independent practitioner to conform to these laws.

1.1.11 Art therapists must seek to provide a safe, private, and functional environment in which to offer art therapy services. This includes, but is not limited to: proper ventilation, adequate lighting, access to water supply, knowledge of hazards or toxicity of art materials and the effort needed to safeguard the health of clients, storage space for client artworks and secured areas for any hazardous materials, monitored use of sharps, allowance for privacy and confidentiality, and compliance with any other health and safety requirements according to state and federal agencies that regulate comparable businesses.

1.2 Professional Competence And Integrity 1.2.1. Art therapists must maintain high standards of professional competence and integrity.

1.2.2 Through educational activities and clinical experiences, art therapists must keep informed and updated with regard to developments in their field which relate to their practice. 1.2.3 Art therapists should assess, treat, or advise only in those cases in which they are competent as determined by their education, training, and experience. 1.2.4 Art therapists must not knowingly provide professional services to a person receiving similar treatment or therapy from another professional, except by agreement with such other professional, or after termination of the client's relationship with the other professional. 1.2.5 Art therapists, because of their potential to influence and alter the lives of others, must exercise special care when making public their professional recommendations and opinions through testimony or other public statements. 1.2.6 Art therapists must seek appropriate professional consultation or assistance for their personal problems or conflicts that may impair or affect work performance or clinical judgment. 1.2.7 Art therapists must not distort or misuse their clinical and research findings. 1.2.8 An art therapist shall file a complaint with the ATCB when the art therapist has reason to believe that another art therapist is or has been engaged in conduct that violates the law or the Standards of Conduct contained in this Code. This does not apply when the belief is based upon information obtained in the course of a therapeutic relationship with a client; however, this does not relieve an art therapist from the duty to file any reports required by law. 1.2.9 An art therapist shall notify the ATCB of any disciplinary sanctions imposed upon another art therapist by another professional credentialing agency or organization, when such sanctions come to his or her attention.

1.2.10 An art therapist shall not make knowingly false, improper, or frivolous ethics or legal complaints against colleagues or other art therapists.

1.3 Responsibility To Students And Supervisees 1.3.1 Art therapists must instruct their students using accurate, current, and scholarly information and at all times foster the professional growth of students and advisees. 1.3.2 Art therapists as teachers, supervisors, and researchers must maintain high standards of scholarship and present accurate information. 1.3.3 Art therapists must not permit students, employees, or supervisees to perform or to represent themselves as competent to perform professional services beyond their education, training, experience, or competence. 1.3.4 Art therapists who act as supervisors are responsible for maintaining the quality of their supervision skills and obtaining consultation or supervision for their work as supervisors whenever appropriate.

1.3.5 Art therapists are aware of their influential position with respect to students and supervisees, and they avoid exploiting the trust and dependency of such persons. Art therapists, therefore, shall not engage in a therapeutic relationship with their students or supervisees.

1.3.6 Art therapists do not condone or engage in sexual harassment, which is defined as unwelcome comments, gestures, or physical contact of a sexual nature.

1.3.7 Art therapists who offer and/or provide supervision must:

1.3.7.1 Ensure that they have proper training and supervised experience through contemporary continuing education and/or graduate training; 1.3.7.2 Ensure that supervisees are informed of the supervisor's credentials and professional status as well as all conditions of supervision as defined/outlined by the supervisor's practice, agency, group, or organization; 1.3.7.3 Ensure that supervisees are aware of the current ethical standards related to their professional practice, including the ATCB Code of Professional Practice; 1.3.7.4 Ensure that supervisees are informed about the process of supervision; 1.3.7.5 Provide supervisees with adequate feedback and evaluation; 1.3.7.6 Ensure that supervisees inform their clients of their professional status; and 1.3.7.7 Establish procedures with their supervisees for handling crisis situations.

1.4 Responsibility To Research Participants 1.4.1 Art therapists who are researchers must respect the dignity and protect the welfare of participants in research. 1.4.2 Researchers must be aware of and comply with federal, state, and local laws and regulations, agency regulations, and professional standards governing the conduct of research. 1.4.3 Researchers must make careful examinations of ethical acceptability in planning studies. To the extent that services to research participants may be compromised by participation in research, investigators must seek the ethical advice of qualified professionals not directly involved in the investigation and observe safeguards to protect the rights of research participants. 1.4.4 A researcher requesting a potential participant's involvement in research must inform him or her of all risks and aspects of the research that might reasonably be expected to influence willingness to participate, and must obtain a written acknowledgement of informed consent, reflecting an understanding of the said risks and aspects of the research, signed by the participant or, where appropriate, by the participant's parent or legal guardian. Researchers must be especially sensitive to the possibility of diminished consent when participants are also receiving clinical services, have impairments which limit understanding and/or communication, or when participants are children. 1.4.5 Researchers must respect participants' freedom to decline participation in or to withdraw from a research study at any time. This principle requires special thought and consideration when investigators or other members of the research team are in positions of authority or influence over participants. Art therapists, therefore, must avoid relationships with research participants outside the scope of the research. 1.4.6 Art therapists must treat information obtained about research participants during the course of an investigation as confidential unless the participants have previously and reasonably authorized in writing that their confidential information may be used. When there is a risk that others, including family members, may obtain access to such information, this risk, together with the plan for protecting confidentiality, must be explained to the participants as part of the above stated procedure for obtaining a written informed consent.

1.5 Responsibility To The Profession 1.5.1 Art therapists must respect the rights and responsibilities of professional colleagues and should participate in activities that advance the goals of art therapy. 1.5.2 Art therapists must adhere to the ATCB standards of the profession when acting as members or employees of third-party organizations. 1.5.3 Art therapists must attribute publication credit to those who have contributed to a publication in proportion to their contributions and in accordance with customary professional publication practices. 1.5.4 Art therapists who author books or other materials that are published or distributed must cite persons to whom credit for original ideas is due. 1.5.5 Art therapists who author books or other materials published or distributed by a third party must take reasonable precautions to ensure that the third party promotes and advertises the materials accurately and factually. 1.5.6 Art therapists are encouraged, whenever possible, to recognize a responsibility to participate in activities that contribute to a better community and society, including devoting a portion of their

professional activity to services for which there is little or no financial return. 1.5.7 Art therapists are encouraged, whenever possible, to assist and be involved in developing laws and regulations pertaining to the field of art therapy that serve the public interest and in changing such laws and regulations that are not in the public interest. 1.5.8 Art therapists must cooperate with any ethics investigation by any professional organization or government agency, and must truthfully represent and disclose facts to such organizations or agencies when requested or when necessary to preserve the integrity of the art therapy profession. 1.5.9 Art therapists should endeavor to prevent distortion, misuse, or suppression of art therapy findings by any institution or agency of which they are employees.

1.5.10 Art therapists are accountable at all times for their behavior. They must be aware that all actions and behaviors of the art therapist reflect on professional integrity and, when inappropriate, can damage the public trust in the art therapy profession. To protect public confidence in the art therapy profession, art therapists avoid behavior that is clearly in violation of accepted moral and legal standards. **2. ELIGIBILITY FOR CREDENTIALS**

As a condition of eligibility for and continued maintenance or renewal of any ATCB credential, each applicant, registrant, certificant, or certified supervisor agrees to the following:

2.1 Compliance with ATCB Standards, Policies and Procedures 2.1.1 No person is eligible to apply for or maintain credentials unless in compliance with all ATCB eligibility criteria as stated in the ATR, ATR-BC, and ATCS applications, as well as all other ATCB rules and standards, policies and procedures, including, but not limited to, those stated herein, and including timely payment of fees and any other requirements for renewal of credentials.

2.1.2 Each applicant, registrant, or certificant bears the burden for showing and maintaining compliance at all times. The ATCB may deny, revoke, decline to renew, or otherwise act upon credentials when an applicant, registrant, or certificant is not in compliance with all ATCB standards, policies, and procedures.

2.2 Complete Application 2.2.1 The ATCB may make administrative requests for additional information to supplement or complete any application for credentials or for renewal of existing credentials. An applicant must truthfully complete and sign an application in the form provided by the ATCB, must provide the required fees, and must provide additional information as requested.

2.2.2 The applicant must provide written notification to the ATCB within 60 days of occurrence of any change in name, address, telephone number, and any other facts bearing on eligibility for credentials, including but not limited to: filing of any civil or criminal charge, indictment or litigation involving the applicant; disposition of any civil or criminal charge, indictment or litigation involving the applicant, including, but not limited to, dismissal, entry of a judgment, conviction, plea of guilty, plea of nolo contendere, or disciplinary action by a licensing board or professional organization.

2.2.3 An applicant, registrant, or certificant must not make and must correct immediately any statement concerning his or her status that is or becomes inaccurate, untrue, or misleading.

2.2.4 All references to “days” in ATCB standards, policies and procedures shall mean calendar days. Communications required by the ATCB shall be transmitted by certified mail, return receipt requested, or other verifiable method of delivery.

2.2.5 The applicant shall provide the ATCB with documentation of compliance with ATCB requirements as requested by the ATCB through its President or Executive Director.

2.3 Property of ATCB 2.3.1 All examinations, certificates, and registration or certification cards of the ATCB, the name Art Therapy Credentials Board, the mark ATR, the mark ATR-BC, the mark ATCS, the term Registered Art Therapist, the term Registered Art Therapist - Board Certified, and the term Art Therapy Certified Supervisor, and all abbreviations relating thereto, are all the exclusive property of the ATCB and may not be used in any way without the express prior written consent of the ATCB.

2.3.2 In case of suspension, limitation, relinquishment or revocation of ATCB credentials, or as otherwise requested by the ATCB, a person previously holding an ATCB credential shall

immediately relinquish, refrain from using, and correct at his or her expense any and all outdated or otherwise inaccurate business cards, stationery, advertisements, or other use of any certificate, logo, emblem, and the ATCB name and related abbreviations.

2.4 Pending Litigation 2.4.1 An applicant, registrant, or certificant shall provide written notification to the ATCB of the filing in any court of any information, complaint, or indictment charging him or her with a felony or with a crime related to the practice of art therapy or the public health and safety, or the filing of any charge or action before a state or federal regulatory agency or judicial body directly relating to the practice of art therapy or related professions, or to a matter described in Part I, Section 4.1. Such notification shall be within 60 days of the filing of such charge or action, and shall provide written documentation of the resolution of such charge within 60 days of resolution.

2.5 Criminal Convictions 2.5.1 Any person convicted of either (i) a felony, or (ii) any crime substantially related to or impacting upon art therapy, the therapist's professional qualifications, or public health and safety, shall be ineligible for credentials for a period of five years from and after completion of sentence by final release from confinement, probationary or parole status, or satisfaction of fine imposed, whichever is later. Convictions of this nature include but are not limited to those involving rape, sexual abuse of a patient or child, actual or threatened use of a weapon or violence, and prohibited sale, distribution or possession of a controlled substance.

3. STANDARDS OF CONDUCT

The Art Therapy Credentials Board prescribes the following standards of conduct, which shall guide the conduct of all art therapists who seek to obtain or maintain credentials under the authority of the ATCB.

3.1 Confidentiality 3.1.1 Art therapists will inform clients of the purpose and limitations of confidentiality. 3.1.2 Art therapists shall respect and protect confidential information obtained from clients, including, but not limited to, all verbal and/or artistic expression occurring within a client-therapist relationship. 3.1.3 Art therapists shall protect the confidentiality of the client-therapist relationship in all matters. 3.1.4 Art therapists shall not disclose confidential information without the client's explicit written consent unless there is reason to believe that the client or others are in immediate, severe danger to health or life. Any such disclosure shall be made consistent with state and federal laws that pertain to welfare of the client, family, and the general public. 3.1.5 In the event that an art therapist believes it is in the interest of a client to disclose confidential information; he or she shall seek and obtain written authorization from the client or the client's legal guardian, before making any disclosures, unless such disclosure is required by law. 3.1.6 Art therapists shall disclose confidential information when mandated by law and/or in an ATCB disciplinary action. In these cases client confidences may be disclosed only as reasonably necessary in the course of that action. 3.1.7 Art therapists shall maintain client treatment records for a reasonable period of time consistent with legal regulations and sound clinical practice. Records shall be stored or disposed of in ways that maintain confidentiality.

3.1.8 Whenever possible, a photographic representation should be maintained for all work created by the client that is relevant to document the therapy if maintaining the original artwork would be difficult. 3.1.9 Where the client is a minor, any and all disclosure or consent shall be made to or obtained from the parent or legal guardian of the minor client, except where otherwise provided by state law. Care shall be taken to preserve confidentiality with the minor client and to refrain from disclosure of information to the parent or guardian that might adversely affect the treatment of the client, except where otherwise provided by state law. 3.1.10 Client confidentiality must be maintained when clients are involved in research, according to Part I, Section 1.4 of this code of practice.

3.1.11 An independent practitioner of art therapy must sign and issue a written professional disclosure statement to a client upon the establishment of a professional relationship. Such statement must include, but need not be limited to, the following information: education, training, experience, professional affiliations, credentials, fee structure, payment schedule, session scheduling arrangements, information pertaining to the limits of confidentiality and the

duty to report. The name, address, and telephone number of the ATCB should be written in this document along with the following statement, “The ATCB oversees the ethical practice of art therapists and may be contacted with client concerns.” It is suggested that a copy of the statement be retained in the client’s file.

3.2 Public Use and Reproduction of Client Art Expression and Therapy Sessions

3.2.1 Art therapists shall not make or permit any public use or reproduction of a client’s art therapy sessions, including verbalization and art expression, without express written consent of the client or the client’s parent or legal guardian. **3.2.2** Art therapists shall obtain written informed consent from a client, or where applicable, a parent or legal guardian, before photographing the client’s art expressions, making video or audio recordings, otherwise duplicating, or permitting third-party observation of art therapy sessions. **3.2.3** Art therapists shall use clinical materials in teaching, writing, electronic formats and public presentations only if a written authorization has been previously obtained from the client or the legal guardian.

3.2.4 Art therapists shall obtain written, informed consent from a client or, when appropriate, the client’s parent or legal guardian, before displaying the client’s art in galleries, healthcare facilities, schools, the Internet or other public places.

3.2.5 Only the client or guardian may give signed consent for use of imagery or information from sessions and treatment, and only for the specific uses, and in the specific communication formats, designated in the consent. Once consent has been granted, the therapist shall ensure that appropriate steps are taken to protect client identity and disguise any part of the notes, art expression or audio or video recording that reveals client identity unless the client or guardian specifically designates in the signed consent that their identity may be revealed. The signed consent form shall include conspicuous language that explains the potential that imagery and information displayed or used in any form may not be able to be permanently removed if consent is later revoked.

3.3 Professional Relationships **3.3.1** Art therapists shall not engage in any relationship, including through social media, with current or former clients, students, interns, trainees, supervisees, employees, or colleagues that is exploitative by its nature or effect.

3.3.2 Art therapists shall make their best efforts to avoid, if it is reasonably possible to do so, entering into non-therapeutic or non-professional relationships with current or former clients, students, interns, trainees, supervisees, employees, or colleagues or any family members or other persons known to have a close personal relationship with such individuals such as spouses, children, or close friends.

3.3.3 In the event that the nature of any such relationship is questioned, the burden of proof shall be on the art therapist to prove that a non-therapeutic or non-professional relationship with current or former clients, students, interns, trainees, supervisees, employees, or colleagues is not exploitative or harmful to any such individuals.

3.3.4 Exploitative relationships with clients include, but are not limited to, borrowing money from or loaning money to a client, hiring a client, engaging in a business venture with a client, engaging in a romantic relationship with a client, or engaging in sexual intimacy with a client.

3.3.5 Art therapists shall take appropriate professional precautions to ensure that their judgment is not impaired, that no exploitation occurs, and that all conduct is undertaken solely in the client’s best interest. **3.3.6** Art therapists shall not use their professional relationships with clients to further their own interests. **3.3.7** Art therapists shall be aware of their influential position with respect to students and supervisees, and they shall avoid exploiting the trust and dependency of such persons. Art therapists, therefore, shall not provide therapy to students or supervisees contemporaneously with the student/supervisee relationship.

3.3.8 Art therapists must insure that they do not engage in personal, social, organizational, or political activities which might lead to a misuse of their influence.

3.3.9 Art therapists do not condone or engage in sexual harassment, which is defined as unwelcome comments, gestures, or physical contact of a sexual nature.

3.3.10 Art therapists should know and take into account the traditions and practices of other professional disciplines with whom they work and cooperate fully with such. 3.3.11 Any data derived from a client relationship and used in training or research shall be so disguised that the informed client's identity is fully protected. Any data which cannot be so disguised may be used only as expressly authorized by the client's informed and uncoerced consent.

3.4 Financial Arrangements 3.4.1 Independent practitioners of art therapy should seek to ensure that financial arrangements with clients, third party payers, and supervisees are understandable and conform to accepted professional practices. 3.4.2 Art therapists must not offer or accept payment for referrals. 3.4.3 Art therapists must not exploit their clients financially. 3.4.4 Art therapists must represent facts truthfully to clients, third party payers, and supervisees regarding services rendered and the charges therefore.

3.4.5 If art therapists who intend to use collection agencies or take legal measure to collect fees from clients who do not pay for services as agreed upon must first inform clients of such intended actions and offer clients the opportunity to make payment.

3.4.6 Art therapists may barter only if the relationship is not exploitive or harmful and does not place the art therapist in and unfair advantage; if the client requests it; and if such arrangements are an accepted practice among professionals within the community. Art therapists should consider the cultural implications of bartering and discuss relevant concerns with clients and document such agreements in a clear written contract.

3.4.7 Art therapists understand the challenges of accepting gifts from clients and recognize that in some cultures, small gift are a token of respect and showing gratitude. When determining whether or not to accept a gift from clients, art therapists take into account the therapeutic relationship, the monetary value of the gift, a client's motivation for giving the gift, and his or her own motivation for wanting or declining the gift.

3.5 Advertising 3.5.1 Art therapists shall provide sufficient and appropriate information about their professional services to help the layperson make an informed decision about contracting for those services. 3.5.2 Art therapists must accurately represent their competence, education, earned credentials, training, and experience relevant to their professional practice. 3.5.3 Art therapists must ensure that all advertisements and publications, whether in print, directories, announcement cards, newspapers, radio, television, electronic format such as the World Wide Web, or any other media, are formulated to accurately convey, in a dignified and professional manner, information that is necessary for the public to make an informed, knowledgeable decision. 3.5.4 Art therapists must not use names or designations for their practices that are likely to mislead the public concerning the identity, responsibility, source, and status of those under whom they are practicing, and must not hold themselves out as being partners or associates of a firm if they are not. 3.5.5 Art therapists must not use any professional identification (such as a business card, office sign, letterhead, or telephone or association directory listing) if it includes a statement or claim that is false, fraudulent, misleading or deceptive. A statement is false, fraudulent, misleading or deceptive if it: fails to state any material fact necessary to keep the statement from being misleading; is intended to, or likely to, create an unjustified expectation; or contains a material misrepresentation of fact. 3.5.6 An art therapist must correct, whenever possible, false, misleading, or inaccurate information and representations made by others concerning the therapist's qualifications, services, or products. 3.5.7 Art therapists must make certain that the qualifications of persons in their employ are represented in a manner that is not false, misleading, or deceptive. 3.5.8 Art therapists may represent themselves as specializing within a limited area of art therapy only if they have the education, training, and experience that meet recognized professional standards to practice in that specialty area.

3.6 Measurement and Evaluation

3.6.1 Because many types of assessment techniques exist, art therapists must recognize the limits of their competence and perform only those assessment functions for which they have received appropriate training or supervision.

3.6.2 Art therapists who utilize assessment instruments to assist them with diagnoses must have appropriate training and skills in educational and psychological measurement, validation criteria, test research, and guidelines for test development and use.

3.6.3 Art therapists must provide instrument specific orientation or information to an examinee prior to and following the administration of assessment instruments or techniques so that the results may be placed in proper perspective with other relevant factors. The purpose of testing and the explicit use of the results must be made known to an examinee prior to testing.

3.6.4 In selecting assessment instruments or techniques for use in a given situation or with a particular client, art therapists must carefully evaluate the specific theoretical bases and characteristics, validity, reliability and appropriateness of the instrument.

3.6.5 When making statements to the public about assessment instruments or techniques, art therapists must provide accurate information and avoid false claims or misconceptions concerning the instrument's reliability and validity.

3.6.6 Art therapists must follow all directions and researched procedures for selection, administration and interpretation of all evaluation instruments and use them only within proper contexts.

3.6.7 Art therapists must be cautious when interpreting the results of instruments that possess insufficient technical data, and must explicitly state to examinees the specific limitations and purposes for the use of such instruments.

3.6.8 Art therapists must proceed with caution when attempting to evaluate and interpret performances of any person who cannot be appropriately compared to the norms for the instrument.

3.6.9 Because prior coaching or dissemination of test materials can invalidate test results, art therapists are professionally obligated to maintain test security.

3.6.10 Art therapists must consider psychometric limitations when selecting and using an instrument, and must be cognizant of the limitations when interpreting the results. When tests are used to classify clients, art therapists must ensure that periodic review and/or retesting are made to prevent client stereotyping.

3.6.11 Art therapists recognize that test results may become obsolete, and avoid the misuse of obsolete data.

3.6.12 Art therapists must not appropriate, reproduce, or modify published tests or parts thereof without acknowledgment and permission from the publisher, except as permitted by the fair educational use provisions of the U.S. copyright law

3.7 Documentation

Art therapists must maintain records that:

3.7.1 Are in compliance with federal, provincial, state, and local regulations and any licensure requirements governing the provision of art therapy services for the location in which the art therapy services are provided.

3.7.2 Are in compliance with the standards required at the art therapist's place of employment.

3.8 Termination Of Services 3.8.1 Art therapists should terminate art therapy when the client has attained stated goals and objectives or fails to benefit from art therapy services. 3.8.1 Art therapists must communicate the termination of art therapy services to the client.

3.9 Electronic Means

3.9.1 Art Therapists must inform clients of the benefits and limitations of using information technology applications in the therapeutic process and in business/ billing procedures. Such technologies include but are not limited to computer hardware and software, faxing, telephones, the World Wide Web, the Internet, online assessment instruments and other technological procedures and devices.

3.9.2 When art therapists are providing technology-assisted distance art therapy services, the therapist must determine that clients are intellectually, emotionally, and physically capable of using the application and that the application is appropriate for the needs of clients.

3.9.3 Art Therapists must ensure that the use of technology does not violate the laws

of any local, state, national, or international entity and observe all relevant statutes.

3.9.4 Art therapists should seek business, legal, and technical assistance when using technology applications, particularly when the use of such applications crosses state or national boundaries.

3.9.5 As part of the process of establishing informed consent, art therapists should do the following:

3.9.5.1 Address issues related to the difficulty of maintaining the confidentiality of electronically transmitted communications, and the difficulty in removing any information or imagery that has been posted electronically if consent is later revoked.

3.9.5.2 Inform clients of all colleagues, supervisors, and employees (including Informational Technology (IT) administrators) who might have authorized or unauthorized access to electronic transmissions.

3.9.5.3 Urge clients to be aware of all authorized or unauthorized users including family members and fellow employees who have access to any technology clients may use in the therapeutic process.

3.9.5.4 Inform clients of pertinent legal rights and limitations governing the practice of a profession over state lines or international boundaries.

3.9.5.5 Inform clients that Web sites and e-mail communications will be encrypted, but that there are limitations to the ability of encryption software to help ensure confidentiality.¹³

3.9.5.6 When the use of encryption is not possible, art therapists notify clients of this fact and limit electronic transmissions to general communications that are not client specific.

3.9.5.7 Inform clients if and for how long archival storage of transaction records are maintained.

3.9.5.8 Discuss the possibility of technology failure and alternate methods of service delivery.

3.9.5.8 Inform clients of emergency procedures, such as calling 911 or a local crisis hotline, when the art therapist is not available.

3.9.5.9 Discuss time zone differences, local customs, and cultural or language differences that might impact service delivery.

3.9.5.10 Inform clients when technology-assisted distance art therapy services are not covered by insurance.

3.9.6 Art Therapists maintaining sites on the World Wide Web (the Internet) should do the following:

3.9.6.1 Regularly check that electronic links are working and professionally appropriate.

3.9.6.2 Provide electronic links to the ATCB and other relevant state licensure and professional certification boards to protect consumer rights and facilitate addressing ethical concerns.

3.9.6.3 Strive to provide a site that is accessible to persons with disabilities.

4.0 STANDARDS OF CONDUCT: DISCIPLINE PROCESS

4.1 Grounds For Discipline 4.1.1 The ATCB may deny or revoke credentials or otherwise take action with regard to credentials or an application for credentials under the following circumstances:

4.1.1.1 Failure to observe and comply with the Standards of Conduct stated above;

4.1.1.2 Failure to meet and maintain eligibility for ATCB credentials;

4.1.1.3 Irregularity in connection with any ATCB examination; 4.1.1.4. Failure to pay fees required by the ATCB; 4.1.1.5 Unauthorized possession of, use of, or access to ATCB examinations, certificates, registration or certification cards, logos, the name Art Therapy Credentials Board, the term ATCB and abbreviations relating thereto, the terms Registered Art Therapist, Registered Art Therapist - Board Certified, Art Therapy Certified Supervisor, the abbreviations ATR, ATR-BC, and ATCS and any variations thereof, and any other ATCB documents and materials; 4.1.1.6 Obtaining, maintaining, or attempting to obtain or maintain credentials by a false or misleading statement, failure to make a required statement, fraud, or deceit in an application, reapplication, or any other communication to the ATCB;

4.1.1.7 Misrepresentation of status of ATCB credentials;

4.1.1.8 Failure to provide any written information required by the ATCB;

4.1.1.9 Failure to cooperate with the ATCB or any body established or convened by the ATCB at any point from the inception of an ethical or disciplinary complaint through the completion of all proceedings regarding that complaint;

4.1.1.10 Habitual use of alcohol or any drug or any substance or any physical or mental condition, which impairs competent and objective professional performance;

4.1.1.11 Gross or repeated negligence in the practice of art therapy or other related professional work; including, but not limited to, sexual relationships with clients, and sexual, physical, social, or financial exploitation;

4.1.1.12 Limitation or sanction (including but not limited to discipline, revocation, or suspension by a regulatory board or professional organization) in a field relevant to the practice of art therapy;

4.1.1.13 The conviction of, or plea of guilty or plea of nolo contendere to, (i) any felony or (ii) any crime related to the practice of art therapy, the therapist's professional qualifications, or public health and safety. Convictions of this nature include but are not limited to those involving rape, sexual abuse of a patient or child, actual or threatened use of a weapon or violence, and the prohibited sale, distribution or use of a controlled substance;

4.1.1.14 Failure to update information in a timely manner, including any violation referred to in this section, to the ATCB;

4.1.1.15 Failure to maintain confidentiality as required in the Standards of Conduct, by any ATCB policy or procedure, or as otherwise required by law; or

4.1.1.16 Other violation of an ATCB standard, policy, or procedure stated herein or as stated in the ATCB candidate brochure or other material provided to applicants, registrants, or certificants.

4.2 Release Of Information 4.2.1 Each applicant, registrant, and certificant agrees to cooperate promptly and fully in any review of eligibility or credential status, including submitting such documents and information deemed necessary to confirm the information in an application.

4.2.2 The individual applicant, registrant, or certificant agrees that the ATCB and its officers, directors, committee members, employees, Ethics Officer, Disciplinary Hearing Panel members, agents, and others may communicate any and all information relating to an ATCB application, registration or certification, and review thereof, including, but not limited to, existence of or outcome of disciplinary proceedings, to state and federal authorities, licensing boards, employers, other registrants or certificants, and to the public.

4.3 Waiver 4.3.1 An applicant, registrant, or certificant releases, discharges, exonerates, indemnifies, and holds harmless the ATCB, its officers, directors, employees, committee members, panel members, Ethics Officer, Disciplinary Hearing Panel members, and agents, and any other persons from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, for actions of the ATCB arising out of applicant's application for or participation in the ATCB registration and/or certification programs and use of ATCB trademarks or other references to the ATCB registration and/or certification programs, including but not limited to the furnishing or inspection of documents, records, and other information and any investigation and review of applications or credentials by the ATCB.

4.4 Reconsideration Of Eligibility And Reinstatement Of Credentials 4.4.1 If eligibility or credentials are denied, revoked, or suspended for a violation of the Standards of Conduct, eligibility for credentials may be reconsidered by the Board of Directors, upon application, on the following basis:

4.4.1.1 In the event of a felony conviction, no earlier than five years from and after the exhaustion of appeals, completion of sentence by final release from confinement, probationary or parole status, or satisfaction of fine imposed, whichever is later;

4.4.1.2 In any other event, at any time following imposition of sanctions, at the discretion of the Board of Directors.

4.4.2 In addition to other facts required by the ATCB, such an applicant must fully set forth the circumstances of the decision denying, revoking, or suspending eligibility or credentials as well as all relevant facts and circumstances since the decision.

4.4.3 The applicant bears the burden of demonstrating by clear and convincing evidence that he or she has been rehabilitated and does not pose a danger to others.

4.5 Deadlines 4.5.1 The ATCB expects its registrants and certificants to meet all deadlines imposed by the ATCB, especially in regard to submission of fees, renewal or recertification applications, required evidence of continuing education, and sitting for its examinations. On rare occasions, circumstances beyond the control of the applicant, registrant or certificant, or other extraordinary conditions may render it difficult, if not impossible, to meet ATCB deadlines.

4.5.2 Should an applicant, registrant, or certificant wish to appeal a missed deadline, he or she must transmit a written explanation and make a request for a reasonable extension of the missed deadline along with the appropriate fees with full relevant supporting documentation, to the ATCB Executive Director, to the attention of the ATCB Board of Directors.

4.5.3 The Board of Directors shall determine at the next meeting of the Board, in its sole discretion and on a case-by-case basis, what, if any, recourse will be afforded based on the circumstances described and the overall impact on the profession of art therapy. No other procedures shall be afforded for failure to meet ATCB deadlines.

4.15.4 The ATCB shall make every effort to follow the time requirements set forth in this document. However, the ATCB's failure to meet a time requirement shall not prohibit the final resolution of any ethics matter.

II. DISCIPLINARY PROCEDURES CODE

5.0 DISCIPLINARY PROCEDURES

5.1 Appointment Of Disciplinary Hearing Panel

5.1.1 The ATCB Board of Directors may authorize an Ethics Officer and a Disciplinary Hearing Panel to investigate or consider alleged violations of the Standards of Conduct contained in this Code or any other ATCB standard, policy or procedure. The ATCB Board of Directors shall appoint the chair of the Disciplinary Hearing Panel. 5.1.2 The Disciplinary Hearing Panel shall be composed of three members, including the chair. The membership of the Disciplinary Hearing Panel shall be drawn from ATCB registrants and certificants, except that one member of the Disciplinary Hearing Panel shall be a public member who shall not be an ATCB registrant or certificant. 5.1.3 The initial appointments to the Disciplinary Hearing Panel shall be for terms of years as determined by the ATCB Board of Directors to result in staggered expiration dates. Thereafter, a panel member's term of office on the panel shall run for three years and may be renewed. Once a member of the Disciplinary Hearing Panel begins to participate in the review of a matter, the panel member shall remain part of the Disciplinary Hearing Panel for that particular matter even if the review extends beyond the expiration of his or her term. 5.1.4 A panel member may not serve simultaneously as Ethics Officer and may not serve on any matter in which he or she has an actual or apparent conflict of interest or his or her impartiality might reasonably be questioned.

5.1.5 When a party to a matter before the Disciplinary Hearing Panel requests that a member of the panel, other than the chair, recuse himself or herself, a final decision on the issue of recusal shall be made by the chair, subject to review as hereinafter provided. In the event a request is made that the chair recuse himself or herself, the decision shall be made by the President, subject to review as hereinafter provided. 5.1.6 Panel action shall be determined by majority vote. 5.1.7 When a Panel member is unavailable to serve by resignation, disqualification, or other circumstance, the President of the ATCB shall designate another registrant or certificant, or public member, if applicable, to serve as an interim member for a particular matter or for the duration of the panel member's unexpired term, whichever is appropriate.

5.2 Submission Of Allegations 5.2.1 Any person concerned about a possible violation of the ATCB Standards of Conduct, or other ATCB standard, policy or procedure, may initiate a complaint by identifying the persons alleged to be involved and the facts concerning the alleged conduct in as much detail and specificity as possible with available documentation in a written statement addressed to the Executive Director.

5.2.2 The written complaint must identify by name, address, and telephone number of the person making the information known to the ATCB, and others who may have knowledge of the facts and circumstances concerning the alleged conduct. The ATCB may provide for the submission of complaints on forms to be supplied by the Executive Director.

5.2.3 The Executive Director shall forward the complaint to the Public Member of the ATCB Board of Directors (the “Public Member”) for further action. The Public Member may initiate complaints that shall be handled in the manner provided hereinafter for the review and determination of all complaints.

5.2.4 The Public Member shall review the allegations and supporting information and make a determination of the merits of the allegations, after such further inquiry as he or she considers appropriate, and after consultation with ATCB legal counsel as needed. 5.2.5 The Public Member may direct the ATCB Executive Director to assist with factual investigations or with administrative matters related to the initial review of allegations. 5.2.6 If the Public Member determines that the allegations are frivolous or fail to state a violation of the Standards of Conduct, or that the ATCB lacks jurisdiction over the complaint or the person(s) complained about, ATCB take no further action and shall notify the Board and the complainant. 5.2.7 If the Public Member determines that probable cause may exist to deny eligibility or question compliance with the Standards of Conduct or any other ATCB policy or procedure, he or she shall transmit the allegations to the Ethics Officer. 5.2.8 The Ethics Officer shall review the allegations and supporting information provided and may make such further inquiry, as he or she deems appropriate.

5.2.9 The Ethics Officer may seek the assistance of the Executive Director to research precedents in the ATCB’s files, as he or she reasonably determines to be necessary in making a determination regarding probable cause of a violation of the ATCB Code of Professional Conduct or other misconduct. The Ethics Officer may direct the ATCB Executive Director to assist with factual investigations or with administrative matters related to the review of allegations.

5.2.10 If the Ethics Officer concurs that probable cause may exist to deny eligibility or question compliance with the Standards of Conduct or any other ATCB policy or procedure, he or she shall transmit the allegations and his or her findings to the full Disciplinary Hearing Panel, the complainant and the respondent.

5.2.11 If the Ethics Officer determines that probable cause does not exist to deny eligibility or question compliance or that the ATCB lacks jurisdiction over the complaint or the person(s) against whom the complaint was made, he or she shall direct ATCB to take no further action and shall notify the Board, the applicant, registrant, or certificant, and complainant, if any.

5.3 Procedures Of The Disciplinary Hearing Panel 5.3.1 Upon receipt of notice from the Ethics Officer containing a statement of the complaint allegations and the finding(s) that probable cause may exist to deny eligibility or question compliance with the Standards of Conduct or any other ATCB policy or procedure, the applicant, registrant, or certificant shall have thirty (30) days after receipt of the notice to notify the Ethics Officer in writing that the applicant, registrant, or certificant disputes the allegations of the complaint and to request review by written submissions to the Disciplinary Hearing Panel, a telephone conference with the Disciplinary Hearing Panel, or an in-person hearing (held at a time and place to be determined by the panel), with the respondent bearing his or her own expenses for such hearing.

5.3.2 If the applicant, registrant, or certificant does not contest the allegations of the complaint he or she may still request review by written submissions to the Disciplinary Hearing Panel, a telephone conference with the Disciplinary Hearing Panel, or an in-person hearing (held at a time and place to be determined by the panel), with the applicant, registrant, or certificant bearing his or her own expenses for such hearing, concerning the appropriate sanction(s) to be applied in the case.

5.3.3 If the applicant, registrant, or certificant does not submit a written statement contesting the allegations or notify the board of a request for review by written submission, telephone conference or in-person hearing as set forth in this paragraph, then the Disciplinary Hearing Panel

shall render a decision based on the evidence available and apply sanctions as it deems appropriate. 5.3.4 If the applicant, registrant, or certificant requests a review, telephone conference, or hearing, the following procedures shall apply:

5.3.4.1 The Ethics Officer shall forward the allegations and applicant, registrant, or certificant of the respondent to the Disciplinary Hearing Panel, and shall present the allegations and any substantiating evidence, examine and cross-examine witnesses, and otherwise present the matter during any hearing of the Disciplinary Hearing Panel.

5.3.4.2 The Disciplinary Hearing Panel shall then schedule a written review, or telephone or in-person hearing as requested by the applicant, registrant, or certificant, allowing for an adequate period of time for preparation, and shall send by certified mail, return receipt requested, a notice to the applicant, registrant, or certificant. The notice shall include a statement of the standards allegedly violated, the procedures to be followed, and the date for submission of materials for written review, or the time and place of any hearing, as determined by the Disciplinary Hearing Panel. The applicant, registrant, or certificant may request a change in the date of any hearing for good cause, which shall not unreasonably be denied.

5.3.4.3 The Disciplinary Hearing Panel shall maintain a verbatim audio, video, or written transcript of any hearing.

5.3.4.4 During any proceeding before the Disciplinary Hearing Panel, all parties may consult with and be represented by counsel at their own expense. At any hearing, all parties or their counsel may make opening statements, present relevant documents or other evidence and relevant testimony, examine and cross-examine witnesses under oath, make closing statements, and present written briefs as scheduled by the Disciplinary Hearing Panel.

5.3.4.5 The Disciplinary Hearing Panel shall determine all evidentiary and procedural matters relating to any hearing or written review. Formal rules of evidence shall not apply. Relevant evidence may be admitted. The chair, subject to the majority vote of the full panel, shall determine disputed questions regarding procedures or the admission of evidence. All decisions shall be made on the record.

5.3.4.6 The burden shall be upon the ATCB to demonstrate a violation by preponderance of the evidence.

5.3.4.7 Whenever mental or physical disability is alleged, the applicant, registrant, or certificant may be required to undergo a physical or mental examination at his or her own expense. The report of such an examination shall become part of the evidence considered.

5.3.4.8 The Disciplinary Hearing Panel shall issue a written decision following any hearing or written review and any submission of briefs. The decision shall contain findings of fact, a finding as to the truth of the allegations, and any sanctions applied. It shall be mailed promptly by certified mail, return receipt requested, to the applicant, registrant, or certificant.

5.3.4.9 If the Disciplinary Hearing Panel finds that the allegations have not been proven by a preponderance of the evidence, no further action shall be taken, and the applicant, registrant, or certificant, and the complainant, if any, shall be notified.

5.4 Appeal Procedures 5.4.1 If the decision rendered by the Disciplinary Hearing Panel is not favorable to the applicant, registrant, or certificant, he or she may appeal the decision to the ATCB Board of Appeals by submitting to the Executive Director a written appeals statement within thirty (30) days following receipt of the decision of the Disciplinary Hearing Panel. The Disciplinary Hearing Panel shall grant any reasonable requests for extensions.

5.4.2 The Disciplinary Hearing Panel may file a written response to the appeal with the Executive Director.

5.4.3 The Executive Director shall immediately forward any appeals documents to the ATCB Board of Appeals.

5.4.4 The ATCB Board of Appeals by majority vote shall render a decision on the record without further hearing, although written briefs may be submitted on a schedule reasonably determined by the Board of Appeals. On matters on which the ATCB Public Member has initiated a complaint or performed the initial review, he or she shall not be part of the ATCB Board of Appeals.

5.4.5 The decision of the ATCB Board of Appeals shall be rendered in writing following receipt and review of briefs. The decision shall contain findings of fact, a finding as to the truth of the allegations, and any sanctions applied and shall be final.

5.4.6 The decision of the ATCB Board of Appeals shall be communicated to the applicant, registrant, or certificant by certified mail, return receipt requested. The complainant, if any, shall be notified of the Board of Appeals' final decision.

5.5 Sanctions 5.5.1 Sanctions for violation of the Standards of Conduct, or any other ATCB standard, policy or procedure to which reference is made herein, may include, without limitation, one or more of the following:

5.5.1.1 Denial or suspension of eligibility for credentials for a stated period of time;

5.5.1.2 Forfeiture or revocation of registration or certification;

5.5.1.3 Suspension or probation of registration or certification for a stated period of time;

5.5.1.4 Non-renewal of certification;

5.5.1.5 Reprimand;

5.5.1.6 Publication of the complaint and its disposition;

5.5.1.7 Mandatory remediation through specific education, treatment, and/or supervision;

5.5.1.8 A requirement that the respondent take appropriate corrective action(s);

5.5.1.9 Referral or notice of governmental bodies of any final determination made by the ATCB; or 5.5.1.10 Other corrective action.

5.5.2 Threat of Immediate and Irreparable Harm

Whenever the Public Member determines that there is cause to believe that a threat of immediate and irreparable harm to the public exists, the Public Member shall forward the allegations to the ATCB Board of Appeals. The Board of Appeals shall review the matter immediately, and provide telephonic or other expedited notice and review procedure to the candidate, registrant, or certificant. Following such notice and opportunity by the individual to be heard, if the Board of Appeals determines that a threat of immediate and irreparable injury to the public exists, certification or registration may be suspended for up to ninety (90) days pending a full review as provided herein.

5.6 Resignation from ATCB

5.6.1 Should a respondent attempt to relinquish ATCB certification or registration or withdraw an application during the course of any ethics inquiry or case, the ATCB reserves the right to continue the matter to a final resolution according to these rules. The ATCB may require that a registrant or certificant agree to conditions related to the relinquishment of a registration or certification.

5.7 Bias, Prejudice, Impartiality 5.7.1 At all times during the ATCB's handling of any matter, the ATCB shall extend impartial review. If at any time during the ATCB's review of a matter an applicant, registrant, certificant, or any other person identifies a situation where the judgment of a reviewer may be biased or prejudiced or impartiality may be compromised (including employment with a competing organization), such person shall immediately report such matter to the Executive Director or President of the ATCB.